

COURT OF QUÉBEC
Small Claims

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF GATINEAU
LOCALITY OF GATINEAU
Civil Division

Nos. 550-32-021148-132
550-32-021149-130

DATE: December 17, 2014

PRESENT: THE HONOURABLE JEAN FAULLEM J.C.Q.

JUDY ANN BROKX

Plaintiff

v.

6613179 CANADA INC., doing business under the name Nadon Électrique

Defendant

6613179 CANADA INC., doing business under the name Nadon Électrique

Plaintiff

v.

JUDY ANN BROKX

Defendant

I- CONTEXT

[1] In the file bearing number 550-32-021149-130, Judy Ann Brokx is claiming from 6613179 Canada Inc., doing business under the name Nadon Électrique (Nadon Électrique), **\$6449.25** broken down as follows:

1. Costs to repair Nadon Électrique work : **750,00 \$**

2. Costs to present small claims case :

- i. Ink to print pictures and documents : 78,00 \$
- ii. Computer paper : 10,00 \$
- iii. Copies : 20,00 \$
- iv. Gas to go to 17 Laurier, Hull, Qc. Small claims court office to submit application and submission of evidence (twice) and to make two court appearances (twice) : 35,00 \$
- v. Registered letter cost : 9,50 \$
- vi. Cost of picking registered letter Mr Nadon failed to accept : 10,50 \$
- vii. Cost of small claim application : 129,25 \$
- viii. Cost of my response to Mr. Eric Nadon's small claim case : 105,00 \$
- viii. Cost of first Electrical Inspection (January 2012) : 85,00 \$
- x. Cost of inspection by gas furnace technician (January 2012).
- xi. Cost of electrician estimate (April 2014) : 80,00 \$
- xii. Cost of parking near 17 Laurier, Hull, Qc. (4 times plus 1 proposed court date @ 15.00 per occurrence) : 75,00 \$

TOTAL: 763,25 \$

3. Witness Expense :

- i. Witness cost for first court appearance 80,00 \$
- ii. Witness expense for proposed second court appearance and for translation : 80,00 \$

TOTAL: 160,00 \$

4. Wages Lost to prepare and present the small claims case :

- i. First electrician – 2 hours (January, 2012)
- ii. City safety inspector – 2 hours (January, 2012)
- iii. Gas technician – 2 hours (January, 2012)
- iv. Electrician Written Estimate – 2 hours (April, 2014)

- v. Lost work time to present evidence at small claims court office at 17 Laurier, Hull Qc. and pay small claims fee – 3 hours (May 2013)
- vi. Lost work time to pay \$105.00 fee to contest Mr. Nadon's small claims case – 2 hours – June 2013
- vii. Time to attend court – 4 hours (February 2014)
- viii. Time to write statement of facts, take clearer pictures of electrical work performed by Nadon Electricque and to clarify evidence for small claims court judge for second court date (second submission – 30 hours – (March-April 2014)
- viii. Time to resubmit evidence for next small claims court appearance tentatively scheduled in May 2014 – 3 hours – (April 2014)
- x. Time to attend proposed court appearance tentatively scheduled in May 2014 – 4 hours (May 2014)

TOTAL : **2 080,00 \$**

- 5. Benefit hours lost to address small claims case :
 - i. Benefits Lost (9.25 vacation days per 37.5 hours) paid sick leave (9.25 hours per 37.50)
 - ii. Benefit hours lost – 18.50 hours
 - iii. Residual benefit hours 52 hours – 37.50 hours = 14 hours (37.3% *9.25 + 3.45 vacation sick leave benefit = 6.9 hours)
 - iv. Total benefit hours lost : 25.4

TOTAL : **1 016,00 \$**

- 6. Loss of enjoyment of free time to compile small claims court case :
 - i. Free time spent compiling case for small claims application (first court appearance) 8 hours – (April 2013)
 - ii. Small claims internet application – 1 hours (April 2013)
 - iii. Time spent looking for an electrician who would substantiate poor electrical work performed by Nadon Electricque and act as a witness in court or write an Inspection report for second court appearance – 8 hours – (March 2014)

TOTAL : **680,00 \$**

- 7. Compensation for Stress and Inconvenience : **1 000,00 \$¹**

[2] All these claims stem from work performed by Nadon Électricque on December 17, 2012 at Ms. Brokx's home.

