



Civil Resolution Tribunal

Date Issued: May 10, 2022

File: SC-2021-007781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parfitt v. Enviro Paving Corporation*, 2022 BCCRT 560

BETWEEN:

KENNETH DANIEL PARFITT

APPLICANT

AND:

ENVIRO PAVING CORPORATION, JASON SCHOENAU, ELLEN
WHITE, and J&S LANDSCAPING LTD. dba ENVIROPAVING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about rubber paving work. The applicant, Kenneth Daniel Parfitt, says he hired the respondents, Enviro Paving Corporation (EPC) and J&S Landscaping Ltd. dba EnviroPaving (J&S), to install rubber paving in his backyard. The respondent,

Jason Schoenau, is EPC's director. The respondent, Ellen White, is an EPC employee.

2. Mr. Parfitt says the respondents did a poor job, and seeks \$4,930.43 as a refund for the installation, costs to remove the rubber and prepare the area for a new contractor, as well as lost wages.
3. EPC says its work was to industry standard and denies Mr. Parfitt is entitled to any refund.
4. J&S did not file a Dispute Response despite being served. So, it is in default as discussed below.
5. Mr. Parfitt represents himself. Mr. Schoenau represents himself. Ms. White represents herself and EPC.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
7. Section 39 of the CRTA says that 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. Further, 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.

8. Section 42 of the CRTA says that 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.
9. 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.

ISSUE

10. The issue in this dispute is whether the respondents' rubber paving installation was deficient such that Mr. Parfitt is entitled to a refund and associated costs.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Mr. Parfitt must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
12. At the outset, I dismiss the claims against Ms. White and Mr. Schoenau personally. The evidence shows that Ms. White was the Vice President – Operations for EPC, while Mr. Schoenau is EPC's Director. Mr. Parfitt makes no claims against them personally and the undisputed evidence is that Mr. Parfitt's contract was with one or both of J&S or EPC.
13. Next, there is some confusion about who Mr. Parfitt actually contracted with. On one version of an invoice, the company is named as "J & S Landscaping LTD (Doing Business As EnviroPaving)". In a second version, the company is named as "Western Rubber Paving Ltd (Doing Business As EnviroPaving)". In a third version, the company is named as "Enviro Paving Corp.". The respondents did not explain this discrepancy. Additionally, the evidence clearly shows Mr. Parfitt made payments for

the installation by e-transfer, but they are only noted as being to “Enviropaving” and they do not say which corporate respondent received the funds.

14. As noted above, J&S is a named respondent in this dispute, but failed to file a Dispute Response, so is technically in default. Generally, when a party is in default, its liability is assumed. In this case, as J&S is listed on one of the invoices provided to Mr. Parfitt, I find it is somehow related to this dispute and yet chose not to participate without any explanation. As such, I find it appropriate to assume liability as against J&S. As discussed below, I also find EPC liable. Given EPC was a participating party, I address its liability and Mr. Parfitt’s claimed damages in detail below.

15. The following facts are undisputed:

- a. Sometime in April 2021, Mr. Parfitt contacted EPC as a result of an internet search for backyard landscaping.
- b. On April 27, 2021, Ms. White provided an on-site quote for rubber paving over a concrete slab and grass area in Mr. Parfitt’s backyard.
- c. On May 3, 2021, Mr. Parfitt signed an agreement with either EPC or J&S or both, for a total of \$4,450.43, and paid a deposit of \$1,365 shortly thereafter.
- d. On May 22 and 23, 2021, EPC and/or J&S installed the rubber paving, and on May 23, Mr. Parfitt paid the contract’s balance. Immediately upon completion, Mr. Parfitt complained of a “dip” in one part of the yard.
- e. On June 18, 2021, EPC and/or J&S returned to repair the “dip”, but Mr. Parfitt was not satisfied with the repair.
- f. Between June and August 2021, Mr. Parfitt, Ms. White and Mr. Schoenau communicated regularly by email about the alleged deficiencies.

16. In this dispute, Mr. Parfitt seeks reimbursement of \$4,930.43, which he says is a complete refund for the rubber paving installation (\$4,450.43), costs to remove the shoddy rubber, and fees and “lost wages”.

