

## **Don't Work for Free – How to Get Paid for “Extra” Work**

Disputes between homeowners and contractors can often be avoided by the use of a written building contract. However, a written contract is of limited benefit if its terms are unclear, or the actual work performed deviates significantly from the scope set out in the contract. In the recent case of *McCrea v. Fournier*, a homeowner (the “Homeowner”) refused to pay amounts claimed by a contractor (the “Contractor”) for “extras”. Although the court ultimately agreed the Contractor deserved some payment for this “extra” work, it found the contract did not clearly establish how the price for this work was to be calculated. Ultimately, the court awarded the Contractor payment on the basis of what it determined to be fair value in the circumstances.

### **FACTS**

The Homeowner hired the Contractor to paint the exterior of her house (the “Project”). When the Project completed, the Homeowner refused to pay the Contractor’s final invoice, arguing among other things that she was being billed for “extras” that were already included in the base contract price.

### **THE DECISION**

In its analysis, the Court reviewed three categories in which claims of payment for extra work typically fall:

- (1) the “extra” work claimed is actually called for in the contract, in which case the contractor is required to perform it without any additional compensation beyond the contract price, regardless of whether the contractor failed to realize this work would be required when the contract was entered into;
- (2) the “extra” work is not specifically called for in the contract, but was nevertheless contemplated by the parties when the contract was entered into. If the contract is silent or unclear on how this work is to be paid for, the court may imply a promise that a homeowner will pay a reasonable amount; and
- (3) the “extra” work is actually substantially different, or wholly outside, the scope of the work contemplated by the contract. Again, if the contract does not provide for the amount of payment for this work, the court may imply a promise by the homeowner to pay a reasonable amount.

Luckily for the Contractor in this case, the Court determined the claim for extras fell under the second category. While the claimed extras were originally contemplated by the parties, their contract had failed to include a price for this work. As such, the Homeowner was ordered to pay the base contract price *plus* a reasonable sum for the claimed extras.

### **LESSONS LEARNED**

1. When preparing the scope of work to be included in a building contract, carefully consider all the work that will actually be required. Avoid overly broad descriptions of the scope of work that might result in you being contractually obligated to do more than you intended.

2. Clarify in your building contract the process for documenting extras, and ensure it is clearly stated that all extras fall outside the base contract price. If extras do arise during the course of the project, it is prudent to obtain written confirmation from the client in the form of a change order clearly setting out exactly how much the base contract price will be increased. You should not rely on the amount a court considers to be “fair value” to sufficiently compensate you for your actual costs and profit.

*This article was written by Jay N. Spiro and Andrew D. Delmonico, lawyers, and John A. Wiebe, an articulated student, who practice in construction law with the law firm of Kuhn LLP. This article is only intended as a guide and cannot cover every situation. It is important to get legal advice for specific situations. If you have any questions or comments about this case or other construction law matters, please contact us at 604-864-8877 (Abbotsford) or 604-684-8668 (Vancouver).*