

Claim No: SCCH - 478177

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Shelburne County Healthcare Realty Limited v. Jeannette Jewells (Family Jewells Contracting), 2018 NSSM 91*

BETWEEN:

SHELBURNE COUNTY HEALTHCARE REALTY LIMITED

Claimant

- and -

JEANNETTE JEWELLS doing business as
FAMILY JEWELLS CONTRACTING

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 11 and October 3, 2018

Decision rendered on October 25, 2018

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] This claim concerns a new roof that the Defendant installed on the Claimant's commercial property in Barrington Passage. The work was done in late 2016 and the new roof has not performed well, according to the Claimant and as is confirmed by all of the evidence. They consider the roof so deficient that they plan to remove it completely and replace it with a new, even more expensive metal roof. The cost to do this even with a conventional asphalt roof would exceed the \$25,000.00 jurisdictional limit of this court. They claim that amount.

[2] The Defendant concedes that the roof has not performed as well as hoped for, but considers it serviceable with only repairs needed. The Defendant blames the problems on the fact that it was installed late in the year, and on the fact that there was exceptionally poor weather in December 2016.

[3] The Claimant is a family-run business that owns a number of commercial properties across the province. The Anthony Mall in Barrington Passage is one of their properties. As attested to by owners Kim Geldart and her son, Jordan Paradis, they acquired this property in 2015 and by 2016 considered it prudent to replace a large portion of the roof that was clearly old and showing signs of leaking into the interior of some of their tenants. They sought two quotes for roof replacement, one of which was from the Defendant.

[4] It was Ms. Geldart who had direct dealings with Carl Jewells, one of the owners of the Defendant business and the hands-on roofer. Mr. Paradis was privy to the negotiation to an extent, but did not deal directly with the Defendant until problems arose later.

[5] Mr. Jewells has a long history in construction generally, and roofing in particular. The listed business owner, his wife Jeannette Jewells, is not a roofer by trade though she claimed to have a great deal of knowledge about roofing based on many years of marriage to a roofer. The name Family Jewells Contracting was at one time registered as her proprietorship, though its registration has since been revoked by the Registry of Joint Stocks. As such, the name of the business has no legal effect and this claim is for all intents and purposes against her personally.

The contract

[6] It is not in dispute that a written quote was given and accepted at a price of \$35,000.00 plus tax. The relevant parts of the document are:

Remove shingles from roof and replace with 30 year BP shingles.
Install six feet of ice and water shield on the bottom of the roof.
Install ice and water shield in the valleys.
Install drip edge on the edges of the roof and along the bottom.
Install new pipe flashing.
Install ridge vents.
Install scaffold and tarps around the areas of the mall where needed.
Remove garbage resulting from the roofing job.
Five year warranty on workmanship.
30 year manufacturing warranty on shingles.
\$35,000.00 + HST.

[7] The largest issue in this dispute concerns what the quote did not contain. Specifically, it made no mention of four things:

- a. The fact that the roofing job was being done late in the year, with the risks that came with roofing during winter conditions.
- b. The fact that the shingles specified were 3-tab types rather than architectural shingles which are said to be less likely to come up in the wind.
- c. The fact that there was no underlayment being placed on the roof deck to provide added protection from water.
- d. The fact that the shingles were not being tarred or cemented down, which is an extra step that is not always taken, and which adds to the labour cost.

[8] Mr. Jewells testified that he discussed all of these things with Ms. Geldart. Specifically, he says that he warned her about roofing late in the season. He also says he recommended architectural shingles and that the shingles be tarred down. He says that she also declined underlayment because of the extra cost. He says that Ms. Geldart declined all of his advice because she was determined to get the job done for \$35,000.00, an amount which (he says) she had stuck in her mind, and which price would have risen if his advice had been taken on any of these additional items. Mr. Jewells also testified that he suggested the possibility of temporary repairs to get through the winter, at a quoted cost of \$5,000.00, but (he says) Ms. Geldart did not want to spend that money which would essentially have been wasted when a new roof was put on in the spring.

[9] Mr. Jewells admitted that there was nothing in the contract, or in any of the text messages that preceded the signing of the contract, to corroborate his claim that he discussed these matters with Ms. Geldart. He relies on the fact that the contract makes no mention of these things which, he says, corroborates his position that they were not to be included.