¹ As detailed in Mrs Brokx written factum.

[3] Nadon Électrique billed Ms. Brokx \$699.23, including the applicable taxes, for the professional services rendered. The December 17, 2012 bill indicated \$48.17 for the supply of materials and \$560.00 for labour at an hourly rate of \$80.00 for the work performed by two of its employees.

[4] Note that, on the date of the hearing, Ms. Brokx had still not paid Nadon Électrique's bill. The company is, in fact, claiming from Ms. Brokx the payment of that bill in the file bearing the number 550-32-021148-132.

[5] Since the two files are connected, they were heard at the same time for a decision on the basis of the same evidence, and a single judgment was rendered to serve in both files.

[6] Ms. Brokx alleged the following both in support of her claim and in contestation of the claim of Nadon Électrique:

Nadeau Electric failed to meet its contractual obligations for the electrical services rendered: More precisely,

- a) Nadon Electric failed to provide a Licensed Electrician to perform the work;
- b) The work done does not meet all electrical Code requirements;
- c) Nadon Electric's employees did not place the ceiling fixture where requested;
- d) Nadon Electric over charged is bill for one hour of work not performed.²

[7] As for Nadon Électrique, its representative contended that the work performed complied with its client's instructions and with all the applicable standards.

II– THE LAW AND ANALYSIS

[8] The agreement binding the parties is governed by articles 2098 *et seq.* of the *Civil Code of Québec* (C.C.Q.), which deal with a contract of enterprise or for services.

[9] Article 2098 C.C.Q. reads as follows:

Art. 2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to another person, the client, to carry out physical or intellectual work or to supply a service, for a price which the client binds himself to pay to him.

² As stated in Mrs Brokx claim.

[10] The burden of convincing the Court of the merits of its contentions is borne by the party that seeks to defend a right.

[11] In accordance with articles 2803 and 2804 C.C.Q., the evidence adduced at trial must make the existence of a fact more probable than its non-existence.

(A) Nadon Électrique's claim

[12] As regards Nadon Électrique's claim for services rendered, the evidence shows preponderantly that the work indicated in the December 17, 2012 bill was done in full.

[13] Furthermore, in accordance with article 2106 C.C.Q., the services rendered are billed at an hourly rate agreed upon between the parties. The Court notes that the amount of the bill presented to Ms. Brokx was below the estimate prepared by Nadon Électrique.

(B) Ms. Brokx's contestation

[14] The Court discusses below each of the grounds of contestation raised by Ms. Brokx in the order established in paragraph 6 of this judgment.

A. Licensed Electrician

[15] The evidence showed that the work was performed by Marc Jobin, an electrician qualified by the Commission de la construction du Québec as a journeyman since 1994. Mr. Jobin was assisted by Pierre Lacroix, who holds an apprenticeship card, also issued by the Commission de la construction du Québec.

[16] Furthermore, since July 3, 2012, Mr. Jobin has held an electrician's licence issued by the Régie du bâtiment du Québec (R.B.Q.).

[17] Therefore, Nadon Électrique did not fail in its duty to have the work performed by a licensed electrician.

[18] At the hearing, Ms. Brokx modified her arguments somewhat, claiming that it was represented to her that Mr. Jobin had held his licence at least as long as Mr. Nadon had, i.e. since 2006. She said that was why she agreed to Mr. Jobin's doing the work.

[19] But although Mr. Jobin had held his electrician's licence for only a few months at the time the work was performed, he had held a competency card as an electricity journeyman since 1994. Therefore, that ground of defence raised by Ms. Brokx is not accepted. In any case, although Mr. Jobin did not have his R.B.Q. licence for a sufficient amount of time to reassure Ms. Brokx, that fact alone is not sufficient, in and of itself, for her to be awarded damages.

[20] In contractual matters, a party is entitled to damages only if it shows that a failure to abide by or comply with the contracted undertakings caused it bodily, moral or material injury, in accordance with article 1458 C.C.Q.

[21] But for the reasons explained in the next section, Ms. Brokx was unable to demonstrate that the short period that Mr. Jobin held his electrician's licence caused her any injury whatsoever.

b. Code requirements

[22] Ms. Brokx alleged insistently that the work performed by Nadon Électrique was not in compliance with the requirements of the *National Building Code* (the Code).

