

CLAIM NO. SCY-471601

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: Aimer Roofing Ltd. v. RCS Construction Incorporated, 2019 NSSM 25**

BETWEEN:

NAME: **Aimer Roofing Ltd.**

ADDRESS:

PHONE:

**CLAIMANT  
SMALL CLAIMS COURT**

**JUN 17 2019**

**YARMOUTH COUNTY**

NAME: **RCS Construction Incorporated  
(NS RJSC Registry ID:  
c/o Chris Baldwin, Recognized Agent**

ADDRESS:

PHONE:

**DEFENDANT**

NAME: **The Source (Bell) Electronics Inc./ La Source (Bell)  
Electronique Inc., carrying on business as "The Source"  
(NS RJSC Registry ID: 3262200)  
c/o Daniel Gallivan, Recognized Agent**

ADDRESS:

PHONE:

**DEFENDANT**

NAME: **Toulon Development Corporation  
(NS RJSC Registry ID:  
c/o Willard Strug, Recognized Agent**

ADDRESS:

PHONE:

**DEFENDANT**

NAME: **3226621 Nova Scotia Limited,** **DEFENDANT**  
**carrying on business as**  
**“ALL OUT PROPERTY SERVICES”,**  
**(NS RJSC Registry ID: 3234877)**  
**c/o Pamela Churchill, Recognized Agent**

ADDRESS:

N/A

PHONE:

NAME: **All Out Property Services, holding itself out as a** **DEFENDANT**  
**sole proprietorship of Pamela E. Churchill**  
**(NS RJSC Registry ID: 3234877)**

ADDRESS: N/A

PHONE:

NAME: **All Out Property Services, holding itself out as** **DEFENDANT**  
**a sole proprietorship of Stan Churchill**  
**(NS RJSC Registry ID: 3234877)**

ADDRESS:

PHONE:

## DECISION

The claim is brought by Aimer Roofing Ltd. against RCS Construction Incorporated, The Source (Bell) Electronics Inc., Toulon Development Corporation, 3226621 Nova Scotia Limited, All Out Property Services, a sole proprietorship of Pamela Churchill and All Out Property Services as a sole proprietorship of Stan Churchill. The claim is for collection of an invoice for repairs effected by the Claimant on the roof of the Yarmouth Mall.

Based on the evidence I have concluded that the Defendant, The Source (Bell) Electronics Inc. (hereinafter referred to as "The Source"), is a tenant at the Yarmouth Mall which is owned by the Defendant, Toulon Development Corporation (hereinafter referred to as "Toulon"). The Defendant, RCS Construction Incorporated (hereinafter referred to as "RCS Construction"), is an independently owned and operated Construction Company based in Halifax Nova Scotia. Among other things, RCS Construction provides services to Toulon at its various properties in Atlantic Canada including the Yarmouth Mall property. 3226621 Nova Scotia Limited carries out a property management business in Yarmouth County, Nova Scotia. Pamela Churchill is the sole director, President, Secretary and Recognized Agent of 3226621 Nova Scotia Limited. Stan Churchill is the spouse of Pamela Churchill and runs the day to day operations of the property management business of 3226621 Nova Scotia Limited, known as All Out Property Services.

In the spring of 2016, representatives of The Source raised concerns with Toulon that the roof over The Source space at the Yarmouth Mall was leaking. The Source sought to have this rectified for obvious reasons. Toulon, in accordance with its protocol, referred the issue to RCS Construction in Halifax. As a matter of efficiency, RCS Construction engaged All Out Property Services through Stan Churchill to investigate the source of the leak and determine what needed to be done to effect a repair. Based on the evidence, it was unclear to me what Stan Churchill's experiences with roofing repairs might be, but in this circumstance he was scheduled to leave the Yarmouth area on a southern vacation and engaged the Claimant, Aimer Roofing Ltd. (hereinafter referred to as "Aimer Roofing"), to attend the Yarmouth Mall to investigate the leak and extent of necessary repairs.

