



Civil Resolution Tribunal

Date Issued: April 21, 2020

File: SC-2020-000396

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ketchum v. Schinkel*, 2020 BCCRT 430

BETWEEN:

JESSE BRUCE KETCHUM

APPLICANT

AND:

ALLAN SCHINKEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about concrete work. The applicant, Jesse Bruce Ketchum, says the respondent, Allan Schinkel, provided unprofessional, sloppy, and defective concrete

services for his home renovation project. The applicant says the respondent is personally responsible and claims \$4,717 in compensation for various “unsatisfactory” issues, which amount the applicant says is 20% of the total final cost for the concrete project.

2. The respondent says the applicant’s contract was with Defined Concrete Services Inc. (Defined Concrete), and I infer the respondent is one of Defined Concrete’s principals. The respondent also denies any defects and says the work was done professionally. Defined Concrete is not a party to this dispute.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the tribunal’s mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. Is the applicant entitled to \$4,717 in damages, being 20% of the concrete contract, for alleged defects in the concrete work?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Briefly, the concrete project was initially for an agreed price of \$19,456 plus GST. The applicant paid an additional \$3,005 for additional “integral dye”, bringing the total project cost to \$22,471 plus GST. The concrete work began on May 27, 2019 and completed on June 11, 2019. The applicant paid for the work in full on June 11, 2019. The parties disagree about when the applicant first raised concerns about the work: the applicant says he did so in person on June 11, whereas the respondent says it was by email on November 8, 2019. Given my conclusion below, I find nothing turns on this.
11. The applicant’s claim acknowledges that the respondent operated as Defined Concrete. There is no explanation however for why the applicant did not name Defined Concrete, an incorporated entity, as a party to this dispute, other than saying he wishes to “hold the respondent personally liable”.
12. The evidence shows that the applicant contracted with Defined Concrete, not the respondent personally. The March 28, 2019 quote was from Defined Concrete to the applicant and his spouse, and I find this became the concrete contract (which was later amended). The receipts were all issued from Defined Concrete to the

applicant and his spouse. I find the respondent was not a party to the concrete contract.

13. While the applicant argues the respondent should be held accountable, the applicant does not explain why the respondent should be personally responsible for the corporation's alleged negligence and/or alleged failure to fulfill the concrete contract.
14. In law, officers, directors and employees of corporations are not personally liable unless they committed a wrongful act independent from that of the corporation: see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. The applicant provided no evidence that the respondent personally committed a wrongful act independent from Defined Concrete. On this basis alone, I dismiss the applicant's claims against the named respondent Mr. Schinkel.
15. However, even if the applicant had named the correct respondent, on the evidence before me I would not allow his claimed damages. My reasons follow.
16. The applicant alleges the following specific problems:
 - a. concrete colour mismatch,
 - b. patio border poorly troweled,
 - c. sloppy 'antiquing',
 - d. gap under the garage door, and
 - e. "miscellaneous", related to an electrical wire cut and alleged sprinkler damage.
17. I find these problems are essentially all claims of professional negligence, with a concrete finisher being the relevant trade.
18. The applicant provided a screenshot of his spouse's handwritten daily journal for June 11, 2019, which he says supports his position that he raised concerns that

day. For the most part, the handwriting is illegible and I cannot read it. In any event, this does not address whether the concrete work was in fact defective. There is no evidence the applicant or his spouse are engaged in the concrete trade or have any related qualifications. The applicant's only other evidence is a series of photos, along with his own evidence of his observations of the concrete work.

19. I cannot tell from the photos alone whether the concrete work was defective as alleged. For instance, while the patio border photos appear to show some dimpling, I cannot conclude the appearance falls below what is reasonably expected for such work. I find the issues here are not within ordinary knowledge and instead require expert opinion from someone in the concrete finishing trade. There is no such evidence before me. I say the same about the alleged "colour mismatch", noting the respondent says there can be some colour variations between truckloads of concrete.
20. The respondent says the concrete colour ordered and used was as selected by the applicant. The respondent says the patio border was troweled to a smooth finish, and that it followed its usual antiquing procedure. The respondent also says the gap under the door is the result of a pre-existing garage floor having sunk. Again, I have no expert evidence before me that says the concrete work fell below the applicable standard of care. As for the "miscellaneous" claim, the applicant provided no evidence showing the respondent is responsible for these claimed damages.
21. Given my conclusions above, I find the applicant's claims must be dismissed. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful I find he is not entitled to be reimbursed for tribunal fees or dispute-related expenses. The successful respondent did not pay any fees or claim expenses.

ORDER

22. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair