

COURT OF QUEBEC

Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
TOWN OF MONTREAL
Civil Division

No: 500-32-124514-102

DATE: April 12, 2012

BY THE HONOURABLE ARMANDO AZNAR, J.Q.C.

KUCCINA STONES INC. (*B.R.G. Kuccina Stones*)
Plaintiff

v.

Ginette TREMBLAY
and
Jagmohan BHATIA
Defendants

JUDGMENT

[1] Plaintiff claims from Defendants the sum of \$2,821.88 for renovations performed at their request and for their benefit.

[2] The work performed consisted in the renovation of the fireplace situated in the residence of Defendants.

[3] Defendants contest Plaintiff's action. More particularly, in the contestation, they allege the following:

- 1) the agreed amount was \$2,000;
- 2) there is a hole drilled in the marble;
- 3) the bottom slab is not centered.

[4] On behalf of Plaintiff, Mr. Behrooz Salimi declared that the contract concluded with Defendants was for an amount of \$2,000.00 plus taxes and included the installation of the marble of the new fireplace of Defendants detailed on exhibit P-1.

[5] However, according to Mr. Salimi, the contract was subsequently amended to include the removal of the old marble fireplace and demolishing of the brick from the floor for an additional amount of \$500.00 plus taxes making it a contract for a total value of \$2,821.88, taxes included.

[6] The work was performed by Plaintiff's employees and on November 25, 2009, an invoice (exhibit P-2) totalling \$2,821.88 was sent to Defendants by Plaintiff.

[7] For his part, Defendant Bhatia stated that the contract was for an amount of \$2,000.00 plus taxes and there was never any discussion regarding a subsequent agreement in the amount of \$500.00 plus taxes as stated by Mr. Salimi.

[8] Defendant refuses to pay Plaintiff's bill because of the presence of a hole on the front part of the marble of the fireplace where a knob was to be inserted for the purpose of the usage of an air vent.

[9] According to Defendant Bhatia, Plaintiff was previously advised that a gaz fireplace was being installed instead of the existing wood fireplace and that consequently, no air vent was necessary. Therefore, according to Defendant, there was no need for a hole in the marble.

[10] Defendant Bhatia stated that because of the presence of the hole in the marble, he is entitled to refuse to pay Plaintiff's bill.

[11] Defendant Bhatia alleges that the edges of the marble installed by Plaintiff in front of the fireplace are not adjusted. Because of this, he feels that he entitled to refuse to pay for the work done.

[12] In view of the evidence adduced at trial, the Court believes that Plaintiff has established that he has done the work that was requested from him by Defendants.

[13] Regarding the price of the contract, the Court concludes that the preponderance of the evidence favours Defendants position that the contract was for an amount of \$2,000.00 plus taxes.

[14] In the opinion of the Court, Plaintiff has not established that there existed a subsequent agreement between the parties regarding the extra \$500.00 plus taxes claimed by him.

[15] Furthermore, the Court believes that the refusal by Defendants to pay Plaintiff's bill based on the presence of the hole in the marble in front of the fireplace is a pretext to try to justify their position.

[16] The Defendants can easily remedy this alleged defect by inserting a knob in the hole. In this manner, the problem would be corrected in a reasonable manner. Consequently, this aspect of Defendants contestation is dismissed.

[17] The Court is of the opinion that there is a problem regarding the marble placed on the floor in front of the fireplace, said marble not having been adjusted properly by Plaintiff. Considering this, Plaintiff's bill, in the amount of \$2,000.00 plus taxes, will be reduced by \$500.00.

[18] Consequently, Plaintiff's action would be maintained for an amount of \$1,693.13 (\$1,500.00 plus taxes).

FOR THE FOREGOING REASONS, THE COURT:

MAINTAINS in part Plaintiff's action.

CONDEMNNS Defendants to pay to Plaintiff the sum of \$1,693.13 with interests at the annual rate of 5% as of January 4, 2010, plus the judicial costs in the amount of \$148.00.

ARMANDO AZNAR, J.Q.C.

Date of hearing: April 2, 2012.