

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

**Citation:** *Critchley v. Ultimate Bathroom Renovations*, 2017 NSSM 8

BETWEEN:

RACHEL ADA CRITCHLEY

Claimant

- and -

ULTIMATE BATHROOM RENOVATIONS,  
ULTIMATE BATH SYSTEMS and GERALD KELLY

Defendants

**REASONS FOR DECISION**

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on November 29, and December 1, 2016

Decision rendered on February 9, 2017

**APPEARANCES**

For the Claimant                      self-represented

For the Defendants                    self-represented

## **BY THE COURT:**

### **Introduction**

[1] The Claimant hired the Defendants (or one of them) in August 2015, to renovate her bathroom. The lawsuit is a consequence of a leaking shower stall that has stubbornly resisted repair. She wants the shower torn out and replaced.

[2] The proper legal identity of the Defendant is a bit elusive. The Claimant named the three entities, Ultimate Bathroom Renovations, Ultimate Bath Systems and Gerald Kelly, all as Defendants . The written contract is with Ultimate Bath Systems, which is said to be a business name of “Kotatek Bath Renos Inc.” A search of that name reveals that it is now “Ultimate Group Inc.” Ultimate Bathroom Renovations is a proprietorship of Gerald Kelly. The name Ultimate Bath Systems appears to have been dissolved. In spite of all these confusing machinations, it is clear that Mr. Kelly is the owner of the business, and I do not expect that he would deny responsibility for work done under any of those names.

[3] I do not hold this confusion and complexity against any of the Defendants, and I find that the Claimant reasonably believed she was dealing with some or all of the Defendants, and specifically Mr. Kelly personally. Any findings in this decision will be against all named Defendants jointly.

[4] There is a year-plus long history of frustration experienced by both parties. The Claimant has not got the bathroom she contracted for. The Defendants have put in a great deal of effort trying to fix the problem. What started out as a

cordial relationship has turned sour. Words have been exchanged and reputations called into question. The dispute has spilled over onto social media, which has become a common (though not so productive) way for consumers to express their frustration.

[5] Let me say at the outset that the Defendants enjoy a good reputation. They are a large business that has been active and successful for nine years in the Halifax area. Negative comments that the Claimant has made on social media and to the Better Business Bureau were understandable, but unhelpful.

[6] All in all, the rights of the parties will turn on the unique facts and not on any extrinsic factors such as reputation.

### **The Facts**

[7] The evidence before me consisted of the testimony of the Claimant and Defendant and a few other individuals. There is voluminous documentary evidence, including lengthy email exchanges. I realize that this is the world in which we all live, but (for what it is worth) email threads are often difficult to follow. Depending on how they are printed out, they are most often in reverse chronological order and are frequently duplicated many times over. Having said that, there is nothing in the lengthy email exchanges here that is particularly controversial. What it shows is a Claimant that communicated (and documented) her complaints and a Defendant who was generally responsive, but also clearly frustrated by his inability to fix the problem.

[8] The Claimant testified that she contracted with the Defendant to renovate the ensuite bathroom in her newly acquired home in about September 2015. One of the major features of the renovation was to replace a bathtub with a modern shower stall. The work started on September 21, 2015 and mostly concluded the day after.

[9] The shower stall selected was a unit manufactured by an internationally known company, Fleurco. The model included a so-called (and attractive) Novara glass door. The total cost of the shower stall, including materials, labour and HST was \$6,129.50. This is clearly a luxury item.

[10] On November 2, 2015 the Defendant's workers returned to install a vanity. While there, they noticed some loose, dried silicone on the shower stall, which they repaired. It should be noted that the Claimant had not yet used the shower, as she did not move in until late November. She testified that she first used the shower on November 26. She said that on that occasion she noticed a loud noise coming from the base or the floor beneath, when she first stepped into the stall. Also, the shower doors leaked. She contacted the Defendant to report the problem.

[11] The Defendant's workers returned December 18, 2015 to address several issues, including a leaking tap, low water pressure, lack of hot water and squeaks in the base.

[12] Visits were made on January 12, 2016, January 25, 2016 and March 7, 2016 to try to address the leaking door. Those efforts were not successful.

[13] The Defendant suggested getting a Fleurco representative in to help assess the problem. A Mr. MacCauley from Fleurco attended on March 31, 2016 and reported his findings. He believed there were installation problems, rather than any defect in the unit.

[14] Based on that, on April 8, 2016, the Defendant completely removed and reinstalled the shower doors.

[15] Several months later, on August 18, 2016, with reports that the shower doors were still leaking, the Defendant returned and removed and reinstalled the entire unit.

[16] By then, the Defendant believed that all that was left to do was to perform some minor deficiency repairs to correct problems caused by the reinstallation. A final visit was done on September 28, 2016. The Claimant believes that the Defendant did not leave the bathroom in pristine condition, and moreover, the shower still leaked.

[17] As matters stood at the trial before this court in December 2016, the shower still leaks, there are some minor touch ups required in the bathroom as a result of repairs damaging the walls, and some of the repair efforts by the Defendant involved steps that were against the manufacturer's instructions, such as caulking on the inside of the unit.

[18] The Claimant is unhappy because she did not receive what she contracted for. She has lost patience with the Defendant, and has had several other companies in to get a quote on fixing the unit. Those companies apparently do

not want to try to fix another contractor's work, and would only quote on removing the existing shower unit and replacing it with something new.

[19] It is understandable that most bathroom or general renovation companies would not want this kind of a repair job, especially after learning of the many steps that were taken by the Defendant. While I would normally insist that a Claimant mitigate her damages by taking the least expensive route possible, I am hard-pressed to differ from the logical conclusion that there is something about the existing unit that is fundamentally wrong. I would have no faith that another repairer would have any greater luck. I base this on the fact that the Defendant is itself a highly reputable bath company, and it has had multiple opportunities to fix it. One only gets so many opportunities to fix deficiencies in one's work.

[20] I do not have the technical expertise, nor did the evidence supply me with sufficient facts, to diagnose the entire problem. It appears that part of the problem may have started when the base was initially placed. Very likely it was out of level, or somehow came out of level shortly thereafter. The Defendant's project manager found it "baffling" when he saw how out of level the base was on one of his visits. He could not believe that he, or his workers, would have done something so fundamentally incorrect. However, no other conclusion is possible.

### **Conclusion**

[21] While it may appear wasteful, I am satisfied that the Claimant has received no value for the money she spent. On the contrary, she has endured more than a year of frustration and has been unable to use the shower that she purchased. The Defendant has had more than enough opportunities to fix the problem.

Despite its offer to have another contractor remove and reinstall the shower doors, I am not convinced that this would end the dispute between the parties. I find that there has been a fundamental breach of contract.

[22] The remedy for fundamental breach is typically a refund, and I am awarding the Claimant the sum of \$6,129.50, together with interest at the statutory rate of 4% from the date of purchase to the present date.

[23] I note that the Claimant has sought slightly more, which would have conformed to one of the estimates she obtained for a new shower stall. Included in her claim is also the cost of repainting her bathroom, which she says is necessary because it was damaged by the Defendant. I am not satisfied that the bathroom would need an entire paint job. I will add \$150.00 for whatever touch up may be necessary.

[24] The Claimant shall accordingly have judgment for:

Refund of moneys paid	\$6,129.50
Interest at 4% from October 1, 2015 to February 9, 2017	\$333.85
Cost to repair paint job	\$150.00
Costs	\$199.35
Total	\$6,812.70

**Eric K. Slone, Adjudicator**