

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation: *Hammond v. Elshanti*, 2018 NSSM 71**

BETWEEN:

GREG HAMMOND

Claimant

- and -

RAY ELSHANTI and ATLANTIC RUBBER PAVING INC.

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 18, 2018

Decision rendered on October 5, 2018

**APPEARANCES**

For the Claimant                      self-represented

For the Defendant                    self-represented

**BY THE COURT:**

[1] The Claimant hired the Defendant Atlantic Rubber Paving Inc. (“ARP”) to resurface his driveway with a rubber-based product made from recycled auto tires. The Claimant is very unhappy with the result, in large part because of damage that he says that the Defendant’s workers did to his property while performing the work. He seeks a refund of the money he paid toward the contract. That amount appears to be a little over \$3,000.00. (Unfortunately, the documents do not set this out precisely.)

[2] The Defendant Ray Elshanti is the principal of ARP. It is unclear why he is being sued personally, since all dealings were clearly done on behalf of ARP.

[3] Although not filed as a counterclaim, the Defendants assert the right to be paid the balance of the contract in the amount of (approximately) \$3,000.00. (Again, the amount is not clear from the documents.)

[4] The contract was based on a written estimate dated May 23, 2018. The total price quoted, after some negotiation, was \$6,120.00 plus tax. Payment terms were 25% down on signing the contract, a further 25% on the date of installation, and 50% upon completion. The actual work took place on June 27 and 28, 2018.

[5] As I understand the process, the product called “rubber crumb” is made from crushed and pulverised tires, which is mixed with adhesives and essentially glued to the existing driveway surface with another specialized, powerful adhesive.

[6] The Claimant testified that the workers hired by the Defendants were young and inexperienced, and according to the Claimant they were incredibly sloppy. In particular, they managed to get some of the adhesive on areas of the foundation and wood siding, most likely transferred from their hands. There are photos in evidence supporting this contention. The Claimant contends, and I accept, that this adhesive cannot be removed once it is dry. In the case of the foundation, he has already had it repainted at a cost of \$688.27. As for the siding, he plans to have it completely repainted - as opposed to only the affected areas - as he is convinced that there would be a noticeable difference between the new and old paint. The estimated cost for the paint job is \$3,622.50. The reason for this large expense is that vinyl siding can only be repainted with very specialized equipment and product, and the nearest company that does this type of work is in PEI.

[7] The Claimant also proposes to re-pave the driveway with conventional asphalt paving, and has an estimate of \$2,856.60 to do so. The reason for re-paving is that the Claimant contends the ARP product was sloppily done and is not properly adhering to the surface, with the result that large chunks are already coming loose.

[8] The Claimant seeks a rebate of the money he paid to ARP, which is less than the cost of all he proposes to do. He seeks this lesser amount because the contract with ARP limits him to that.

[9] Mr. Elshanti testified. He admits that his workers left a few minor fingerprints which he believes are much less serious than the Claimant

contends. He admits that this was not ideal, but “it happens.” He proposes that he could do the paint touch-up if the Claimant would provide colour codes.

[10] As for the rubber product itself, he says that the job was not 100% complete and it just requires some further adhesive at some of the borders. He says that he would be willing to do this further work if the Claimant would pay the balance of the price. (He did not explain to my satisfaction why the job was not fully completed on June 28.)

[11] In my opinion, Mr. Elshanti has grossly underestimated the magnitude of damage that his workers did. This is not a case of a “few fingerprints.” There is far more than that. I accept that the damage cannot be rectified with minor touch-up painting.

[12] On the other hand, I am not satisfied from the evidence presented that the rubber product cannot be salvaged. The Claimant produced no evidence that establishes that the product needs to be scrapped entirely. A couple of photos showing loose edges does not go that far.

[13] In the result, I propose to hold the Defendant liable for the cost to repair his foundation and siding, which two amounts total \$4,310.77. The Defendant is entitled to set off the balance owing under the contract, giving some credit for the work undone and possibly inadequate work. I allow a set off of \$2,500.00, with the result that the Defendant ARP owes the Claimant \$1,810.77.

[14] If the Claimant chooses to scrap the rubber driveway, that is his choice, but he may well decide that it can be repaired.

[15] I should note that the Claimant also seeks a rebate on the price because the actual square footage appears to have been less than what is shown on the quote. An abatement is not appropriate because I find that the price was a negotiated price, and not a unit price that would vary depending on the actual square footage.

[16] It should be understood that the Defendant ARB is not entitled to be paid any more, as it has already notionally been paid by way of a set-off.

[17] The Claimant is also entitled to his costs of \$99.70 to file, \$97.75 to serve the claim, and a further \$20.00 for colour photocopies and miscellany.

[18] The total owing by ARP is \$2,028.22.

[19] The claim against Mr. Elshanti personally is dismissed.

**Eric K. Slone, Adjudicator**