17. Mr. Parfitt says the rubber paving work was deficient and contains “many dips, valleys, hills, tripping hazards, failing seams, and a completely unsightly backyard”. He says there was only one noticeable dip at first, but that after he was allowed to step on the material after 24-48 hours, he found several deficiencies. Mr. Parfitt further says the repair completed on June 18 was worse than the initial installation, leaving a mismatched backyard with worse tripping hazards than before.
18. EPC says the rubber paving was installed to industry standard, but acknowledges there is one seam that opened up and agrees to return to “re-fasten” it. Given his lengthy list of complaints, Mr. Parfitt does not want EPC to perform any more work.
19. When a customer alleges that a contractor’s work fell below a reasonably competent standard, the customer must prove the deficiencies (see: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Generally, expert evidence is required to prove a professional’s or trade’s work was below a reasonable standard (see: *Bergen v. Guliker*, 2015 BCCA 283). The two 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).
20. First, Mr. Parfitt submitted a volume of photos and videos in evidence which he says show the paving is not up to standard. I find these photos show unlevel rubber paving in several areas and unconnected seams that flex when stepped near. Additionally, I find the “patch” done on June 18 that stretches nearly the entire span of the backyard is unsightly, discoloured and clearly not level. Although EPC says Ms. White warned Mr. Parfitt that any patching would be discoloured for a while until it weathered to blend in with the original rubber, I find it obvious the colour used is not sufficiently similar.
21. Second, Mr. Parfitt submitted a report from Paul Graham of BC Eco Paving Inc. (BCEP). In Mr. Graham’s report, he noted the rubber’s unevenness, and stated not enough road base was used to bring the grass area up to the same height as the concrete area, for the rubber to cover evenly. Mr. Graham also noted the patch’s

discolouration and gave the opinion it did not have enough brown pigmentation to match the existing rubber. Mr. Graham further stated that the installation and repair did not meet industry standards. Specifically, he said a patch should be cut out and patched within the cut area so the seams are flush, where EPC paved additional rubber over top of the cut seams, which creates a tripping hazard.

22. EPC says BCEP should not be considered an expert because BCEP originated out of EPC, and says BCEP “will always attack” EPC. EPC also says BCEP lacks the experience with this type of installation.
23. I accept Mr. Graham’s qualifications and allow his report as expert evidence under the CRT’s rules. I also find Mr. Graham’s report is consistent with what I see in the photos and videos submitted by Mr. Parfitt.
24. Given my conclusions above, I am satisfied the rubber paving work completed fell below a reasonably competent standard. So, what is Mr. Parfitt’s remedy? Although he seeks \$4,930.43 for an installation refund, cost to remove the existing rubber and prepare the area for a new contractor, fees and lost wages, Mr. Parfitt did not provide any evidence of the costs or any evidence about alleged lost wages. Additionally, Mr. Graham did not comment on what the proper course would be to remedy the deficiencies as noted above. However, on balance I find given the deficiencies’ extent and the patch stretching across the length of the yard that I find does not meet industry standards, I accept the rubber will need to be completely redone. As noted, Mr. Parfitt paid \$4,450.43 for the installation, and I find he is entitled to a full reimbursement of that amount. I dismiss the balance of his claim as unproven.
25. In the circumstances, I find EPC and J&S jointly and severally liable for Mr. Parfitt’s proven damages, given EPC does not deny it contracted with Mr. Parfitt and J&S’s default status.
26. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Parfitt is entitled to pre-judgment interest under the COIA on the \$4,450.43. Calculated from September 1, 2021 (a date I find reasonable in the circumstances), this equals \$13.79.

27. Under section 49 of the CRTA, and the CRT 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 Mr. Parfitt was successful, I find that he is entitled to reimbursement of the \$175 he paid in tribunal fees. Mr. Parfitt also claims \$319.10 in dispute-related expenses, which includes \$45 for company searches, \$11.60 for registered mail, and \$262.50 for Mr. Graham's expert report. I find these expenses were all reasonable, and I find Mr. Parfitt is entitled to reimbursement of them.

ORDERS

28. Within 21 days of the date of this decision, I order the respondents, Enviro Paving Corporation and J & S Landscaping Ltd. dba EnviroPaving, jointly and severally, to pay the applicant, Kenneth Daniel Parfitt, a total of \$4,958.32, broken down as follows:

- a. \$4,450.43 in damages,
- b. \$13.79 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$175 in tribunal fees, and
- d. \$319.10 in dispute-related expenses.

29. Mr. Parfitt is also entitled to post-judgment interest, as applicable.

30. The claims against the respondents, Jason Schoenau and Ellen White, are dismissed.

31. 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.

32. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. 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 British Columbia.

Andrea Ritchie, Vice Chair