

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Rotary Club of Sackville and Area v. Landry*, 2017
NSSM 37

BETWEEN:

ROTARY CLUB OF SACKVILLE AND AREA

Claimant

- and -

JOSEPH LANDRY, BRIAN GAZELEY, and
LANDRY GAZELEY ARTS

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on June 8, 2017

Decision rendered on June 20, 2017

APPEARANCES

For the Claimant

Debbie Gascoigne, Treasurer
Ron Zwaagstra, Past President
Linda Meldrum, President
Karen Broydell, Foundation Chair

For the Defendants

self-represented

BY THE COURT:

[1] The Defendants Joseph Landry (“Landry”) and Brian Gazeley (“Gazely”), collectively “Landry and Gazeley,” are a Hammonds Plains-based sculpting partnership with an international reputation for their work. The named entity Landry Gazeley Arts is an unregistered name which Landry and Gazely sometimes use.

[2] The Rotary Club is an international service organization, which has a branch based in Lower Sackville, Nova Scotia. That branch (“the Club”) has brought this Claim alleging breach of contract against the Defendants.

[3] In early 2013 an idea was born to create a large sculpture involving the youth in the community. Children would be invited to have molds taken of their hands, which would then be cast into a set of panels designed by Landry and Gazeley, which work (called the “Hands Wall”) would be displayed in Acadia Park on Sackville Drive. The projected completion date was sometime in 2014.

[4] Landry and Gazeley produced an invoice in the amount of \$4,200.00 which was paid by the Club in early June 2014. Mr. Landry testified that the invoice was for a fraction of the anticipated work to complete this project, and that it was in many respects a volunteer effort on his and Gazeley’s part. The charge was mostly to recoup the cost of materials.

[5] Many hours were spent casting the hands of volunteer children in the community. This was only the first step as all of the individual casts were to be put together at Landry and Gazeley’s workshop, forming part of the sculptures that would eventually hang in the park.

[6] The projected finish date came and went, and after about two years the Club gave something of an ultimatum to Landry and Gazeley. Despite promises given in 2016, the project remains stalled. The Club wants its money back as well as delivery of the casts, which it says it will destroy because it contains confidential information, namely the impressions of children's hands.

[7] Landry and Gazeley do not deny that there has been unacceptable delay, but explain that this has been entirely due to Mr. Landry's poor health. During the last few years he has suffered with a condition that was difficult to diagnose, and that sapped him of much of his strength. He was simply unable to work on the project. He admits that he concealed his poor health from the public, which explains how he was occasionally seen at parties or other events that he and Gazeley hosted.

[8] As far as Landry and Gazeley are concerned, the project can still go ahead, as Landry is now much better.

[9] The Club appears to have abandoned the project entirely, in part because they have completely lost trust in Landry and Gazeley.

[10] There is no written contract between the parties, but I believe an implied term can be read into it, to the effect that the work would be completed within a reasonable time. On that basis, the amount of time that has passed with no sculptures delivered is excessive and exceeds what was promised.

[11] Mr. Landry's illness is an explanation, and might even have been a complete answer had he been forthcoming about his own condition to the Club. There appears to have been an almost complete breakdown of communication, which I attribute to Landry and Gazeley. Assuming Mr. Landry was too ill even to communicate, such as by phone or email, this does not explain why Mr. Gazeley did not do so on their joint behalf.

[12] Clearly the relationship between Landry and Gazeley and the Club is fractured and they cannot work together, which is a shame, but it is the reality.

[13] There are some minor, but interesting questions that need to be answered in order to arrive at the appropriate remedy.

Is there confidential information that needs to be protected?

[14] In my opinion, there is no confidential information. The children's hands were cast, but care was taken to buff out any information such as fingerprints which would make it remotely feasible to identify the identity of the hands, let alone exploit it. The fact that parents were asked by the Club to sign a waiver was probably an abundance of caution, and also covered risks other than to the children's identities.

Who owns the intellectual property?

[15] Landry and Gazeley argued that they own the intellectual property in the sculpture, unfinished though it may be, which is why they resist any order that would see it destroyed. I agree, but subject to a qualification. When a piece of

art is commissioned, the implication is that the work, as well as all associated intellectual property, belongs to the party commissioning it. As such, having agreed to make it for a client, i.e. the Club, Landry and Gazeley have no special claim to intellectual property rights that overrides any contractual rights.

Remedy

[16] In my opinion, the Club has made out a case of breach of contract, but cannot have it both ways. Conceptually, it is entitled to either of two things:

- a. A refund, or
- b. The work.

[17] In my opinion, the appropriate remedy in this case is for the Club to be reimbursed for the money that it paid to Landry and Gazeley. I recognize that the Club paid additional moneys to have concrete blocks poured in the park, which were meant to house the sculptures. I also recognize that many volunteer hours were wasted, on both sides.

[18] The imperfect remedy I have chosen is legally consistent with the principle of rescission. The contract has been rendered void by the Defendants' non-performance, and the Claimant is entitled to its money back.

[19] I recognize that the sculptures may have some value, and may end up in the same or a similar installation, just not in association with the Club. That does not affect my ruling, as I find that the Defendants Landry and Gazeley are free to use the sculpture as they see fit.

[20] The Claimant is entitled to its money with interest at the statutory rate of 4% for four years.

[21] The following is awarded:

refund	\$4,200.00
interest @ 4% for 4 years	\$672.00
costs	\$199.35
Total	\$5,071.35

Eric K. Slone, Adjudicator