[23] Ms. Brokx affirmed before the Court that any person who is the least bit intelligent could, by reading the Code and looking at the photographs filed in the record, determine that the work performed was not in compliance.

[24] Ms. Brokx tried to give her opinion concerning the alleged professional errors committed by the employees of Nadon Électrique. At trial, the Court opposed Ms. Brokx's expressing her opinion about the quality of the work performed by the employees of Nadon Électrique.

[25] Although Ms. Brokx seems to be very well informed about the electrical standards in effect, she has no experience or training in electricity. Hence, as a lay witness, Ms. Brokx cannot give an expert opinion and the Court cannot accept her opinion.

[26] Note that, in the first hearing of the case, which took place on February 10, 2014, Ms. Brokx was advised, by me for a first time, that she could not express a technical opinion concerning the way the work was carried out. The Court then gave her a sufficient period of time to use the services of an expert electrician in order to obtain a report on the nature of the alleged professional errors committed by Nadon Électrique.

[27] For the reasons she explained in a letter filed with the Court, Ms. Brokx indicated that she was unable to provide at trial the testimony of an expert. She said that, despite the fact that the experts with whom she met all confirmed that the work performed by Nadon Électrique was not in compliance, none of them agreed to testify.

[28] Ms. Brokx filed in the Court record an estimate prepared by the firm FJH Électrique on April 7, 2014 for the performance of certain work.

[29] Even if the Court would accept that document as an expert opinion, which it cannot do, since the representative of FJH Électrique was not present in Court to testify about his experience, and thus be recognized by the Court as an expert, the document contains no opinion about the quality of the work performed by Nadon Électrique.

[30] In addition, from the content of FJH Électrique's document, the Court cannot deduce what the employees of Nadon Électrique are said to have failed to comply with.

[31] Furthermore, no representative of FJH Électrique was present in Court to testify as to what was observed on the site.

[32] Accordingly, despite all her efforts, Ms. Brokx was unable to demonstrate preponderantly that the work performed by Nadon Électrique did not comply with the provisions of the Code.

[33] With respect for the opposite opinion, the Court, although it has some knowledge about electrical work, cannot conclude, without the help of an expert, that the work performed by Nadon Électrique did not comply with the standards of the Code.

c. Ceiling fixture

[34] Ms. Brokx alleged that the employees of Nadon Électrique did not install her ceiling fixture where she showed them it was to be installed.

[35] The employees of Nadon Électrique who performed the work did not testify at trial.

[36] Mr. Nadon was not present when that work was performed.

[37] Therefore, Ms. Brokx proved that the ceiling fixture was not installed where she showed the employees of Nadon Électrique to install it. Hence, she is entitled to compensation for the repositioning of the fixture.

[38] The evidence shows that it costs \$150 to move the ceiling fixture. That amount is therefore deducted from the amount Ms. Brokx must pay Nadon Électrique.

d. Work not performed

[39] Mr. Nadon explained that the hour billed that is not accepted by Ms. Brokx included the 15-minute health break provided for his employees, and travel time.

[40] These explanations are sufficient for the Court.

e. Others

[41] At the hearing, Mr. Nadon acknowledged that two metal plates were not installed by his employees when the work was performed. According to him, the installation of those parts would take no more than ten or so minutes.

[42] Since the parts will have to be installed by another electrician, the Court grants Ms. Brokx a credit equal to one hour at the hourly rate recommended for a construction electrician for light residential work, i.e. \$87.40, as indicated in the table of recognized rates, filed by Nadon Électrique.

[43] Accordingly, offsetting the amounts owed by both parties, the Court concludes that Ms. Brokx owes Nadon Électrique \$461.83 (\$699.23 – \$150 – \$87.40) in payment of the December 17, 2012 bill.

[44] Given the mixed result of the parties' claims, each party will pay its own court costs, in the two files;

[45] **THEREFORE, THE COURT:**

[46] **ORDERS** Judy Ann Brokx to pay 6613179 Canada Inc. \$461.83 with interest at the legal rate plus the additional indemnity provided for in article 1619 du *Civil Code of Québec*, as of May 28, 2013;

[47] **THE WHOLE** without court costs for either party.

JEAN FAULLEM J.C.Q.

Date of hearing: August 6, 2014