

Claim No: 313607

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bhatnagar v. Riley, 2009 NSSM 49

BETWEEN:

KAMLESH BHATNAGAR

Claimant

- and -

ROBERT RILEY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 8, 2009

Decision rendered on September 9, 2009

APPEARANCES

For the Claimant Bob Smith, agent

For the Defendant Kenneth Langille, counsel

BY THE COURT:

- [1] This matter was contested with equal and opposite vigour by two very strong-minded and outraged parties.
- [2] The Claimant is a widow who owns a home in Dartmouth. In August 2007 she hired the Defendant to do some repairs to her walkway, steps and stone retaining walls. She is unhappy with the result and seeks a refund of the \$2,300.00 she paid.
- [3] The Defendant has been in the concrete business for about 50 years. There is a family connection as his wife is a personal friend of the Claimant.
- [4] The evidence presented two almost diametrically opposite views of the matter. According to the Claimant, the Defendant was disorganized, sloppy and unresponsive to her concerns. The results of the work, she contends, are unsightly and generally so poor that she is considering having it all removed at considerable expense. She produced an estimate from another contractor which indicates that the cost of removing the existing structures and replacing them would be either \$6,400 or \$7,400, depending upon how one reads the estimate.
- [5] The Defendant's version of events is to the effect that the Claimant was demanding to the point of obsessive, didn't like anything that he did, and was harassing him constantly and could not be placated no matter how hard he tried. He says that he did a number of additional things for her, at

no extra charge, including replacing the initial Shaw paving blocks with exposed aggregate concrete.

- [6] The Defendant's view is that the work is generally okay, given that it was a repair being done on a small budget and cannot be compared with what a much more expensive rebuild would show. He also claims that the Claimant held back \$300.00 of the money due to him, which she denies.
- [7] There were a number of photos placed in evidence which do not really favour either extreme. There are some cracks in some of the concrete work which clearly require repair or replacement. The alleged flaws in the exposed aggregate work are either not very serious, or simply are not done justice by the photographs.
- [8] There is a minor credibility issue to be determined. The Defendant's assertion that the Claimant held back \$300.00 is a difficult one to credit, given that the Defendant himself signed receipts for two payments totalling \$2,300.00. His evidence was that the Claimant asked him to sign a further paper acknowledging that he had been paid in full, which he says he signed before she handed him the money, whereupon (he says) she simply held back the \$300.00. This seems rather incredible, and is moreover at odds with the earlier receipts that he signed.
- [9] Even so, I am reluctant to say that he was lying as he seemed to genuinely believe that this had occurred. I conclude that he must be mistaken.

- [10] I was not impressed with the Defendant's witnesses, his cousin and his son, who seemed more focussed on justifying the Defendant's assessment of the Claimant than on giving objective facts about the work.
- [11] I cannot say that I was all that impressed with the Claimant's evidence either. She seemed to me to lack any appreciation of the limitations of the work that she was contracting for, and appears to expect near perfection where none is possible, especially at the price she was willing to pay.
- [12] One example is that she complains that the wrought iron railings along the walkway are only 24 inches in height, and therefore unsafe and contrary to the Building Code. The Defendant points out that these railings were already there and his only responsibility was to replace the concrete work. I am unable to understand what the Claimant expected of the Defendant in this regard. They are no more or less safe than they were before the Defendant did his work.
- [13] The Claimant also appears to be denying, against all of the evidence, that certain things were done, specifically the application fo sealant to the exposed aggregate which, I accept, was done.
- [14] In the result, I am unable to find that there was any serious flaw in the work sufficient to require that it be torn out and replaced. The old adage "you get what you pay for" has some application here.
- [15] However, it does appear that there are some cracks which require repair, and it would be unreasonable given the animosity that exists to expect the Defendant to go back and repair them. I believe that an allowance of

\$500.00 would be sufficient to repair the deficiencies, and that is the extent of my order.

[16] I also allow the Claimant costs of issuing the claim in the amount of \$89.58 plus costs of service in the amount of \$50.00, for a total of \$639.68.

Eric K. Slone, Adjudicator