

COURT OF QUEBEC

"Small Claims Division"

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

N° : 500-32-121178-109

DATE : September 21, 2012

BY THE HONOURABLE ELIANA MARENGO, J.C.Q.

6781900 CANADA INC. doing business under the firm and style name of
DHM RENOVATIONS
Plaintiff
v.
ALICIA LORENTE
Defendant

JUDGMENT

- [1] **GIVEN** the evidence;
- [2] **WHEREAS** plaintiff is a licensed general contractor;

[3] **WHEREAS** a verbal contract of enterprise intervened between the parties, on or about August 25, 2009, for the renovation of defendant's home;

[4] **WHEREAS** the parties wilfully chose to transact without the benefit of a written contract or the issuance of invoices, with a view to avoid their fiscal responsibilities;

[5] **WHEREAS** this way of operating is prohibited by law and against public order;

[6] **WHEREAS** a contract, the cause of which is prohibited by law or contrary to public order, is null (s. 1411 of the *Civil Code of Quebec*);

[7] **WHEREAS** a contract that is null, is deemed never to have existed; and, in such a case, each party is bound to restore to the other the prestations he has received (s. 1422 C.C.Q.);

[8] **WHEREAS** plaintiff is claiming the balance owing on the price of the work performed;

[9] **WHEREAS** defendant is alleging incomplete and shoddy work;

[10] **WHEREAS** the Court shall not enforce an agreement which is contrary to law and public order;

[11] **WHEREAS**, however, restitution under s. 1699 C.C.Q. is not feasible, under the circumstances;

[12] **GIVEN** s. 1700 C.C.Q.;

[13] **GIVEN** the absence of proper documentation and accounting; given the work carried out; given the contestation; and given the absence of experts' reports in the file;

[14] **WHEREAS**, however, the pictures filed by defendant show that plaintiff did not execute the flooring work in accordance with usual practice and the rules of art (s. 2100 C.C.Q.);

[15] **GIVEN** s. 1699 (2) C.C.Q.;

[16] **WHEREAS**, in its discretion, the Court shall modify the scope and mode of the restitution¹;

[17] **WHEREAS**, finally, both parties, as stated above, acted contrary to the law and to public order;

¹ *Amusements St-Gervais inc. v. Legault*, J.E. 2000-550 (C.A. 2000-03-07); *Dion v. Soucy*, 2012 QCCQ 3084, AZ-50851871.

WHEREFORE THE COURT HEREBY:

GRANTS plaintiff's application as amended, in part;

SENTENCES defendant to pay plaintiff the sum of \$1,500.00, without interest or legal indemnity;

EACH PARTY PAYING ITS OWN COSTS.

ELIANA MARENGO, J.C.Q.

Date of hearing : September 4, 2012