[10] Ms. Geldart was adamant in her testimony that she did not receive any estimate for temporary repairs, and that while she knew that it was late in the season, she did not appreciate that she was taking any risk that the roof would be less durable. She also denied being told that she should consider the heavier architectural shingles, the addition of underlayment, or that she could opt to have the shingles tarred down.

[11] As I understand it, architectural shingles look as if they have tabs, but they are in fact a solid piece of asphalt that is heavier than the common three tab types. Three tab shingles are lighter in weight and more prone to catching the wind and being blown off.

[12] The process of tarring or cementing adds an extra adhesive layer which sticks the shingles to the one above it. Shingles come with an adhesive strip that sticks best if the shingle heats up under sunny conditions soon after installation. When a shingle is applied late in the year, it may not get enough sun to adhere properly. The added layer of cement compensates for that. Also, tarring or cementing is a recommended practice for areas with extremely high winds.

[13] Underlayment is a useful addition to keep water from coming into contact directly with the wood roof decking.

[14] Barrington Passage is a windy place being right on the North Atlantic coast, prone to stormy weather and difficult winters.

Finding of credibility

[15] Much of the case rides on the respective credibility of Ms. Geldart and Mr. Jewells. Having listened to both of them testify at some length, I prefer Ms. Geldart's credibility to that of Mr. Jewells. I am influenced in this determination by a number of factors.

[16] Most significantly, I am influenced by the lack of documentation concerning any of these issues. Given the importance of the matters that Mr. Jewells says he recommended, or cautioned against, one would expect to see something in writing. Experienced business or professional people typically confirm their advice in writing to make clear that the client understands the risks of ignoring such advice. Such communications are colloquially referred to as "cover your ass" communications for a reason. Professionals want to avoid placing their own backside at risk if things go wrong. It would have been so easy for Mr. Jewells to say something in his lengthy text correspondence with Ms. Geldart, or alternatively he could have worded the quote accordingly. The absence of any warning suggests that Mr. Jewells cut his quote down to a price that he hoped would be low enough to get the bid, and that these additional protections were simply not discussed.

[17] I also carefully observed the demeanor of the two witnesses. Ms. Geldart was straightforward in her recollections and seemed genuinely outraged when she heard Mr. Jewells say that these matters were discussed with her and declined. Mr. Jewells on the other hand was evasive and combative in his testimony, and I came to have trouble believing that he was accurately relating what had gone on.

[18] Mr. Jewells seemed very quick to blame outside factors for what happened, and conceded almost nothing that might have placed some responsibility on him.

[19] In particular, he blamed the bad weather that he and his crew encountered, as if rain, snow and wind were unusual in that part of the province in November and December. He also seemed to have no answer for the suggestion that he could have consulted Environment Canada on his phone at any time and received a reliable weather forecast for the days ahead.

[20] He also tried to place blame on the Claimant for having hired him to do a number of other jobs at the mall, including painting, as if this somehow stretched his resources too thin. I doubt that this had any effect since he also stated that he roofed on any day when the weather permitted and it appears he prioritized doing the roof. If he took on too much, he always had the option of declining some of this other work.

[21] He also fastened on an alternate theory for some of the leaking inside the mall restaurant, as if it explained everything. There is a rooftop mechanical unit above the restaurant that he suggests is not functioning properly. While I cannot

entirely discount the possibility that this unit has contributed to interior leaks, it seems improbable. Furthermore, this unit has nothing to do with any of the many blown off or loose shingles, some of which exposed the wooden roof deck to the wind and rain.

[22] At the hearing, he also fastened on an email which revealed that the restaurant in the mall was having a problem with the Culligan water purification unit. Mr. Paradis testified that the unit - which sits on the floor - had a clogged filter which caused a bit of water to leak onto the floor. Mr. Jewells attempted to posit this problem as an alternative source of the leaks which the restaurant experienced, ignoring the fact that the restaurant was complaining of leaks through their ceiling, which were occurring on rainy days.

[23] In the end, I found Mr. Jewells to lack credibility, and wherever it conflicts with that of Ms. Geldart, I accept Ms. Geldart's testimony. The testimony of Ms. Jewells offered no independent verification of any of the Defendant's theories as it was clear that she was basing most of what she testified to on what her husband had told her.

