Citation: *39957 Yukon Inc. o/a Reliable Electric & Communications and Owen Laviolette v. Darrin Sinclair*, 2012 YKSM 4

Date: 20120611
Docket: 11-S0008
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Chief Judge Cozens

39957 Yukon Inc. o/a Reliable Electric & Communications and Owen Laviolette

Plaintiffs

v.

Darrin Sinclair

Defendant

Appearances:
Owen Laviolette — Appearing on own behalf for the Plaintiffs
Darrin Sinclair — Appearing on own behalf

REASONS FOR JUDGMENT

[1] The Plaintiffs, 39957 Yukon Inc., and Owen Laviolette, the owner and operator of the Plaintiff company, seek payment from the Defendant, Darrin Sinclair, for electrical work performed at the Defendant's newly constructed home (the "Residence"). The Defendant has filed a counter-claim seeking return of monies he provided to the Plaintiff as part of a settlement proposal, which the Plaintiff kept while still asserting their claim for full payment. Although Owen Laviolette is suing both on his own behalf and on behalf of his company, given that he, as the owner and operator, negotiated the contract at issue and personally made all of the subsequent representations and decisions, I am referring to him in the singular, as "the Plaintiff".

[2] The Plaintiff's position is that he had an agreement with the Defendant to

wire the Defendant's Residence and bill him $85.00 per hour for this electrical work. The Plaintiff denies that he provided the Defendant a final or binding estimate as to the total cost of the job. The Plaintiff claims that the Defendant has not fully paid the Plaintiff for the work performed.

[3] The Plaintiff invoiced the Defendant a total of $30,778.73 on four invoices, with the final invoice reduced by $1,963.50 (inclusive of GST), due to concerns expressed by the Defendant about the work performance of one of the Plaintiff's employees. The Defendant has paid the Plaintiff a total of $26,344.10, although a final payment of $9,241.12 was provided by the Defendant to the Plaintiff as part of a proposed compromise agreement, and not in recognition of an outstanding amount owing.

[4] The Plaintiff's claim is for $4,708.15 plus costs, which amount includes $273.52 for interest on the invoice dated 19/04/2011, in regard to the unpaid balance on earlier invoices, dated 28/02/11 and 11/03/11.

[5] The Defendant's counterclaim is for $9,241.12.

[6] On his part, the Defendant does not dispute that there was an agreement that the Plaintiff would bill him at the rate of $85.00 per hour for electrical work, however he claims that the agreement reached between the parties was that the total price he would be billed for the electrical work, inclusive of materials and labour, would be between $22,000.00 - $25,000.00, and no more. There was no evidence as to whether this amount was to include GST.

[7] The Defendant also expressed a concern about $85.00 per hour also

being billed for apprentice electricians, as he had understood that this was the rate for Mr. Laviolette in his capacity as a journeyman electrician.

[8] As such, the Defendant claims that he should not have been required to pay the Plaintiff any amount in excess of $25,000.00 for the wiring of the Residence, other than an additional amount for installation of teck cable wiring for the hot tub, and wiring for the generator transfer switch. The Defendant estimates this amount to be approximately $850.00 for labour, having supplied the materials himself.

[9] The Defendant further submits that the cost of any materials he purchased should be deducted from this final figure of $25,850.00. This amount is $5,090.53, including GST. As such, the Defendant's position is that the maximum total he should have paid to the Plaintiff is approximately $20,759.47. It is not clear whether this amount is inclusive of GST or not. He also states that there was no agreement that interest would accrue on outstanding invoices.

[10] The Defendant says that the Plaintiff should not have cashed the bank draft in the amount of $9,241.12 unless he was accepting the proposed compromise agreement. As such, the Defendant claims that the Plaintiff has been overpaid by approximately $5,584.62.

Issues

[11] The critical issue in this case is what the parties' oral agreement was as to the price of the work done on the Residence. If I accept the Plaintiff's evidence that it was an open-ended $85.00 per hour, then, in the absence of evidence that

the Plaintiff overcharged for the value of the work completed, the Plaintiff is entitled to be paid for the work completed and billed at $85.00 per hour.

