



# Civil Resolution Tribunal

Date Issued: November 15, 2019

File: SC-2019-005912

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Suddard v. Pristine Concrete Ltd.*, 2019 BCCRT 1297

BETWEEN:

GARY SUDDARD

**APPLICANT**

AND:

PRISTINE CONCRETE LTD., JOSH BURROWS and SHAUN  
SIEMENS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about payment for garage floor repairs.
2. The applicant, Gary Suddard, says he hired the respondents to repair and paint his garage floor. As discussed below, the applicant's contract was with the respondent

Pristine Concrete Ltd. (Pristine). The respondents, Josh Burrows and Shaun Siemens, are joint owners of Pristine.

3. The applicant says the respondents' work was substandard and seeks reimbursement of the \$4,368 he paid for the job, plus \$500 compensation for labour for moving appliances, shelving and baseboards. Pristine says the job was done adequately and serves its intended purpose to repair and protect the garage concrete slab. Mr. Burrows and Mr. Siemens also say the applicant's contract is with Pristine and that they are not proper parties to this dispute.
4. The applicant and Mr. Burrows are both self-represented. Mr. Siemens represents himself and Pristine.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
  - a. Order a party to do or stop doing something;
  - b. Order a party to pay money;
  - c. Order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the applicant is entitled to reimbursement of \$4,368 for an unsatisfactory garage floor repair job, plus \$500 for labour services.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. At the outset, I dismiss the applicant's claims against Mr. Burrows and Mr. Siemens, Pristine's joint owners. There is no evidence before me to support claims against them personally, as the invoice indicates the contract was between the applicant and Pristine, a limited company.
12. I turn then to the applicant's claim against Pristine. In February 2019, the applicant approached Pristine about repairing the concrete slab floor in his garage and applying a "polyaspartic coating" for protection. On February 21, 2019, Pristine provided a quote for \$4,368 including tax. The quote was for Pristine to: clean,

repair and prep approximately 640 square feet of garage slab to “accept polyaspartic floor coating” in solid grey colour, and apply that floor coating. After Pristine issued the quote, the parties discussed warranties on the work. The applicant advised Pristine he had an offer from another company that provided a 9-year warranty. In response, Pristine advised it could only offer a 1-year manufacturer’s warranty on the product itself. Despite this, on March 7, 2019, the applicant elected to proceed with Pristine.

13. On March 14 and 15, 2019, Pristine completed the job. The applicant says he noticed “big dark blotches” the next day and notified the respondents. Pristine returned on March 25, 2019 and applied a second coat of the polyaspartic product to the garage floor. The applicant says immediately after the second coat was applied, noticeable stripes running across the floor from the paint roller could be seen. Although unhappy with the stripes, the applicant says he accepted it as the only other option given was to re-grind and start all over, which he says Pristine did not agree to do.
14. On April 21, 2019, the applicant noticed chips in the coating, where the product had failed to adhere to the concrete slab. On April 25, 2019, Pristine attended to repair the chipped area. On May 15, 2019, the applicant noted more chipping, and Pristine attended on May 21, 2019 for further repairs. It is undisputed that the repair patches were a different colour than the rest of the floor and that Pristine had failed to include the anti-slip component, making the repaired areas “slick and shiny”. By May 27, 2019, additional chips appeared and the applicant followed up with Pristine. Text messages in evidence show the applicant continued to follow up with Pristine about the new chips several times between May 27 and June 18, 2019, but that Mr. Siemens advised they had been very busy and would try to schedule something. It is undisputed that no further repairs were completed after the May 21, 2019 visit.
15. On June 18, 2019, the applicant requested a refund of the \$4,368 he paid, due to the deficiencies in the floor coating. Mr. Siemens responded declining a refund but said that Pristine was willing to repair the chips and that no warranty was available

on the coating application due to the age of the concrete slab. It was Pristine's position that the imperfections were "minor, yet fixable". Although Pristine says it was willing to repair the chips, I find it did not make a reasonable effort to do so after May 27, 2019.

16. The applicant says his floor remains unrepaired and is chipping in several areas. Pristine says the job was done adequately and serves its intended purpose of protecting the slab, and that the imperfections are cosmetic and do not affect the coating's function. The photographs filed in evidence show significant chipping in several areas, noticeable dark patches from earlier chip repairs, and obvious paint streaks in the coating.
17. Neither party says the ongoing issues are a result of the product used. Rather, the applicant says the issues are due to poor application of the product, and Pristine says the issues are due to the old age of the concrete slab.
18. In support of his position, the applicant says he spoke with another flooring company, ZGF, and the product's representative, MG, who both agreed the floor issues were due to poor application. The applicant did not provide a statement from either ZGF or MG, except a brief email from MG in which they indicate it looks like an installer error, but that the actual products used were not disclosed to MG. It is unclear what information MG was sent prior to them providing their opinion. Pristine says MG's comments should not be relied on because MG has a vested interest in blaming the application rather than their own product. I agree, and given MG is not disinterested and the lack of context for MG's opinion, I give it no weight. However, that does not mean that I accept Pristine's argument that the issues are a result of the condition of the concrete slab. Pristine did not provide any evidence of its own in support of that submission.
19. Based on the evidence before me, I find the job was not completed to a satisfactory standard. The parties' agreement was to provide labour and materials to complete the job to a professional standard. Although Pristine says the chips are "fixable", I find Pristine has already attended for repairs on three separate occasions and that

the prior repairs were also not done to a professional standard, leaving additional issues with the floor, including areas without anti-slip protection. Additionally, Pristine failed to re-attend the applicant's home for further repairs after more chipping appeared on May 27, 2019. In the circumstances, I find a refund is reasonable. The next question is how much.

20. The applicant seeks a full refund of the \$4,368 he paid to Pristine and says that he intends on having the floor fixed by a "larger, more experienced" company, for \$4,200. The applicant did not say whether that cost included tax and did not provide the quote in evidence.
21. Pristine says a full refund would be unfair, because of the time it spent preparing and repairing the area. However, Pristine failed to provide any breakdown of the time spent repairing or prepping, compared to applying the coating, either in its quote or during this dispute. As I am unable to determine how much time was spent on each task, I find the applicant is entitled to reimbursement of the full \$4,368 he paid for the job. I also find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* on this amount, from June 18, 2019, the date the applicant's refund request was denied. This amounts to \$35.24.
22. Turning to the applicant's claim for \$500 in labour services, I dismiss that claim for the following reasons. The applicant says the amount is an estimate for moving services because he is not able to move the items out of his garage on his own to have the floor redone. However, I note that before the work started in March 2019, Pristine offered to move the items for the applicant, but he refused and did it himself with assistance from friends. In any event, the applicant has not provided any evidence to support the \$500 claim, and so I dismiss it.
23. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was generally successful, I find that he is entitled to reimbursement of the \$175 he paid in tribunal fees. No dispute-related expenses were claimed.

## ORDERS

24. Within 30 days of the date of this decision, I order Pristine to pay the applicant a total of \$4,578.24, broken down as follows:
  - a. \$4,368 for a refund for garage floor repair services,
  - b. \$35.24 in pre-judgment interest under the COIA, and
  - c. \$175 in tribunal fees.
25. The applicant is also entitled to post-judgment interest, as applicable.
26. The claims against Mr. Burrows and Mr. Siemens personally are dismissed.
27. The applicant's remaining claims are dismissed.
28. 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.
29. 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 it is an approved consent resolution order, or, 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.

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Andrea Ritchie, Vice Chair