Deficiencies

[24] The Claimant called as a witness Charlie Davison, who is a licenced home inspector and has several decades of experience in the roofing business. He testified that the roof has exhibited a number of deficiencies, including:

- a. Missing tabs
- b. Curled tabs
- c. Lines not straight

- d. Exposed nails
- e. Lack of tabbing (cementing) except in some places where later repairs were attempted
- f. Exposed plywood

[25] He testified that he would never have started a roof of that size in November, but if he was obliged to do so, he would have installed an ice-shielding underlayment and would have recommended to the owner that the shingles be tarred/cemented. He also stated that architectural shingles would have been preferable because they have a higher wind-resistance value because of their weight.

[26] He believes that the roof is unsalvageable.

[27] Although Mr. Davison is not an entirely unbiased witness, given that he stands to gain the job of putting a metal roof on the building, I found his evidence to be helpful.

[28] I have looked at the numerous photographs placed in evidence. Some of them show areas of the roof in seemingly good order. Others taken during or after storms show large areas of loose or missing shingles.

[29] On all of the evidence, I conclude that the job was deficient. It has not proved to be durable. Not only have numerous shingles come loose, but the entire roof is vulnerable because of the lack of underlayment and the failure to cement the shingles at the time of installation. Had he used architectural shingles, perhaps cementing might not have been needed, but for three-tab shingles being installed at this time of year in this location, it was highly risky to

proceed as he did. Although it is theoretically possible that the roof could be salvaged by repairing loose shingles as they appear, this is not something that the Claimant bargained for. They wanted a new roof so that they could have a number of headache-free years where they would not have to respond to complaints from their tenants every time it rained hard and the wind blew.

[30] I find that the Defendant is in breach of various sections of the *Consumer Protection Act*, and in particular:

26 (3) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

.... (e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, a condition that the goods shall be reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

.....

(j) a condition that the goods shall be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

....

(5) There shall be implied in every consumer sale of services a condition, on the part of the seller, that the services sold shall be performed in a skilful and workmanlike manner.

[31] The roofing job clearly has not proved durable and the roof has proved itself to be unfit for the purpose. I also find that the roofing services were not performed in a skilful and workmanlike manner.

[32] I want to make a specific answer to one of the Defendant's arguments. He went on at great length about the hundreds of roofs he had installed over the years, including large buildings in Ontario and in the U.S. He put this forward as if it tended to prove that he could or would not have done a poor job.

[33] Everyone makes mistakes and not every hour is one's finest hour. For unknown reasons Mr. Jewells made a very bad judgment call, and all of the experience that he has did not cause him to make a better decision about how to proceed with this roofing job. The end result was extremely poor and the Claimant does not have to accept that when it contracted for something much better.

Damages

[34] The measure of damages can be looked at several different ways. One way is to look at what the Claimant paid, which is now subject to being scrapped. One could also look at the cost of a new roof. In either case the cost is well over \$25,000.00. As such, I assess the Claimant's damages at \$25,000.00.

[35] The Claimant is also entitled to its costs which include the filing fee of \$199.35 plus reasonable costs to serve the Claim plus expert witness fees.

[36] The Claimant filed an invoice from a process serving company that charged it \$786.45 to serve this claim. This amount is well outside the norm.

However, the process server provided detailed explanations for all of the times that he drove to the Defendant's address in Boutilier's Point to attempt service. On several of those occasions, he had been told that Ms. Jewells would be home, only to find that she was not. I conclude that the Defendant - if not outright evading service - was not doing anything to make it easy to be served. Under the circumstances, the Claimant had little choice but to spend the money and I will allow this amount.

[37] The Claimant also seeks \$882.86 for its expert witness, Mr. Davison, who attended court on at least two occasions and who testified helpfully. I note that Mr. Davison is not a classic "expert" in the sense that he is also doing work for the Claimant and has provided the estimate to install a metal roof on the mall in question. In the exercise of my discretion, I disallow this amount (which was not supported by an invoice) except to the extent of \$250.00.

[38] The Claimant is entitled to recover:

Damages	\$25,000.00
Cost to issue claim	\$199.35
Cost to serve claim	\$786.45
Expert witness	\$250.00
Total	\$26,235.80

Eric K. Slone, Adjudicator