



Civil Resolution Tribunal

Date Issued: April 19, 2023

File: SC-2022-004779

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grandel v. Prestige Concrete Grinding and Polishing Corp.*,
2023 BCCRT 318

B E T W E E N :

SHERRI GRANDEL and EDWARD GRANDEL

APPLICANTS

A N D :

PRESTIGE CONCRETE GRINDING AND POLISHING CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a concrete driveway.
2. The applicants, Sherri Grandel and Edward Grandel, hired the respondent, Prestige Concrete Grinding and Polishing Corp. (Prestige), to grind and apply sealant to their

concrete driveway. Prestige performed the work in July 2021. The Grandels say that in March 2022 they observed scratches, chips, and a line that “seemed to have been missed” when Prestige did the “top coat”, among other issues. The Grandels say they asked Prestige to come back and look at the driveway, but Prestige refused to do so. The Grandels ask for an order that Prestige either fix their driveway or pay to have someone else fix it, and claim \$4,000, which I infer is the Grandels’ estimated cost to have someone else fix the driveway.

3. Prestige disputes the Grandels’ claims and says its work was not deficient. It says the Grandels caused the scratches and other alleged damage, and Prestige is not responsible for any repairs.
4. The applicants are self-represented, the respondent is represented by its director, TS.

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). 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 the dispute’s parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA 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. 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 in the interests of justice.

7. Section 42 of the CRTA 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. Was Prestige's work deficient?
 - b. If yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicants the Grandels must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
11. In their application for dispute resolution, the Grandels refer to a 1-year warranty, and says Prestige failed to return to warranty its work on their driveway. Prestige says no warranty was stated or agreed to for its work. Prestige says even if there was a warranty, it would not cover damage caused by a homeowner, which includes scratches and wear and tear. Prestige says it explained this to the Grandels. Based on the evidence, I find it unproven that Prestige provided any specific warranty on its work. However, in all contracts for professional or trade services, which I find includes this contract to grind and seal concrete, there is an implied term that the professional will perform the work to a reasonably competent standard.

12. Where the customer alleges deficient work, as the Grandels do, they must prove the deficiencies. In general, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, such as concrete grinding and sealing. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical. See *Absolute Industries Ltd. v. Harris*, 2014 BCCA 287, and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196. With that in mind, I turn to the facts.
13. The parties agree that the Grandels hired Prestige to work on the Grandels' concrete driveway, and the Grandels paid Prestige \$4,192.13 for the grinding and sealant work around July 10, 2021.
14. The Grandels' say when Prestige finished the concrete work in July 2021, it "looked good as it was wet". The Grandels did not say that they noticed any issues with Prestige's work in the fall of 2021. However, the Grandels say that in the spring of 2022, they had concerns because there were deep scratches appearing on the concrete, multiple chips everywhere, and a solid 3 to 4 inch thick line that they say was missed completely because it was discoloured. The Grandels also say there were rust colours coming up from the rocks that had not been there before. The Grandels contacted Prestige around March 9, 2022 with concerns about their driveway's condition, sent some photographs of the alleged issues to Prestige, and asked Prestige to come look at the driveway. Although Prestige initially indicated it would look at the driveway, it is undisputed that Prestige did not send anyone to look at the Grandels' driveway. I find Prestige did not do so because the parties' relationship deteriorated and Prestige decided it would not attend.
15. The Grandels submitted photographs in evidence that they say show chips, uneven patches, pits, scratches, and discolouration on their concrete driveway. I find the photographs shows some chipped concrete edges, uneven areas, a crack or groove with some discolouration, surface scratches, and other minor variances in the concrete's colour. However, the Grandels did not submit photographs that show the

driveway as a whole. So, it is unclear where or when any of the above photographs were taken, and I cannot determine the extent of any of the alleged damage.

16. Prestige does not dispute the alleged damage shown in the photographs, but as noted says it was caused by the Grandels and is not a result of Prestige's work in July 2021. Prestige says the photographs do not show any white or flaking of the sealant so the work was done properly. Prestige says the photographs show excessive abrasion and salt damage on the Grandels' driveway. The Grandels dispute this. They say that they only used a plastic snow shovel to clear snow over the winter, and did not use a scraper, metal, or salt to remove any ice or snow.
17. Bearing in mind the 9-month period between Prestige's July 2021 work and the Grandels' concerns raised in March 2022, I find the photographs, alone, do not prove that any of the any of the alleged damage is a result of any deficiencies with Prestige's concrete grinding and sealant work. I find it is not obvious from the available evidence that Prestige's work was deficient. So, I find expert evidence is required to prove whether Prestige's concrete grinding and sealant work was deficient in any way, or caused the alleged damage.
18. Prestige provided emailed statements from RL, a sales representative for W.R. Meadows of Western Canada which I infer is the sealant manufacturer, and JM, a sales representative for National Concrete Accessories.
19. RL said that scratches in the applied acrylic sealer are normal after a full winter. RL said the scratches can occur from a variety of things such as road salts and sand, studded tires and shoveling snow. RL said re-coating of driveways in climates that get snow is 1 to 2 seasons on average. RL said there is no service time provided for durability as each user and property have different uses and abrasion rates. RL concluded their statement by saying they saw no signs of blushing or peeling which may indicate poor surface preparation.
20. JM said that based on their review of photographs provided by Prestige, the scratches or wear on the sealer is a normal occurrence. JM says clear acrylic sealer requires

maintenance and needs to be re-applied, touched-up or repaired every 1 to 2 years. However, neither RL nor JM provided their qualifications to provide expert opinion evidence, as required by CRT rule 8.3. So, I place no weight on JM or RL's opinion evidence.

21. However, the problem for the Grandels is that they submitted no expert evidence in support of their claim to explain how Prestige's grinding and sealant work was deficient, or how it caused the alleged damage to their driveway. They also did not provide any quote or estimate that would show the cost to repair the alleged damage.
22. As noted, the Grandels bear the burden of proving their claims. Based on the available evidence, I find the Grandels have not proved that Prestige's work was deficient, or caused any of the alleged damage to the Grandels' driveway. So, I dismiss the Grandels' claims.

CRT fees and dispute-related expenses

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The Grandels were unsuccessful in this dispute, so I dismiss their fee claim. Prestige did not pay any CRT fees and neither party claimed any dispute-related expenses, so I award none.

ORDER

24. I dismiss the Grandels' claims and this dispute.

Leah Volkens, Tribunal Member