



Civil Resolution Tribunal

Date Issued: December 8, 2023

File: SC-2022-009687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Defined Concrete Services Inc. v. Jensen*, 2023 BCCRT 1078

B E T W E E N :

DEFINED CONCRETE SERVICES INC.

APPLICANT

A N D :

KATRINA JENSEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about concrete work. Defined Concrete Services Inc. (DCS) says it installed a stamped concrete patio and walkway for Katrina Jensen, but Ms. Jensen has not paid its full invoice. It seeks \$3,247.50 for the unpaid work. An owner or employee represents DCS.

2. Ms. Jensen says that DCS did not finish the concrete work, the work it did do was substandard, and that DCS caused damage to her home while doing the work. So, Ms. Jensen says she owes DCS nothing. Ms. Jensen is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 and that an oral hearing is not necessary.
5. 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.
6. 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.

Late Evidence

7. Ms. Jensen provided her evidence after the deadline provided by the CRT. As DCS was provided the opportunity to review and respond to the late evidence, I find there is no actual prejudice in allowing it. Consistent with the CRT's flexible mandate, I have allowed and considered this late evidence.

ISSUE

8. The issue in this dispute is whether Ms. Jensen owes DCS the claimed \$3,247.50, or some other amount, for the concrete work.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, DCS must prove its claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. In June 2022, Ms. Jensen hired DCS to put in a concrete patio and walkway in her backyard. DCS provided Ms. Jensen a written \$6,247.50 quote, which Ms. Jensen accepted and signed on June 6, 2022. This signed quote became the parties' contract. The contract said that DCS would place, finish, stamp, and seal a concrete patio and walkway as well as 2 steps and a lower landing, presumably for the stairwell. The contract noted that Ms. Jensen was responsible for completing concrete preparation prior to DCS starting the project, and that Ms. Jensen would pay for the concrete and pump truck herself.
11. DCS says it finished placing, finishing and stamping the concrete on June 30, 2022. It says it sealed the patio and walkway and completed the project on July 5. Ms. Jensen undisputedly paid DCS \$3,000 on July 5 but has not paid the remaining \$3,247.50.
12. As noted, Ms. Jensen says that DCS did not complete the work. She says DCS did not do proper concrete finishing, and that it did no surface sanding or checking for lumps prior to sealing the concrete. She says DCS also sealed remnant green garbage into the concrete stairwell walls. Ms. Jensen further says that DCS was responsible for protecting her newly painted home from damage during the project. She says that DCS failed to do this, damaging her new white-washed pine soffits and

spraying concrete over her pool, newly painted home, backyard shop, and hot tub shelter pillars.

13. DCS says that it completed the work per the terms of the parties' contract. It says that before Ms. Jensen hired it, she had hired another concrete company to pour a staircase. It says that Ms. Jensen then had the staircase removed and hired DCS to re-pour it, or a portion of it, as part of the patio project. DCS says that the basement door and trim were covered in black concrete splatter and dust from the original staircase pour. With respect to the rest of the concrete splatter, DCS does not deny that it caused it but says, in essence, that it is not responsible for the cleanup.
14. I turn now to the applicable law. In general, contractors are entitled to be paid for their work once the work is substantially complete. If there are deficiencies with the contractor's work, the customer may claim damages. Although Ms. Jensen alleges DCS's work was incomplete, based on photographs in evidence which show the completed patio, walkway and stairs, I find that DCS had substantially completed the contracted work as of July 5, 2022. So, I find DCS is entitled to the claimed \$3,247.50, subject to any proven deficiencies.
15. It is an implied term in a contract for professional or trade services, such as concrete work, that a contractor's work will meet a reasonably competent standard. When a customer alleges that a contractor's work was below this 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 work fell below the required standard. This is because an ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). There is no expert evidence before me. However, for the reasons that follow, I find Ms. Jensen has proven some obvious deficiencies in DCS's work.

