



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Strathdee et al v. Riarh et al*, 2019 BCCRT 1254

B E T W E E N :

JAMES STRATHDEE and LINDA STRATHDEE

APPLICANTS

A N D :

DALJOT S RIARH, SUNNY AHUJA PERSONAL REAL ESTATE CORPORATION, SUNNY AHUJA, BALRAJ KHUNKHUN, QUANTUM GROUP AQUISITIONS LTD. and RAJVINDER K AHUJA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This decision addresses the first of 2 related disputes. The disputes are about alleged damage to a property during the course of construction next door. I have

written 2 separate decisions for these 2 disputes because the applicants named a slightly different list of respondents in the second dispute (ST-2019-004306).

2. The applicants, James Strathdee and Linda Strathdee, own a house on a residential street. The respondents in this dispute, Daljot S. Riarh, Sunny Ahuja Personal Real Estate Corporation, Sunny Ahuja, Balraj Khunkhun, Quantum Group Acquisitions Ltd. (Quantum), and Rajvinder K. Ahuja, were involved in building a duplex next door.
3. In some correspondence “Quantum Acquisitions” is spelled “Quantum Acquisitions”. I have relied on the spelling provided in the Dispute Notice.
4. Daljot S. Riarh, Sunny Ahuja, Rajvinder K. Ahuja were the investors building the duplex. Quantum was the general contractor, and Balraj Khunkhun is the principal of Quantum.
5. In this dispute, the applicants say that in April 2017, an excavator working on the duplex site splattered mud and concrete sludge up the 2-storey exterior side wall of their house. They say the material dried, causing stains and damage. In their first dispute, the applicants claim \$2,400 for house repainting.
6. The respondents deny the applicants’ claim. The 2 corporate respondents are represented in this dispute by their principals, and all other parties are self-represented.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. To some extent the parties call the other's credibility into question. However, in the circumstances of this dispute, I find that I am properly able to hear this dispute based on the documentary evidence and written submissions before me.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issue in this dispute is whether any of the respondents must pay the applicants \$2,400 for house repainting.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants bear the burden of proving their claims, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The parties provided evidence and submissions about various conflicts between them during the duplex construction, such as complaints to the municipality. Since the parties claim no remedies about those conflicts, I make no findings about them.
14. The applicants say that in April 2017, a contractor working for the respondents at the duplex site splashed "concrete demolition sludge" on the side of their house. I accept that this occurred, based on the photos and text messages provided in

evidence, and on the written statement of neighbour RM. RM says that while excavating the pit for the duplex's foundation, workers used a heavy machine to repeatedly drop a large concrete block to break it up. The photos show that the block was in a large pool of muddy water. RM says, and the photos confirm, that the resulting sludge splattered up the walls of the houses on either side.

15. The respondents do not deny this incident. However, they say it was caused by the excavation contractor, Allright Demolition (Allright), and they are therefore not liable. Allright is not a party to this dispute. In addition, Mr. Khunkhun says Allright was not hired by Quantum, and was hired directly by the other respondents, so he and Quantum are not liable for Allright's actions.
16. The applicants say the respondents did not remove the sludge while it was wet, and instead let it dry and harden. They say they tried to clean it, but could not get it off. The applicants say that 2 later attempts at power washing the exterior wall were unsuccessful, and the stains remained. They say the respondents offered to spot-paint the wall, but never followed through. They also say a painting company later told them that spot painting would not be successful, as a uniform appearance could only be achieved by painting the entire wall.
17. Mr. Khunkhun says he immediately had a crew on site to wash the side of the house, which was followed by the 2 subsequent cleanings. The respondents say they made their best efforts, but the applicants were never satisfied. The respondents say the applicants initially agreed that the respondents would pay to spot-paint the wall, but later changed their minds.
18. I find that even if the applicants verbally agreed to spot-painting the wall, they were entitled to change their minds after getting an opinion from a professional painter. This is particularly true since no work was ever performed, and no consideration was paid. I therefore find that any verbal contract was not binding.
19. Based on the photos in evidence, I accept that it would be difficult to match the wall colour, and spot-painting would likely leave a patchy result.

20. The applicants did not provide photos of the wall after the power washing occurred. However, I also note that the respondents did not submit and provided no evidence that all the sludge was fully removed after washing. Rather, they say the applicants should be bound by their agreement to accept spot-painting.
21. I find that Quantum and Balraj Khunkhun are not liable for the splatter damage. Quantum was the general contractor for the duplex build, but Mr. Khunkhun says the other respondents hired Allright. The other respondents did not provide contrary evidence. Since there is no evidence before me that Quantum or Mr. Khunkhun had a contractual or supervisory relationship with Allright, I find they are not vicariously liable for any damage caused by Allright. Also, Quantum had no contractual relationship with the applicants. For these reasons, I find Quantum and Mr. Khunkhun are not liable to the applicants for the splatter damage.
22. I find that Daljot Riarh, Rajvinder Ahuja, and Sunny Ahuja are liable for the splatter damage and must pay for the wall repainting. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet that standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages.
23. Rajvinder Ahuja and Sunny Ahuja say that they were only "silent partners" in the building project. However, I find this does not change their liability. I find that as the three owners or investors in the duplex project, Rajvinder Ahuja, Sunny Ahuja, and Daljot Riarh all owed a duty of care to neighbouring property owners, and failed to meet that standard of care when their excavating contractor splashed sludge on the applicants' house. I find it was reasonably foreseeable that this would stain the applicants' house, and for the reasons explained above, I find it damaged the paint, requiring repainting of the entire wall.
24. The applicants provided 2 estimates from painting contractors. The lowest of these is for \$2,310, including GST. I therefore order the respondents Rajvinder Ahuja, Sunny Ahuja, and Daljot Riarh to pay the applicants \$2,310 for painting. As the

applicants have not proved the painting will cost \$2,400, I find they are not entitled to that amount. I also find the applicants are not entitled to prejudgment interest under the *Court Order Interest Act* (COIA), as they have not yet paid for any painting.

25. In accordance with the CRTA and the tribunal's rules, as the applicants were successful in this dispute, I find they are entitled to reimbursement of \$125 for tribunal fees. The applicants also claimed \$55.39 for registered mail expenses for serving the Dispute Notices on the respondents. I find that amount is reasonable in the circumstances, so I order reimbursement as a dispute-related expense.

ORDERS

26. I order that within 30 days of this decision, the respondents Rajvinder Ahuja, Sunny Ahuja, and Daljot Riarh pay the applicants a total of \$2,490.39, broken down as follows:

- a. \$2,310 in damages for painting, and
- b. \$180.39, as reimbursement of \$125 in tribunal fees and \$55.39 in dispute-related expenses.

27. The applicants are entitled to post-judgment interest under the COIA, as applicable.

28. I dismiss the applicant's claims against Quantum and Mr. Khunkhun.

29. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

30. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Vice Chair