

COURT OF QUEBEC

Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

No: 500-32-120948-106

DATE: March 15, 2011

PRESIDED BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.

M.E.M.P. CONSTRUCTION INC.

2235 Lafayette
Longueuil, Quebec J4K 3C1

Plaintiff

vs.

HOSSAIN MONIR

[...] Montreal, Quebec [...]

Defendant

JUDGMENT

[1] M.E.M.P. CONSTRUCTION INC. ("MEMP"), a general contractor, sues its client, Mr Monir, for \$1,227.53 invoiced for repairing a water leak under the concrete floor of the client's building at 6965 de l'Épée, Montreal.

[2] Mr Monir admits that the work was done and agrees that something is owed for the work but he contests the invoice as being excessive.

[3] The difficulty in the case arises from the fact that MEMP, hoping to bid on a much larger job, did not give a clear estimate of a lump sum or an hourly rate to do the work which consisted in breaking a concrete floor at the place where the pipe was leaking, cap the pipe and prevent further water damage.

[4] In order to perform the work, MEMP used the services of a retired plumber.

[5] The Court was not provided with any detailed invoice, time record or other objective evidence that could assist in determining the value of the work.

[6] No definite price was given as an estimate because MEMP hoped to quote a price on a much larger job which included the repairs and reconstruction of the basement finishes that had been damaged by the water infiltration.

[7] MEMP seeks payment for two men for four hours at \$85 an hour for a total of \$680 for the corrective work performed on September 30th, 2009 as well as \$325 for the presence of two men to identify the work to be done on September 29th. An additional \$82.75 is claimed for the rental of an electric jackhammer required to break up the concrete floor to have access to the leaky pipe.

[8] The Defendant contests owing anything for the first exploratory visit claiming that he was entitled to a free estimate because he responded to an advertisement placed by MEMP in a local community newspaper called « Desher Alo » catering to the Bengali community. The add does indeed mention "*free estimation*".

[9] Mr Monir testifies that the first exploratory visit was very brief and that the second, where the work was performed, took a total of one and a half hours between 12h30 and 2h00 pm.

[10] Mr Michel Beauregard, who represents MEMP recollects on the contrary that the first visit was substantial and involved spending considerable time to locate the leak and that the repair work involved two men for four hours including the travel time from MEMP's premises in Longueuil.

ANALYSIS

[11] By responding to an advertisement that promised a free estimation, the Defendant was entitled to the service of the contractor to come to his premises and identify the problem and propose a price for its solution. There should be no charge for this first visit even though it required energy and effort on the part of the contractor.

[12] The fact that no estimate was given stems from the fact that the contractor hoped to bid on a much more important contract, the rebuilding of the basement finishes.

Even though he did not give an estimate, the contractor is still entitled to a fair payment for the work actually completed after the initial investigation.

[13] None of the witnesses appearing on behalf of MEMP other than Michel Beauregard were able to establish an amount of time spent for the corrective work. Michel Guerin, an engineer that was in the employment of MEMP at the time stated that the time spent was perhaps a couple of hours but he is unable to be more precise.

[14] Mr Monir on the other hand has a distinct recollection that he came back from his place of work at lunch time and that the contractor was present in the basement to perform the work from noon until two o'clock in the afternoon.

[15] Because the Defendant's evidence is more precise and given the contradiction between the recollection of Michel Beauregard and that of Roger Guerin, the Defendant's version is more reliable and therefore preferable to the Court.

[16] In addition to the one and one half hours spent on the site, the contractor is entitled to a reasonable allocation of time to travel back and forth from Longueuil to Park Extension. An additional one hour is reasonable.

[17] It is reasonable for a contractor to charge for rental of equipment or wear and tear but the amount of \$82.75 is not substantiated.

[18] The contractor has a standard rate of \$85 an hour but this was never mentioned to the client who had an expectation based on his past experience that a fair price would be between \$60 and \$80. The Court arbitrates an amount of \$60 times five man/hours for a total of \$300. The Court also arbitrates an amount of \$50 for use of equipment. Applying the rates of GST and QST applicable in 2009, the total allowed is as follows:

2.5 hours x 2 men x \$60 =	\$300.00
Equipment =	<u>\$ 50.00</u>
Subtotal =	<u>\$350.00</u>
Plus GST 5% + QST 7.5% =	<u>\$395.06</u>

[19] Given that both parties were successful in part there will be no award as to cost.

FOR THESE REASONS, THE COURT:

CONDEMNNS the Defendant to pay the Plaintiff the sum of \$395.06, together with interest at the legal rate of 5% per annum and the additional indemnity provided at article 1619 of the *Civil Code of Quebec*, calculated from December 9, 2009;

Without costs.

DAVID L. CAMERON, J.C.Q.

Date of hearing: February 22, 2011