[12] On the other hand, if I accept the evidence of the Defendant that there was a contractual "cap" at $25,000.00 for labour and materials, then that is the maximum I can find that the Plaintiff is entitled to receive, setting aside the value of the Plaintiff's extra work on the hot tub and generator wiring, which would need to be assessed on a fair market value basis.

Evidence

Evidence of the Plaintiff

[13] The Plaintiff, who had previously done work for the Defendant at his business location on two occasions, testified that the Defendant approached him in December, 2010 and asked him to provide an approximate cost for completing the wiring of his house. He stated that he advised the Defendant that the average cost for wiring a residence was between $10,000.00 - $15,000.00. He testified that this is the usual quote he provides in order to get a project underway, is the estimated value he generally uses to obtain electrical permits from the City of Whitehorse, and was the average cost he initially quoted in this case.

[14] The Defendant subsequently contacted the Plaintiff regarding entering into an agreement to perform the wiring work on the Residence. Mr. Laviolette arranged for his brother, a third year electrical apprentice, Sheldon Laviolette ("Sheldon"), to install the service cable. This was done with the assistance of the Defendant and his bobcat loader. The Plaintiff tied in the service the next day.

He testified that the Defendant was happy with the work. Mr. Laviolette testified that this was the first time he saw the Residence, and he noted that it was a large house. In cross-examination, however, he agreed that he could have first viewed the Residence from the outside three to four weeks before the service installation began.

[15] Mr. Laviolette stated that he started work on the electrical rough-in of the Residence the next day, without having had any further advance discussion with the Defendant regarding the price to be charged for the work. On about the second day of rough-in work, he and the Defendant had a conversation in the garage of the Residence. Sheldon, who was working in the garage at the time, was involved in this discussion to a limited extent.

[16] Mr. Laviolette testified that in this conversation, which lasted up to 20 minutes, he advised the Defendant that the wiring of the Residence would cost more than the original $10,000.00 to $15,000.00 quoted, and that the Defendant would be billed at the rate of $85.00 per hour. He also advised the Defendant that Sheldon and “Ray” (last name unknown) would be performing most of the work, and that the rate of $85.00 per hour applied to their work as well as his own. Mr. Laviolette also told the Defendant that the Defendant could use the Plaintiff’s account at Eecol Electric to purchase materials, thus saving the 20% mark-up the Plaintiff would normally charge on materials. He stated that at no time in this conversation did he give the Defendant an estimated total cost for the work to be done.

[17] Mr. Laviolette stated that the Defendant agreed with these terms and

expressed no complaints or concerns.

[18] Sheldon testified that he was present in the garage about 10 feet away when Mr. Laviolette and the Defendant discussed the cost for the wiring of the Residence, and he heard portions of the conversation. He stated that there was a five to 10 minute discussion between Mr. Laviolette and the Defendant regarding the size of the house and number of circuits, the difficulty in coming up with an exact price, and that the discussion included the figure of $85.00 per hour. He does not recall the Defendant asking Mr. Laviolette for a total cost at that time or Mr. Laviolette giving the Defendant a figure of $22,000.00 - $25,000.00. He recalled there being such a discussion later when the project was 80% completed.

[19] Sheldon stated that he initiated the conversation between Mr. Laviolette and the Defendant in the garage by telling Mr. Laviolette that this project would require more work than the last project the Plaintiff had done. Sheldon stated that while he paid little attention to the small talk, he recalls the basics of the conversation between Mr. Laviolette and the Defendant. He stated that at the end of the conversation he told the Defendant that he would work hard to keep the costs down. He said he told the Defendant this as it was clear that the Defendant was concerned about the cost of the job.

[20] Mr. Laviolette testified that at the half-way point of the job, the Defendant stated he was happy with the work and did not express any complaints or concerns. It was only near the end of the rough-in that the Defendant expressed concerns about Ray's work over a two-day period. As a result, the Plaintiff

reduced the billing for Ray's work to eight hours from 16 and by $5.00 per hour.

