



# Civil Resolution Tribunal

Date Issued: June 24, 2024

File: SC-2023-005037

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mohammed v. Charterhouse Design Inc.*, 2024 BCCRT 592

BETWEEN:

SHAWN MOHAMMED

**APPLICANT**

AND:

CHARTERHOUSE DESIGN INC. and NEIL CODY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. The applicant, Shawn Mohammed, says he purchased an outdoor coating product from the respondent, Charterhouse Design Inc. (Charterhouse). The other respondent, Neil Cody, is a Charterhouse principal. Mr. Mohammed says the respondents wrongly advised him that the product was a concrete sealer suitable for

his concrete pad and walkway. He claims \$4,500 as reimbursement for sandblasting and cleanup to remove the product.

2. The respondents deny liability. They say they provided the correct product. They also say that Mr. Mohammed failed to mitigate his damages by testing the product on a small area first. I note that Charterhouse did not file a Dispute Response. Despite this I find it is not in default as it is clear that Mr. Cody provided evidence and submissions for both respondents.
3. Mr. Mohammed represents himself. Mr. Cody represents both respondents.
4. For the reasons that follow, I find Mr. Mohammed has proven most of his claim against Charterhouse only.

## **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.
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 court.

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.

***Mr. Mohammed's Late Evidence***

9. Mr. Mohammed provided all his evidence late. The respondents did not object and had an opportunity to provide submissions about the evidence. I find the late evidence is relevant, so I allow it.

**ISSUE**

10. The issue in this dispute is whether any of the respondents must reimburse Mr. Mohammed \$4,500 for sandblasting and cleaning up his concrete pad.

**BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Mohammed must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. A July 8, 2021 invoice shows that Mr. Mohammed purchased items totaling \$702.23 from Charterhouse. They were as follows: a) 2 5-gallon containers of a product called "Stay Clean Ready to Use" (Stay Clean) for \$453.72, b) 4 units of "Battleship Gray Tint SO" for \$86.64, and c) 4 units of "Slate Gray Tint SO" also for \$86.64.
13. Mr. Mohammed says he included Mr. Cody as a party because he sold the product at the time and provided advice about it. He did not describe any claims against Mr. Cody in his personal capacity. Mr. Cody was not a party to the purchase agreement. So, I dismiss all claims against him.
14. The parties provided different submissions about what product Charterhouse sold Mr. Mohammed. Mr. Mohammed says that Charterhouse sold him Stay Clean and tinted

it. He also provided a photo of the product that is consistent with this submission. In contrast, Charterhouse says it sold him a product called Seal Once.

15. Based on the invoice, I find the most likely explanation is that Charterhouse sold Mr. Mohammed Stay Clean and tinted it with the “SO” products. I find the “SO” likely means the tint is from the brand Seal Once. I find this best reconciles the parties’ submissions and the evidence.
16. Several emails explain what Stay Clean is. Mr. Mohammed emailed Stay Clean’s manufacturer, U-C Coatings, LLC (UC), on February 5 and 6, 2024. UC’s business development manager, Noelia Cross, replied for UC. I find that Noelia Cross is likely an expert under CRT rule 8.3 in UC’s products including Stay Clean, given their job title. Noelia Cross said that Stay Clean is not a concrete sealer. Instead, it is intended to create a clear protective film to prevent the growth of mold, algae, or moss. Noelia Cross also said that Stay Clean should not be tinted.
17. Mr. Mohammed says that he applied the Stay Clean product to his concrete pad, but it started flaking. Mr. Mohammed provided a February 18, 2023 invoice for sandblasting 1,300 square feet of concrete at a cost of \$2,509.50 and a February 19, 2023 invoice for cleaning up the sand and washing down the concrete at a cost of \$2,000.25. The sum is approximately the claim amount. Charterhouse undisputedly provided a full refund for all the purchased items slightly before the sandblasting, on January 11, 2023.

***Must Charterhouse reimburse Mr. Mohammed \$4,500 for sandblasting and cleaning up his concrete pad?***

18. Mr. Mohammed provided slightly different arguments for his claim. He says that Charterhouse sold him wood sealer instead of concrete sealer. I find that “wood sealer” refers to Stay Clean. He also says that Charterhouse tinted Stay Clean, causing it to fail in any event.

