Claim No: SCBW 466199

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Tanner v. Schrader, 2017 NSSM 53

BETWEEN:

JUSTIN TANNER and JT'S DRYWALL SERVICES

Claimants

- and -

CRAIG SCHRADER

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Bridgewater, Nova Scotia on September 5, 2017

Decision rendered on September 6, 2017

APPEARANCES

For the Claimants	self-represented
For the Defendant	self-represented

BY THE COURT:

[1] The Claimant is a drywall contractor. In this Claim he is suing the Defendant for the balance he believes is owing on a contract to install drywall in the Defendant's 16 unit apartment building. The amount of the Claim is $818.60, which represents the balance owing on an invoice for $1,818.60. The Defendant only paid $1,000.00 of that invoice and terminated the Claimant's services.

[2] The evidence of the Claimant consisted of his earlier invoices, which had been paid, and his testimony to the effect that he installed drywall in the amounts indicated and that the Defendant is obligated to pay those invoices.

[3] The Defendant came to court with numerous photographs, as well as a brief video, which he says show that the work was of very poor quality.

[4] The photos are disturbing. They show drywall not properly attached to the studs, left hanging loose on the walls. Corners have been very crudely cut. Drywall screws are conspicuously missing in many places. The work shown in the pictures is not workmanlike, to put it charitably.

[5] The Defendant also testified that the Claimant routinely charged for amounts supposedly installed, which were inaccurate. Quite apart from deficiencies in the work, he testified that he has been overcharged.

[6] The Claimant seemed strangely unmoved by the graphic evidence of deficient work. He insisted that he does good work, and suggested that there

was work that he had done for which he had not yet billed, which might offset any overcharges.

[7] Part of his narrative was that he billed on Thursdays for work that might not get completed until Friday, or over the weekend. This seems strange to me. Normally contractors bill for the work that they have completed,

[8] The evidence convinces me that the work was not done properly, and I accept the detailed calculations made by the Defendant to the effect that not only is the amount claimed not owing, but in fact that Claimant has overcharged him to the tune of $1,032.58. I am dismissing the claim and allowing the counterclaim to that extent.

[9] There is in fact a larger counterclaim at issue. The Defendant says that because of the deficient work, completion of much of the apartment building has been delayed, causing the Defendant to lose at least one month of rent from each of the 16 apartments. This claim adds up to $13,825.00.

[10] In order for damages to be recovered for breach of contract, those damages must have been “within the contemplation” of the parties, or as sometimes expressed, the foreseeable result of the breach. This test was famously set by the House of Lords in the old English case of *Hadley v Baxendale* [1854] EWHC. In order to hold someone like the Claimant liable for thousands of dollars in lost rent, the Defendant must prove that the Claimant know of the potential consequences of breaching the contract, and that he knowingly incurred that risk. I cannot say that the Defendant has proven that the hiring of the Claimant has established such an onerous risk being undertaken by

the Claimant. I can accept generally that the Claimant must have known that poor workmanship might cost time and money, but in my view that is not enough for this branch of the counterclaim to succeed.

[11] The result will accordingly be that the claim is dismissed, and the Defendant recovers $1,032.58 on the counterclaim. The Defendant is also entitled to the $66.00 filing fee for the counterclaim.

Eric K. Slone, Adjudicator