



# Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-006799

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sran v. Pond*, 2022 BCCRT 432

BETWEEN:

SUKHPAL SRAN and 0839764 B.C. LTD.

**APPLICANTS**

AND:

SHAKUNTALA POND

**RESPONDENT**

AND:

0839764 B.C. LTD. and SUKHPAL SRAN

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is over concrete work. The applicants (and respondents by counterclaim), 0839764 B.C. Ltd. (083) and Sukhpal Sran, say the respondent (and applicant by counterclaim), Shakuntala Pond, has failed to pay for concrete work as agreed. The applicants claim \$2,650.
2. Ms. Pond says the concrete work was deficient. She says at Mr. Sran's insistence she paid \$600 in cash for the concrete materials at the outset of the work. She says she gave him an \$1,800 cheque for the balance of the agreed \$2,400. She admits she later cancelled that cheque because the constructed concrete slab was allegedly sloping improperly. Ms. Pond says fixing the problems added over \$4,000 to her expenses and so she says she owes the applicants nothing.
3. In her counterclaim, Ms. Pond claims \$4,527.75, which includes the \$600 cash payment she says she made, for her "correction" of the "huge dip in the centre of the concrete slab".
4. Mr. Sran represents the applicants. Ms. Pond represents herself.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT 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. Bearing in mind the CRT's mandate that includes

proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. CRTA section 42 says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether the applicants' concrete slab work for Ms. Pond was deficient,
  - b. Whether the applicants are entitled to the claimed \$2,650 for the concrete work, and
  - c. Whether Ms. Pond is entitled to the claimed \$4,527.75 for alleged deficiencies and repairs to the concrete work.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). Ms. Pond must prove her counterclaim to the same standard. I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. There is no formal contract in evidence. It is not entirely clear whether Ms. Pond contracted with 083, Mr. Sran, or both. Mr. Sran's relationship with 083, if any, is not explained. It is undisputed however that one or both of the applicants did concrete

work at Ms. Pond's home in September 2019. Because the evidence discussed below indicates the agreement was most likely made with Mr. Sran and there is no mention of 083, I find Ms. Pond's contract was made with Mr. Sran and not 083.

***Mr. Sran's \$2,650 claim***

12. Ms. Pond submitted a September 11, 2019 handwritten receipt for \$600, which showed this was a "part payment" towards a \$2,400 "total contract". It is undisputed the original contract was for \$2,400 and I find it was.
13. This leaves at least \$1,800 that Ms. Pond undisputedly did not pay, because she cancelled her September 13, 2019 cheque for that amount.
14. Mr. Sran argues Ms. Pond verbally agreed to pay extra for additional work, which she denies. There is no evidence to support this additional work, and Mr. Sran does particularly describe it beyond saying it was extra concrete beside the house. He does not say when or what the parties agreed to as the additional price, though I infer it was an extra \$850 given the difference between the claimed \$2,650 and the \$1,800 outstanding.
15. On balance, I find it unproven Ms. Pond agreed to any additional work for \$850 or otherwise. So, I find Mr. Sran is entitled to the \$1,800, subject to my analysis below of the alleged deficiencies and Ms. Pond's counterclaim.

***Ms. Pond's \$4,527.75 counterclaim***

16. As discussed further below, the central issue in this dispute is whether Mr. Sran improperly built the requested concrete slab, by allegedly sloping it incorrectly so that water pooled on it.
17. I note I place no weight on the negative reviews of Mr. Sran submitted in evidence by Ms. Pond. I find these irrelevant to the question of whether Mr. Sran properly completed Ms. Pond's concrete job.

18. I turn then to the applicable law. When a customer alleges that a contractor's work was below a reasonably competent standard, they must prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61. Generally, an allegation that a professional's work was below a reasonable standard requires expert evidence to prove. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
19. Ms. Pond submitted photos of the concrete slab that shows a significant amount of water on it. However, I cannot tell from these photos that the water is pooling because of a defective slope created by Mr. Sran. Ms. Pond also submitted photos of the wooden forms, in preparation for the concrete slab. It is undisputed Ms. Pond's "framer" built the wooden forms, not the applicants. In any event, I cannot tell from the forms photos that the concrete slab was ultimately deficient.
20. Ms. Pond also submitted a photo of the shed's partially constructed interior, showing the concrete floor was mostly wet. Ms. Pond says this shows water ingress from the defective concrete slab sloping. I cannot conclude this from the photo alone.
21. Next, Ms. Pond submitted a photo of the completed shed, with an annotation that the shed was "ready" but required re-enforcement "for almost one year before water stopped coming in". I cannot tell anything from this photo of the shed, sitting on a concrete pad that is partially wet. In particular, I cannot conclude Mr. Sran's slope was defective.

22. Ms. Pond submitted a December 2, 2021 witness statement from her basement tenant SJ. SJ wrote that between September 12 and 15 they witnessed the “contractor” make the shed’s cement foundation and “it was not levelled”. SJ wrote the rainwater pooled in the platform’s middle, making further work difficult. SJ wrote that even after the shed was made, water still “made its way inside”.
23. While I accept SJ observed water pooling, I do not accept SJ is an expert on concrete slab construction as there is no evidence to that effect. I find accepting SJ’s observation of pooling or “not levelled” does not show that Mr. Sran’s concrete slab work was obviously deficient.
24. Mr. Sran denies his work was deficient and suggests that the issue was likely with the forms built by the framer. As noted, as the party asserting the defect, Ms. Pond has the burden to prove it. Notably, she submitted no witness statement from her framer.
25. So, I find there is no obvious defect with the concrete slab built by Mr. Sran. I find whether the concrete work was done properly is technical in nature and it requires expert evidence.
26. Ms. Pond submitted only one November 6, 2020 receipt for \$5,780.00 from Tomislav Tuter. The receipt said it was for “concrete work in the shed \$1,635 plus assistant for electrical and deficiencies in the house \$4,145”. I infer Ms. Pond’s counterclaim is based on the \$4,145 figure plus the \$600 cash she undisputedly paid Mr. Sran. Yet, she does not explain how “electrical and deficiencies in the house” relates to the alleged correction of Mr. Sran’s concrete work. Given my conclusion below, nothing turns on this discrepancy.
27. Significantly, there is no indication of Tomislav Tuter’s qualifications and no clear criticism of the concrete slab work. I do not accept that receipt as expert evidence under the CRT’s rules and find it does not show Mr. Sran’s work was sub-standard or defective. So, there is no expert evidence before me from a concrete trade professional that Mr. Sran’s work was deficient. I find the alleged defects in the

concrete slab unproven. Given the above, I find Ms. Pond's counterclaim must be dismissed.

28. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Sran is entitled to pre-judgment interest on the \$1,800. Calculated from September 13, 2019 (the cheque's date) to the date of this decision, this interest equals \$42.53.
29. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Sran was partially successful and so I allow ½ his paid CRT fees, which equals \$62.50. Since Ms. Pond was unsuccessful, I dismiss her claim for reimbursement of paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

30. Within 21 days of this decision, I order Ms. Pond to pay Mr. Sran a total of \$1,905.03, broken down as follows:
  - a. \$1,800 in debt,
  - b. \$42.53 in pre-judgment interest under the COIA, and
  - c. \$62.50 in CRT fees.
31. Mr. Sran is entitled to post-judgment interest, as applicable. I dismiss 083's claims and Ms. Pond's counterclaim.
32. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

33. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of BC.

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Shelley Lopez, Vice Chair