

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Atlas Glass and Aluminum Ltd. v. 3273478 Nova Scotia Ltd.*,
2017 NSSM 10

BETWEEN:

ATLAS GLASS AND ALUMINUM LTD.

Claimant

- and -

3273478 NOVA SCOTIA LIMITED

Defendant

REASONS FOR DECISION

Editorial Notice: Addresses and phone numbers have been removed from the electronic version of this judgment

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on January 17, 2017

Decision rendered on February 8, 2017

APPEARANCES

For the Claimant
For the Defendant

Dion MacQuarrie, president
Patrick Jabbour and Elias Jabbour, Directors

BY THE COURT:

[1] This Claimant is suing to recover the balance of a contract to construct a glass curtain wall on a vacant mall on [...] in Dartmouth. The value of the contract was \$21,926.00 plus HST.

[2] The Defendant paid 75% of the price, but has withheld 25% on account of problems which appear resistant to repair. Specifically, there are water leaks. The most serious leaks occur at the doors, where water enters across the threshold when it rains. But there are minor leaks elsewhere.

[3] The Claimant says that there is not a sufficient grade away from the door in the concrete walkway, which would allow the water to drain away naturally, the Claimant also says that awnings above the doors would largely alleviate the problem. The concrete walkway was put in place after the glass curtain wall was installed, and the Claimant insists that he did not expect that the walkway would not be sufficiently sloped to repel water.

[4] The Defendant says that the walkway is sloped appropriately, and from a design point of view it has no interest in putting up awnings.

[5] The Claimant refuses to attempt to rectify any of the water leaks, even though the work is under warranty, because Mr. MacQuarrie does not believe he will be paid.

[6] The Defendant has had a couple of companies come to inspect the work and estimate what it would cost to fix it. The best that they can come up with is a

time and materials estimate, because no one seems sure exactly what may need to be done.

[7] At the hearing I advised the parties that I was hardly in any better position to decide what it would cost to fix the problem. I did indicate that I did not believe the Claimant should receive the full balance of the contract, as the product is not functioning as it should. I encouraged the parties to attempt to work out a discount, that would notionally provide the Defendant with a fund to use for repairs. Failing agreement, I would have to decide.

[8] Not having heard from the parties since the hearing, I am going to abide by the old adage that "equity is equality" and allow the Claimant one-half of what it seeks, namely \$3,033.12. I will allow it costs of \$199.35 to issue and \$97.75 to serve the claim.

Eric K. Slone, Adjudicator