[21] When the Defendant advised the Plaintiff that he was not going to pay the most recent invoice he had received, dated February 28, 2011, the Plaintiff stopped work on the Residence. By that time the rough-in was mostly completed. Mr. Laviolette agreed in his testimony with the Defendant's position that the remaining work could have been completed in approximately 20 hours.

[22] Mr. Laviolette testified that the Residence was a large house with lots of wiring, including dedicated circuits and that it had less than the maximum outlets per circuit. It also had electric in-floor heating, three separate fridge circuits, and included many pot lights, which were more time-consuming to install. Mr. Laviolette also indicated that he installed a sub-panel in the garage which was not in the plans, although he conceded that this allowed him to run fewer separate circuit feeds from the main panel, so the cost differential may have been negligible.

[23] Mr. Laviolette stated that he did not see the blueprints for the Residence until after he had roughed-in the garage and, as a result, he had over-wired the garage. He stated that he informed the Defendant of this and that no concerns were raised. Mr. Laviolette did not provide any estimate as to the value of the work he performed in wiring the garage above what it would have cost had he wired it according to the blueprints.

[24] Mr. Laviolette testified that he provided the Defendant with four invoices:

December 12, 2010:	#655921 – permits/installation of the service:	$ 7,762.36
January 31, 2011:	#655041 – house rough-in:	$ 9,340.62
February 28, 2011:	#654967 – house/garage rough-in:	$10,353.00
March 11, 2011:	#654975 – rough-in:	$ 3,322.75
		$30,778.73

[25] The Defendant paid the first two invoices in the amount of $17,102.98. He did not pay the February and March invoices. On April 15, 2011, the Plaintiff sent the Defendant a facsimile transmission indicating that the Defendant owed the Plaintiff $13,949.27, including interest on the unpaid invoices in the amount of $273.52.

[26] The Defendant subsequently provided the Plaintiff a bank draft in the amount of $9,241.12 as part of a proposed compromise. The premise of this proposal was based upon a 50/50 division of the disputed monies. The Plaintiff, without accepting the compromise proposed by the Defendant, cashed this bank draft as payment towards the outstanding invoice amounts.

[27] Sheldon testified that this was the biggest job he had worked on and that, while there were some extras, the Residence was generally wired as per the blueprints. After the Plaintiff ceased working on the Residence, Sheldon made arrangements with the Defendant to complete the work on his own.

Evidence of the Defendant

[28] The Defendant testified that he contacted Mr. Laviolette in November, 2010 about wiring the Residence. The Plaintiff had completed two prior business projects for the Defendant. In both of these projects, oral cost estimates were

given and the costs were consistent with these estimates.

[29] The Defendant stated that the original estimate the Plaintiff provided him for wiring the Residence was between $10,000.00 - $15,000.00. He thought that this estimate was a little low based upon a figure of $20,000.00 for electrical work that he had received as part of a larger construction estimate from R.J. Wiebe Construction.

[30] Two days after the service was installed by the Plaintiff, with assistance from the Defendant, the Defendant and Mr. Laviolette had the previously mentioned discussion in the garage during which Mr. Laviolette stated that, due to the size of the Residence, the original quote was too low and the cost of the project would be between $22,000.00 - $25,000.00 for labour and materials. Given the Defendant's knowledge of the R.J. Wiebe Construction estimate, he thought that, while this subsequent estimate by Mr. Laviolette was a little high, it was not unreasonable, in particular as the Plaintiff was allowing the Defendant to use the Plaintiff's account to purchase materials, thus allowing the Defendant to avoid the additional mark-up costs the Plaintiff could charge for supplies.

[31] While he agreed to the rate of $85.00 per hour, the Defendant nonetheless believed that the maximum cost would not exceed $25,000.00 for labour and materials. The Defendant also believed that Mr. Laviolette would be doing most of the work and would not be delegating it to apprentices. As noted, the Defendant was not particularly satisfied with the work of one of the apprentices, Ray.

[32] The Defendant stated he was stunned when he received the February 28 invoice from the Plaintiff, especially because of the amount of work that remained to be done. Therefore he contacted Mr. Laviolette and instructed him to cease working until the cost issue was resolved.

