

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Permacrete Restoration Services Ltd. v. Kelly, 2009 NSSM 27

Claim No: 3045

BETWEEN:

PERMACRETE RESTORATION SERVICES LIMITED

Claimant

- and -

PAUL KELLY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 26, 2009

Decision rendered on June 23, 2009

APPEARANCES

For the Claimant Daniel Cole, General-Manager

For the Defendant self-represented

BY THE COURT:

- [1] This claim seeks payment of \$2,764.50 as the balance owing under a contract for services rendered placing and finishing approximately 2000 square feet of stamped concrete in the Defendant's back yard around his pool in November 2006. Stamped concrete is a process where the concrete is dyed and stamped to create an interesting textured effect.
- [2] The evidence is clear that the results were far from satisfactory. The issue for me to decide is whether the Claimant was responsible.
- [3] In a contract where the Claimant supplies all of the labour and materials, this would be a straightforward question of whether or not the work had value. Here the contract was a bit of a hybrid, in the sense that the Defendant supplied some of the labourers and ordered the concrete himself. The Defendant is a professional engineer with a large construction company and called upon several of his company's employees to attend to perform the task of wheeling the concrete in barrows from the truck to where it was needed. This was in an effort to save money.
- [4] The Defendant stated, and I accept, that he was relying on the Claimant's reputation and past examples of its work in hiring Permacrete.
- [5] The job did not go well. The evidence was conflicting as to what went wrong. The evidence of the Claimant's witnesses was to the effect that the Defendant's labourers were not capable and could not keep up with the need for barrows of concrete, with the result that it started to set prematurely, the job took longer, and it got rained on later that evening.

- [6] The evidence of the Defendant was that his labourers were perfectly capable construction workers who wheeled the concrete over when they were called upon to do so, and who spent significant amounts of time that day waiting around without anything to do. The Defendant also testified that it was the Claimant's employees who took longer than they should have, and that there was sloppiness which contributed to the problems eventually experienced; e.g. plastic die bags or pieces of them mixed in with the concrete. The fact that it rained later that day clearly took a toll, but that would not have been a factor if the work had been completed earlier in the day, as scheduled.
- [7] Everyone agrees that by the next morning, the results were not good. The Claimant attempted some remedial work but, based on the photos in evidence, the results of that remedial work are very unsightly. The Claimant also never attended to cut the necessary expansion joints, which the Defendant attended to himself.
- [8] In the result the Defendant has a concrete deck that he is far from proud of, and which the Claimant would certainly agree is not indicative of the quality of work of which it is capable.
- [9] The Defendant decided to pay one-half of the bill rendered. He has not taken any further remedial action. He states, and I accept, that any significant remedial effort would be very costly - far exceeding the original contract.

- [10] On a balance of probabilities, I find that the problems experienced were not any fault of the Defendant or of the men he supplied. Had slow barrowing been identified as a problem at the time, I believe someone would have intervened and brought some additional workers in. I cannot say with any certainty what went wrong here, but the job was significantly within the control of the Claimant and it must take responsibility for the outcome.
- [11] I do not know what would been the result in court if none of the contract amount had been paid. However the Defendant paid one half as a goodwill gesture, and the issue for me is whether the Claimant is entitled to any more.
- [12] In my respectful view, the Defendant does not owe any more for this job. There is no Counterclaim here, although there might have been one. I believe the Defendant was more than fair by paying one half the amount and washing his hands of this contract.
- [13] In the result, the claim should be dismissed.

Eric K. Slone, Adjudicator