I am satisfied that RCS Construction authorized All Out Property Services to spend up to \$500.00 for repairs without seeking further authorization but that expenses beyond that amount were to be authorized in writing. I am also satisfied that this limitation was communicated to Aimer Roofing.

Christopher Boyd, owner and operator of Aimer Roofing, testified that he attended the Yarmouth Mall property and determined what he believed to be the source of the leak and effected a repair. Mr. Boyd confirmed that he had been given a limit of \$500.00 for his services and that if the repairs were to exceed that amount he was to seek further instruction. He further testified that upon determining the approximate cost he phoned Mr. Stan Churchill to discuss the required fix and it was Mr. Boyds evidence that Mr. Churchill authorized him to do the work saying "they will want the work completed", "RCS Construction is good for it, they always pay their bills."

On the basis of this representation from Mr. Churchill, Mr. Boyd proceeded to make the necessary repairs. He said that upon arriving at the mall to do repairs he was stopped by the head of maintenance at the Yarmouth Mall. Mr. Boyd explained to the maintenance manager why he was at the mall and that this individual went to mall management to confirm he was "legitimate."

He testified that the maintenance manager returned a short while later to indicate that he could proceed with the repairs but stated that “it would have nothing to do with us.”

Ms. Linda Deveau, property manager at the Yarmouth Mall, represented Toulon in the hearing and gave evidence. She testified that she always requires a written work order when Mr. Churchill or someone acting for him comes on the property. She denied knowledge of a leak in the roof at the time she learned Mr. Boyd was on the property. She indicated that she made inquiries and determined that Mr. Boyd was in fact there to respond to a complaint about a leak in the roof. She testified that she told him he could proceed but “it would have nothing to do with us.”

On cross examination, Ms. Deveau acknowledged having met directly with Mr. Boyd and having told him to go ahead and make the necessary repairs. She also expanded on her evidence to say that she had told Mr. Boyd that “we would not pay.” She stated that she could recall 2 to 3 occasions over the years where a tenant had done something to damage the roof and they had paid directly for these damages. She indicated that she assumed that The Source would be responsible but did not indicate that she had informed Mr. Boyd of this assumption. I note that Ms. Deveau did not suggest that she had any knowledge of The Source having damaged the roof in any way. On the basis of Mr. Boyd’s evidence, I have concluded that the leak in question is simply the type of thing that sometimes happens with large flat roofs. It was a matter of reaching reasonable life expectancy. There was nothing in the evidence to suggest that there was any reason why anyone other than the owner of the property should pay to make the necessary repair.

Mr. Boyd did in fact repair the roof and sent his invoice for these repairs to Stan Churchill at All Out Property Services. The invoice was not paid by All Out Property Services and remains outstanding. I would also note that none of the parties who participated in the hearing questioned the quality of the Claimant’s work or reasonableness of his invoice.

This matter is somewhat complicated by the fact that the Claimant initially commenced Small Claims Court, Claim No, SCY 460946 against “Stan Churchill and All Out Property Services”. A hearing was conducted in front of Adjudicator Andrew S. Nickerson QC, on what seems to have been significantly the same evidence and Adjudicator Nickerson QC, rendered a decision granting an order for the full amount claimed against Stan Churchill, All Out Property Services. As a result, counsel for 3226621 Nova Scotia Limited, All Out Property Services, Pamela Churchill and Stan Churchill argues that this current Claim SCY 471601 is barred on the principle of *Res Judicata*.

Having reviewed the written decision of Adjudicator Nickerson in the above-noted SCY 460946, I am satisfied that the claim brought therein was based solely in contract. The present claim expands the range of Defendants and raises new, not previously dealt with claims based on *quantum meruit*, unjust enrichment and agency law. I am satisfied that the previous claim prohibits the Claimant from being successful against 3226621 Nova Scotia Ltd., Stan Churchill and Pamela Churchill on the principle of *res judicata*. The principle of *res judicata* is not

applicable to the balance of the Defendants. They were not parties to the previous litigation and the new claim raises new equitable grounds which have not previously been adjudicated over.