[33] After discussion, the Plaintiff agreed to reduce the invoice by approximately $2,000.00 for labour due to the Defendant's concerns. The Defendant arranged for the completion of the remainder of the electrical work by hiring Sheldon to work on his own time, at a reduced rate of $40.00 per hour, a fact that Mr. Laviolette became aware of only just prior to the commencement of the trial.

[34] The Defendant subsequently sent the Plaintiff a bank draft in the amount of $9,241.12, along with a proposal for a compromise settlement. In arriving at this figure, the Defendant had taken a total project cost of $25,000.00 and deducted the $5,090.53 in materials he purchased, giving a figure of $19,909.47. This left a difference of $12,689.26 when compared to the $32,778.73 the Plaintiff billed the Defendant, (the Defendant rounded up the figure of $1,963.50 by which the March 11 invoice was reduced to $2,000.00 in his calculations, thus using the figure of $32,778.73 in his calculations rather than the $32,742.23 actually billed). Dividing this amount equally, the resultant $6,434.63, when added to the $2,806.49 outstanding ($19,909.47 minus $17,102.98) results in a figure of $9,241.12. Although not explicitly stated by the Defendant in the correspondence, it was the intent of the Defendant that the Plaintiff would only cash the bank draft if he was agreeing to the compromise settlement. As noted,

the Plaintiff cashed the bank draft and applied the money to the outstanding invoices. It was at this point that any positive communications between the parties effectively ceased.

Analysis

[35] One of the difficulties in resolving this case is the lack of a written agreement between the parties clearly setting out the work to be done and the amount which the Plaintiff would bill the Defendant for this work.

[36] The Defendant's position is that there was an oral contract between the parties for work to be done by the Plaintiff at a rate of $85.00 per hour up to a maximum of $25,000.00, inclusive of labour and materials. The Defendant accepts that he requested extra work to be done by the Plaintiff on the generator and hot tub wiring, which was over and above the $25,000.00 limit.

[37] The Plaintiff's position is that there was no agreement on a price cap of $25,000.00 and that the oral contract consisted only of an agreement that the Plaintiff would bill the Defendant $85.00 per hour. Over and above the labour costs, the Defendant would also pay the Plaintiff for any materials that the Plaintiff purchased.

[38] ***Ketza Construction Corp.*** v. ***Mickey,*** [1999] Y.J. No. 32 (S.C.), was a decision of Hudson J. in a dispute between a contractor and a homeowner over the costs incurred in the construction of a residence. The Plaintiff in that case took the position that the Defendants had agreed to pay the Plaintiff for his costs in constructing the home and that there was no fixed price. The Defendant was

of the view that the parties had agreed to a fixed price. As noted by Hudson J. at para. 17, “the fact that each party believes the correctness of its or their position does not result in a contract if these beliefs are at variance with each other. There would be no consensus ad idem.”

[39] Hudson J. noted that a consensus ad idem must be clearly manifested. In that case, as in this one, although the parties agreed there was a contract for work, they did not agree on the terms of remuneration. In order to determine the scope of the contract, the Court had to evaluate the intentions outwardly communicated by the parties. Where, as here, there is no written document, the Court must look to everything occurring between the parties.

[40] The Defendant is arguing that an upper limit on the cost of the work was negotiated, while the Plaintiff says that the agreement was to pay an hourly rate until the work was done. Given that everything that occurred between the parties is relevant, what, in this case, was objectively agreed to, and to what extent does the effect of any such agreement constitute a contract between them?

[41] I find that there was agreement that the Plaintiff would bill the Defendant at the rate of $85.00 per hour for labour. I further find that, while the Defendant may have assumed that Mr. Laviolette would personally be providing the labour, rather than apprentices, there was no such representation made by the Plaintiff or any agreement that this would be the case. I find, in the absence of any contrary evidence, including evidence of an industry standard, that the Plaintiff was entitled to bill the Defendant for the work done by the apprentice electricians

at the rate of 85.00 per hour.

[42] I do not accept the position of the Plaintiff that the Defendant agreed to a rate of $85.00 per hour for labour without requesting and being provided an estimate for the total cost of the project. This is inconsistent with the evidence and does not logically make sense.

