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Good renovation advice available to both owner and contractor

A bizarre news story out of Shoreham, England, serves as a powerful reminder that the failure to have a signed home renovation contract can create significant problems for both the owner and contractor.

The drama began late last year when Anita Dovey hired builder Nigel Gray to add a porch and a conservatory to her council house. (In the U.K., a council house is a form of public or social housing built and operated by municipal councils. Eligible tenants obtain secure leases at below market rents.)

Gray quoted Dovey 15,000 (about \$30,500) for the job, but when it was completed he had difficulty obtaining payment.

After receiving a couple of NSF cheques, Gray gave up trying to get paid for the job and obtained permission from the local district council to knock down the porch and repossess the conservatory.

In April, in the presence of a crowd of photographers, Gray and his crew used sledgehammers to demolish the brick porch and its red-tiled roof, and remove the conservatory from the house.

Gray said, "The only reason I am smashing it down is because there is no way I am going to be mugged off." (UrbanDictionary.com defines "mugged off" as the way someone reacts after being offended, insulted or disrespected.)

A spokesperson for the local council said that Dovey would be billed for the cost of restoring the property back to its pre-renovation state.

Following considerable media attention, Gray donated what is now Britain's most famous conservatory to the Argus Appeal, a local charity, where it will be auctioned off to the highest bidder.

Harvey Kirsh is a senior partner at Osler Hoskin & Harcourt in Toronto, and a recognized specialist in construction law. Last week I asked him whether a similar outcome could occur on this side of the ocean.

"The simple answer," he said, "is no, not in Canada."

Kirsh explained that an unpaid contractor has a choice of remedies in Canada, including court action for collecting unpaid funds or registering a construction lien. A self-help remedy such as demolition or removal of the improvement exposes the contractor to criminal charges and a claim for damages caused by the removal.

In England, Kirsh said, there is no construction lien legislation which would entitle a contractor to take legal action against the lease of a tenant in a council house.

Fortunately, there is no shortage of good advice available for both contractors and owners or tenants contemplating a renovation in Ontario.

One of the best sources of information I've found is the website of Canada Mortgage and Housing Corporation (CMHC) at www.cmhc-schl.gc.ca.

Click on consumer and choose renovation as a topic: <http://www.cmhc-schl.gc.ca/en/co/renoho/index.cfm>. CMHC offers renovation guides, videos, energy-saving tips, fact sheets, inspection checklists, financing options, and details on getting refunds of part of the mortgage loan insurance premiums for energy-efficient renovations or home purchases.

Best of all is a sample renovation contract at http://www.cmhc-schl.gc.ca/en/co/renoho/refash/refash_019.cfm. CMHC says that a detailed written contract between the homeowner and the contractor is essential to any renovation or home repair project, no matter its size. Even the smallest job should be put in writing.

For a home renovation project, the CMHC contract template and the accompanying commentary are just as good as any of the expensive ones in my law library.

Topics covered include a description of the work, responsibility for obtaining permits, timing, terms and timing of payment, change orders, washroom facilities for the workers, standards of work, warranties, workers' compensation compliance, insurance, default, and most important dispute resolution.

There is no section in the sample contract about demolition of the work in the event of nonpayment.