When considering the equitable claims made against the balance of the Defendants, I would reference the case of *Wacky's Carpet and Floor Centre v. Dr. Paul Joseph* 2006, NSSC 353. Here, Justice F. C. Edwards referenced *Pettkus v. Becker* (1980) 2 S.C.R. 834, which laid out a three part test for establishing a claim for unjust enrichment. First, there must be: (a) an unjust enrichment; (b) a corresponding deprivation; and (c) an absence of a juristic reason for the enrichment. In *Wacky's v. Joseph*, the Claimant had no direct connection with the Defendant. Justice Edwards discussed the need for a “nexus or special relationship” between the Claimant and the Defendant. At paragraphs 15 and 16, Justice Edwards states as follows:

“[15] On balance, the presence of a special relationship will be persuasive but not necessarily conclusive in the fact-finder’s analysis. The presence of a special relationship will not necessarily defeat a claim.

[16] Here, the facts do establish that there was a “casual arrangement” as contemplated by Justice Muldoon in *McLaren*, supra. In *Nicholson, MacKinnon* JA stated that for there to have been a special relationship the Defendant must have had knowledge of the benefit, and he must have either requested it, or acquiesced to its performance. In that case the Defendant, St. Denis, was unaware that the work had been performed, and so it was held that no special relationship existed. The same is not true in this case as Joseph was clearly aware that the work was being performed, and had in fact selected the flooring from Wacky’s store.”

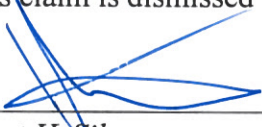
In the present case, Toulon Development Corporation (“Toulon”) was benefited or enriched by the efforts of the Claimant. There is a corresponding deprivation in that the Claimant has provided valuable services and has not been able to collect its fees or expenses. I find no juristic reason why Toulon should not pay. There was a leak in the roof of the Toulon property which required repairs. There was no evidence that anyone other than Toulon would be liable to make the necessary repairs. At the hearing, Toulon argued that they had made it clear to the Claimant that it would not pay for the repairs. I am not convinced that this alleviates Toulon from liability. The Claimant was on Toulon’s property as a direct result of the system created by Toulon to effect repairs on its property. The evidence from Ms. Deveau did not suggest there was any reason why the tenant, “The Source” should pay for the repairs in question.

Additionally, I am not concerned by the fact that the claim exceeds the discretionary financial limit placed on RCS Construction Incorporated and All Out Property Services. This resulted in a breakdown in the system put in place by Toulon, and the Claimant should not be deprived of a remedy on this basis. Although the claim significantly exceeds the \$500.00 discretionary limit placed on RCS construction Incorporated and All Out Property Services by Toulon, there was no suggestion that the amount invoiced by the Claimant was unreasonable. Toulon would have faced similar costs from another service provider had the Claimant not made the repairs.

Finally, the fact that the Claimant was on Toulon's property as a result of the system created by Toulon for effecting such repairs would, in my opinion, create sufficient connection between Toulon and the Claimant for a claim based on unjust enrichment to be successful to the extent it is necessary to establish such connection as discussed by Justice Edwards in *Wacky's v. Joseph*. Based on the evidence, Toulon's property manager, Ms. Deveau, was clearly aware of the Claimant's activities on the mall property.

With all the above-noted in mind, I will be issuing a judgment against Toulon Development Corporation in the amount of \$3,471.13, plus \$99.70 for issuing the claim. I am mindful that the Claimant already has an Order against Stan Churchill and All Out Property Services for a similar amount as granted by Adjudicator Nickerson in SCY 460946. I will therefore order that collections pursuant to the Order I grant in this matter, will be subject to an accounting of amounts collected in SCY 460946.

This claim is dismissed with regards to all other Defendants.



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*Brent H. Silver*  
*Small Claims Court Adjudicator*