[43] Both the Plaintiff and the Defendant agree that there was an initial request by the Defendant for a rough estimate and acknowledge that one was given by Mr. Laviolette in the $10,000.00 to $15,000.00 range. Both parties agree that there was a further discussion in the garage of the Residence while it was being roughed in, during which Mr. Laviolette stated to the Defendant that the Residence could not be wired for this amount and would cost more. Both parties agree that Mr. Laviolette provided the Defendant a rate of $85.00 per hour for the work. Sheldon testified that, as a result of what he heard in the conversation between Mr. Laviolette and the Defendant, he was aware that the Defendant was very concerned about the cost, and he subsequently provided the Defendant assurances that he would work hard to keep the costs down.

[44] It defies logic to think that the Defendant, being as concerned as he was about the cost of the wiring, would not do as he did originally, that is, seek at least a general estimate of the cost of the project from the Plaintiff. The Defendant testified that he did so and that the estimate provided was between $22,000.00 - $25,000.00.

[45] While Mr. Laviolette testified that he did not provide the Defendant any

such estimate, I prefer the evidence of the Defendant on this point, and I find that, during the course of the discussion between Mr. Laviolette and the Defendant in the garage of the Residence, there was a representation made to the Defendant by Mr. Laviolette that the Plaintiff would install the electrical system at the rate of $85.00 per hour total with an estimated total cost of between $22,000.00 – $25,000.00, inclusive of labour and materials.

[46] I am not satisfied, however, that there was a true meeting of the minds and a manifestly clear intention by both parties to agree to a fixed price range, the final figure being determined by calculating hours at the $85.00 per hour rate. While I accept that the Defendant walked away from the discussion in the garage satisfied that the total cost would fall within the $22,000.00 - $25,000.00 fixed price range, I also find that Mr. Laviolette did not intend to commit himself to a cost within this fixed price range. As such there was no contract made between the parties that the Plaintiff would install the electrical wiring for the Residence at a cost not to exceed $25,000.00.

[47] To the extent, however, that the Defendant believed he had a fixed price range cost for the project, I find that he was led to this belief by the representations made by Mr. Laviolette.

[48] What, however, does the estimate provided by Mr. Laviolette mean in the context of the relationship between the parties?

[49] As noted by Masuhara J. in ***Golder Associates*** v**. *Mill Creek Development Ltd.***, 2004 BCSC 665:

20 While an estimate for the cost of services to be provided is not a guarantee or warranty at law, it may have contractual effect, in essence setting a limit beyond which fees may not go: see Price v. Roberts & Muir (1987), 19 B.C.L.R. (2d) 375, [1987] B.C.J. No. 2279 (C.A.). In that case, involving a lawyer's estimate to the client, Madam Justice McLachlin, as she then was, for the Court, limited the circumstances in which such a finding may be made, at 378:

> Depending on the circumstances, a lawyer may not be bound by an estimate, if for example, he or she does work outside the estimate at the request of the client, or if the client by his or her conduct unduly increases the amount of the work, or if unforeseen circumstances add a new and unexpected dimension to the work.

21 In similar vein, the defendants cited Kidd v. Mississauga Hydro-Electric Commission et al. (1979), 97 D.L.R. (3d) 535, 23 O.R. (2d) 385 (H.C.J.), where the Court stated at 540:

> ... I do not, of course, mean to say that all estimates are necessarily binding. Clearly they are not, and the plaintiff here might well have been allowed, because of the vagueness of his estimate, a substantial margin of error. But where the eventual figure is almost three times the original estimate, it is my view that the estimator should be held to that original figure.

22 Mitigating in favour of an estimate having binding effect is the principle that although estimates are necessarily somewhat imprecise, persons in the business of providing work preceded by estimates should be able to do so with some accuracy: see Kidd, supra at 540.

23 The plaintiff cited the recent Alberta case of Husky Oil Operations Ltd. v. Ledcor Industries Ltd., [2003] A.J. No. 1111. In that case, the Court examined the principles underlying the question of whether an estimate is binding, and stated at [paragraph] 36: "It is clear the court has to look at the circumstances in which an estimate is provided, the positions of the two parties, the knowledge of the party providing the estimate and whether it was relied upon by the party requesting it."