19. Charterhouse says it added tint to Seal Once concrete sealer. I have found that this was not the case, and that it actually added Seal Once brand tint to the Stay Clean product. Charterhouse did not comment on the proper application of Stay Clean.
20. I turn to the law. The *Sale of Goods Act* (SGA) applies to this sale. Section 18(a) says that there is an implied warranty that goods will be reasonably fit for their purpose. To establish a claim under SGA section 18(a), Mr. Mohammed must prove the following 3 factors on a balance of probabilities, as outlined in *Nikka Traders v. Gizella Pastry*, 2012 BCSC 1412, at paragraph 65: 1) Mr. Mohammed made Charterhouse aware of his purpose, 2) Mr. Mohammed relied on Charterhouse's skill or judgment, and 3) Charterhouse sold the products at issue in the course of its business.
21. While Mr. Mohammed did not refer specifically to SGA section 18(a), I find his submissions about the facts raised it as an issue for the parties to address. Mr. Mohammed says that he specifically requested a "concrete sealer" from Charterhouse and relied on its product recommendation. Charterhouse did not dispute this. Charterhouse also admits that Mr. Mohammed asked it about tinting. So, I find Charterhouse would have likely provided a recommendation on whether the product could be tinted. I also find that, given its business, Charterhouse normally sells such products. So, I find Mr. Mohammed has proven the 3 factors outlined under SGA section 18(a).
22. I find it proven that Charterhouse breached SGA section 18(a). This is because Charterhouse did not provide Mr. Mohammed a concrete sealer and instead sold him Seal Once. Further, it also tinted the Seal Once against the manufacturer's recommendation. I find Noellia Cross's evidence, referred to above, is expert evidence on these technical matters that shows this was the case. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.
23. I turn to damages. Damages for breach of contract are intended to place the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319.

24. Mr. Mohammed claims for the cost of removing the tinted Stay Clean product as it was flaking. Charterhouse essentially argues the Mr. Mohammed did not mitigate his damages as he should have applied it on a small area first to test for “colour development and compatibility”.
25. Charterhouse did not dispute that the product flaked, and I find it likely did, given the sand blasting and cleanup invoices, evidence that it was the wrong product, and that it should not have been tinted. Charterhouse also did not address whether testing Stay Clean on a small area would show the flaking within a reasonable period of time to dissuade further application. Given this, I put little weight on this submission.
26. Charterhouse also relied on UC’s warranty and limitation of liability. However, Mr. Mohammed did not make a claim against UC, and Charterhouse did not provide any documents to show why its contract with Mr. Mohammed would incorporate these terms.
27. Given the above, I find the appropriate measure of damages is the cost of removing the faulty product so that new product can be applied to the concrete. I find the total measure of damages is the total of the 2 invoices for sand blasting and washing, which total \$4,509.75. I deduct from this the refund already given of \$702.23, as I find not subtracting this amount would result in “double recovery” for Mr. Mohammed. The total equals \$3,807.52.
28. The *Court Order Interest Act* applies to the CRT. Mr. Mohammed is entitled to pre-judgment interest on damages of \$3,807.52 from February 19, 2023, the date of the latest invoice, to the date of this decision. This equals \$251.76.
29. 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. I see no reason in this case not to follow that general rule. As he proved most of his claim, I find Mr. Mohammed is entitled to reimbursement of \$175 in CRT fees from Charterhouse.

30. Mr. Mohammed also claimed \$300 for long-distance calls and filing fees as dispute-related expenses. I have already dealt with the filing fees. Mr. Mohammed did not provide any evidence about the calls. So, I dismiss this claim for reimbursement. The respondents did not claim any dispute-related expenses.

## **ORDER**

31. Within 30 days of the date of this order, I order Charterhouse to pay Mr. Mohammed a total of \$4,234.28, broken down as follows:

- a. \$3,807.52 in damages for breach of contract,
- b. \$251.76 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

32. Mr. Mohammed is entitled to post-judgment interest, as applicable.

33. I dismiss Mr. Mohammed's claims against Mr. Cody.

34. This is a validated decision and order. 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.

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David Jiang, Tribunal Member