16. As noted, Ms. Jensen alleges that DCS did no surface sanding, that it did not check for lumps prior to sealing the concrete, that it sealed remnant green garbage into the stairwell walls, and that it splattered concrete all over the backside of her house, in the backyard on various surfaces, and on 1 of the shop's newly painted walls. I address each of these deficiencies in turn below.
17. Based on the photographs in evidence, other than 3 small areas on the stairs, I find no obvious signs of lumps or uneven concrete that DCS failed to smooth out prior to sealing the patio and walkway. I find Ms. Jensen is entitled to a small reduction on DCS's invoice for DCS's uneven concrete work on the stairs. As there is no evidence before me about what amount of deduction is appropriate for the 3 uneven areas, on a judgment basis, I find Ms. Jensen is entitled to a \$100 reduction.
18. Next, photographs in evidence show the remnant green garbage that Ms. Jensen complains about. However, in text messages in evidence, AS from DCS told Ms. Jensen that they did not pour the wall, but that the green remnants could be removed with needle-nose pliers. The parties' contract did not say anything about DCS pouring the concrete for the stairwell walls. So, I find it likely based on these text messages that DCS did not do this work. The contract also did not include anything about DCS sealing the stairwell wall, and it is not clear from the evidence before me that it did. So, I find it unproven that DCS sealed the green garbage into the stairwell wall. Even if DCS did so, Ms. Jensen has not proven any damages, especially given AS's statement that the green pieces could be removed with pliers. So, I would award no reduction in any event.
19. This leaves the concrete splatter. I find photographs in evidence show extensive concrete splatter on the shop wall, which DCS does not dispute it caused. The photographs also show other areas with less extensive concrete splatter, such as on the pillars to the hot tub shelter and the outside of Ms. Jensen's pool. Though Ms. Jensen alleges the backside of her home also had concrete splatter, I do not find this proven on the evidence before me. As the parties agree that the original concrete company damaged the basement door with concrete splatter, I find DCS is not

responsible for this damage. I also find it likely that the original concrete company damaged the trim around this door, not DCS.

20. DCS appears to argue that the term in the parties' contract that made Ms. Jensen responsible for concrete preparation means that it is not responsible for any concrete splatter, presumably because it expected Ms. Jensen to cover any areas she wanted to protect. I do not agree. I find it was an implied term of the parties' contract that DCS would take reasonable care to complete its work without damaging Ms. Jensen's property. So, while the parties' contract did not include a term requiring DCS to cover up areas that may have been susceptible to concrete splatter, I find DCS nonetheless was required to take reasonable care not to damage the shop wall, hot tub shelter pillars, and the pool's exterior with concrete splatter.
21. Based on the photographs showing the obvious concrete splatter on these areas, I find DCS failed to exercise the care required of it while completing its work. So, I find DCS is responsible for the concrete splatter on the shop wall, hot tub shelter pillars, and the pool's exterior.
22. Ms. Jensen says that she had to hire painters to come back and re-paint the shop wall, remove cement from everything around where DCS poured the concrete and repaint the hot tub shelter's pillars and basement door. An invoice in evidence shows that Ms. Jensen paid the painters \$1,737.68 for this work.
23. I have found above that DCS is not responsible for the concrete splatter on the basement door, which the painter undisputedly worked on and included in the \$1,737.68 invoice. So, based on the photographs in evidence, and on a judgment basis, I find that \$1,400 from the \$1,737.68 invoice is attributable to the damage DCS caused.
24. Further, Ms. Jensen says she likely lost \$1,200 a day in business for the time she spent chipping away the concrete splatters. However, she provided no evidence of any lost business income, or supporting evidence of time she personally spent trying

to clean up the concrete splatter. So, I find Ms. Jensen is not entitled to any further reduction.

25. In conclusion, I find Ms. Jensen is entitled to a \$100 reduction for the proven deficiency with the uneven concrete work on the stairs and a \$1,400 reduction for the proven deficiency with the concrete splatter. So, I order Ms. Jensen to pay DCS \$3,247.50 less the \$1,500 for proven deficiencies, which equals \$1,747.50.
26. The *Court Order Interest Act* (COIA) applies to the CRT. DCS is entitled to pre-judgment interest on the \$1,747.50 from July 5, 2022, the date it finished the work, to the date of this decision. This equals \$91.37.
27. 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. As DCS was partially successful, I find it is entitled to reimbursement of \$87.50 for half its paid CRT fees. Neither party claims any dispute-related expenses, so I order none.

ORDERS

28. Within 14 days of the date of this decision, I order Ms. Jensen to pay DCS a total of \$1,926.37, broken down as follows:
 - a. \$1,747.50 in debt,
 - b. \$91.37 in pre-judgment interest under COIA, and
 - c. \$87.50 in CRT fees.
29. DCS is entitled to post-judgment interest, as applicable.

30. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member