24 In sum, the Court must determine if the estimates were made in circumstances which imbue them with contractual effect and, if so, what margin of error may limit the extent to which the estimates are binding.

[50] In ***Bornhorst Welding Inc.*** v. ***Zwingli***, 2007 SKQB 154, the nature of a binding estimate is discussed at paras. 12 and 13:

> 12 It is a common practice to provide estimates of future costs when negotiating a variety of commercial transactions. The recipient relies upon the represented cost and it forms the basis of the eventual contract. It is only right that such reliance obtain a degree of enforcement.
>
> 13 However, it must also be recognized that an estimate normally will not be elevated to a guarantee. Rather, it is a reasoned and considered representation of anticipated cost, the exact amount of which remains to be ascertained upon completion of the contract. However, that final price must bear a reasonable relation to that which was estimated. There will be room for error, but the variance must meet a test of reasonableness. This approach accords with what was suggested in Kidd v. Mississauga Hydro-Electric Commission et al. (1979), 97 D.L.R. (3d) 535 (Ont. H.C.) and then developed in Household Movers & Shippers Ltd. v. Fanning (1984), 47 Nfld. & P.E.I.R. 169 (Nfld. Dist. Crt.); Newfoundland Capital Corp. v. Mettam (1986), 22 C.L.R. 45 (N.S.T.D.); Husky Oil Operations Ltd. v. Ledcor Industries Ltd., [2003] A.J. No. 1111 (A.B.Q.B.); and Golder Associates Ltd. v. Mill Creek Developments Ltd. (2004), 33 C.L.R. (3d) 63 (B.C.S.C.).

[51] It seems to me that the distinction between an estimate that is binding as a contractual term and an estimate that is not binding per se, is rooted in the notion of reliance and, ultimately, a subset of the caselaw that deals with the tort of negligent misrepresentation in the context of a contractual relationship.

[52] The tort of negligent misrepresentation arises when the following factors are present: i) a special relationship between the parties; ii) a false, inaccurate or misleading representation; iii) negligence in making the representation; iv) reasonable reliance on the representation, and; v) detriment to the representee as a result of the reliance (***Queen*** v. ***Cognos Inc.,*** [1993] 1 S.C.R. 87).

[53] In the specific context of estimates, some relevant factors for a determination of whether an estimate is binding are set out by Lee J. in ***Boehm***

v. ***Chergar Enterprises Ltd. (c.o.b. Service Plumbing and Heating)***, 2010 ABQB 826. These factors can readily be tied into the test for detrimental reliance, and they are:

- the circumstances in which the estimate is provided;
- the bargaining positions of the two parties;
- the knowledge of the party providing the estimate; and
- whether the estimate was relied upon by the party requesting it.

[54] The Plaintiff is a professional contractor who had performed contract work for the Defendant in the past, and who was approached about doing significant work on the Defendant's house. The first part of the detrimental reliance test is readily met, given that there was a contractual relationship between the parties with respect to the wiring project.

[55] I have already found that Mr. Laviolette made the representation the Defendant asserts he did, and it is clear that it was inaccurate. Mr. Laviolette was initially asked for an estimate about the cost of wiring the Residence and he provided the rough estimate of between $10,000.00 - $15,000.00. I accept that this was more of a general estimate that he used on all residential wiring projects to obtain the required permit to get the project started and was not a carefully considered estimate made after carefully viewing the Residence and/or the blueprints.

[56] Subsequently, however, the estimate I have found that he provided, at its highest of $25,000.00, was still approximately $10,000.00 - $11,000.00 less than

what the Defendant ultimately was invoiced and what he paid for labour and materials, even without factoring in the monies Sheldon was paid by the Defendant to complete the project on his own.

[57] I find that this representation was made carelessly and negligently. It is impossible to conclude otherwise, given the Plaintiff's experience, the fact that work was underway when the estimate was provided, the fact that there was little about the work that was done that was out of the ordinary or extra, even taking into account the more time-consuming labour involved in installing pot lighting, and that, as corroborated by Sheldon, the Plaintiff had notice of the Defendant's concern about the cost of the work and that he was seeking assurances that it would not run too high.

[58] Further, the Defendant clearly relied on the representation, and in these circumstances, his reliance was reasonable. The Defendant believed from the earlier estimates that the cost of the wiring would be between $10,000.00 - $20,000.00, but he had no experience with wiring such that he would be able to independently assess whether this was accurate. While the $25,000.00 estimate was substantially more than the $20,000 figure included in the R.J. Wiebe Construction estimate, it nevertheless still seemed somewhat reasonable in the context of the Plaintiff having better information and more familiarity with the Residence than the contractor who provided the earlier quote.

[59] Mr. Laviolette was an experienced contractor, who, in the course of past work for the Defendant, had provided accurate estimates. To frame this in terms of the factors listed by Lee J. in ***Boehm***, the bargaining positions of the two

parties were such that the Plaintiff was in the best position to set the accurate foundation and framework for the project, the project was underway, and the Plaintiff had either all or access to all the required knowledge about the extent of the work required to provide a reasonably accurate estimate.

[60] The Plaintiff was in the best position to ensure that the Defendant was aware, to the extent reasonably possible, of what it would cost him for the electrical work. It is incumbent, whenever there is an agreement being made between two parties for the provision of services, that the party in the best position to ensure that the terms and conditions of an agreement or representation are clearly set out, makes reasonable efforts to do so. If this is not done, then it is this party who runs the risk of absorbing the fallout that all too often arises from ambiguity, misunderstandings and uncertainty of any terms, conditions or representations.

[61] Finally, I find that the Defendant's reliance on the estimate was detrimental to him. It is clear that he was concerned about the cost of the work. If he had been given an accurate estimate by Mr. Laviolette, he could have chosen to take steps to find a new contractor capable of completing the work at a lower rate, or he could have instructed the Plaintiff to find ways to cut back on the amount of work and the ultimate cost of the contract. In the end, the Defendant has been invoiced and/or paid approximately $10,000.00 - $11,000.00 more than the maximum he had anticipated paying for the project, if I include the monies provided to the Plaintiff in relation to the compromise agreement. This figure includes the materials the Defendant purchased himself, which are not reflected

on the Plaintiff's invoices.

[62] While I find that the estimate was carelessly and negligently provided to the Defendant, I do not consider it, in the circumstances, to be binding as a contractual term that strictly limits the Defendant's cost obligation for labour and materials to be a maximum of $25,000.00 (or $26,250.00 if GST is extra). However, I do find that I should consider this as a guideline in deciding the appropriate award of damages.

Damages

[63] Therefore, having found that the Defendant detrimentally relied on the estimate given by the Plaintiff, my next task is to determine the appropriate measure of damages.

[64] In cases of detrimental reliance, the purpose of damages is to put the party in the same position he would have been in had the misrepresentation not been made. It is not possible to place the Defendant in the position of having another contractor agree to do the same work at a lower price, as the project has been completed.

[65] It seems to me that the correct approach would be to strike a balance between the actual value of the work done and the amount that the Defendant believed he would have to pay.

[66] A difficulty in this case is that there is an absence of any objective third-party evidence as to whether the Plaintiff's invoiced charges for the work are reasonable and consistent with what could reasonably be expected for a job of

similar size and complexity, also keeping in mind the fact that the Defendant purchased significant amounts of the materials used.

[67] On the evidence before me, the vast majority of the work was done in accordance with electrical blueprints provided by the Defendant to the Plaintiff, albeit, for whatever reason, not given prior to the work on the Residence being started. These blueprints were not filed at trial. Regardless, in the absence of a qualified witness who could examine the blueprints and provide evidence as to what a reasonable cost of installing an electrical system in compliance with the blueprints would be, filing them as an exhibit would have been of little value.

[68] As I advised the parties, my own previous experience as a journeyman electrician working primarily in the commercial and industrial construction sector, with some residential experience, is of no real assistance in resolving the issues before me. At best my own experience simply provides me some familiarity with the terms used to describe work performed and materials provided, as well as a basic understanding of the general methodology of installing a residential wiring system.

[69] Again, it is the Plaintiff who bears the burden of proving his claim on a balance of probabilities. As such, it would have been to the Plaintiff's benefit to present a witness with experience in the installation of residential electrical systems to testify to a reasonable cost of installing the electrical system in the Residence, and to further testify that the Plaintiff's invoiced costs were reasonable. The Plaintiff did not do so.

[70] This said, nothing precluded the Defendant from adducing the same evidence in support of his position as Defendant and Plaintiff by counter-claim. He also did not do so.

[71] What I am left with is evidence of the hours worked by the Plaintiff's employees, the materials and labour provided and the amount invoiced by the Plaintiff.

[72] The time sheets show that the Plaintiff and his employees worked a total of 278 hours. This results in a labour cost of $23,630.00. The invoices show that the Plaintiff in fact only billed the Defendant for a total of 254.5 hours, with a resultant labour cost of $21,632.50, exclusive of GST ($22,714.13 with GST).

[73] The Plaintiff provided materials, including permit, at a cost of $7,680.55, exclusive of GST ($8,064.58 with GST). The total, with labour, including GST amounts to $30,778.71 (vs. $30,778.73 claimed).

[74] The Defendant provided materials at a cost of $5,090.53, not including the materials for the hot tub and generator transfer wiring.

[75] There is no evidence that the work completed by the Plaintiff was deficient. I assume, in the absence of evidence to the contrary, that all the work performed by the Plaintiff was done to the acceptable industry standard.

[76] I find that the best way to resolve the matter on the evidence I have is to apportion the disputed amount between the parties, while allowing credit for the additional work done for the hot tub and generator transfer switch wiring. I will

use the Plaintiff's figure of $30,778.73, as on the evidence, the initial reduction for substandard performance by Ray was justifiable. I will use the Defendant's figure of $19,909.47. Splitting the difference between the two results in a total payable from the Defendant for the project of $25,344.41. Added to this will be the amount of $850.00 for the hot tub and the generator transfer switch wiring for a final figure of $26,194.10. The Defendant has already paid $26,344.10, leaving a difference of $150.00. There was undisputed evidence that the garage was overwired, and, while no evidence was adduced as to the value of this overwiring, I will allow the Plaintiff to retain this $150.00 in recognition of the extra work done.

[77] I award the Defendant $250.00 for costs associated with his application for disclosure of the receipt for the purchase of the underground cable used for the service installation. The Plaintiff made a conscious decision to force the Defendant to bring this application before the court and obtain an order for disclosure, instead of voluntarily disclosing the document, when there was no apparently valid reason for withholding it. Mr. Laviolette chose not to attend court on the date for the hearing of the application and made it clear at trial that he simply wanted to make the Defendant "jump through this hoop", so to speak. Due to the Plaintiff's non-attendance and failure to indicate to anyone that he would not be appearing, the Defendant spent an unnecessarily long time waiting in court before he obtained the order.

[78] Beyond these costs, however, I decline to award any further costs to either party.

[79] There will be post-judgment interest pursuant to the *Judicature Act* on the total amount of $250.00 payable by the Plaintiff to the Defendant.

[80] Although, based upon my findings, there is no outstanding invoiced amount for which the Plaintiff could claim interest on unpaid invoices, even had I found in favour of the Plaintiff, I would have declined to award the interest claimed as there was no agreement between the parties that interest would accrue on unpaid invoices.

[81] On a final note, there is good advice for contracting parties found in the words of Luther J. in ***Kmyta*** v. ***Ho*** 2012 YKSM1 in para. 38:

> I find that, here, more should have been done, particularly by the plaintiff who has been in this business for over 20 years, to start things off right with a reasonably detailed and accurately written proposal, followed by a subsequent signed contract. The plaintiff should have never started the this project without such documentation; indeed the defendant also should have been wise enough not to have allowed work to start in the absence of a written and signed contract.

[82] Had the parties in the present case taken steps such as these, it is unlikely that this dispute would have arisen and resulted in a trial, and quite likely that both parties would have been much more satisfied with the outcome of this wiring project.

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COZENS C.J.T.C.