

Claim No: SCCH - 481642

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: 3092475 Nova Scotia Limited v. Cumberland Paving and Contracting Ltd., 2019 NSSM 7

BETWEEN:

3092475 NOVA SCOTIA LIMITED

Claimant

- and -

CUMBERLAND PAVING AND CONTRACTING LTD.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on January 8, 2019

Decision rendered on January 11, 2019

APPEARANCES

For the Claimant

Stacy Wentzell
Co-owner

For the Defendant

Adam Downie
Counsel

BY THE COURT:

[1] As promised, this is a very brief decision in the matter involving Cumberland Paving and Contracting Limited, and the damage done by that company's trucks to the Claimant's property on St. Margaret's Bay Road in the late summer and fall of 2017.

[2] The Claimant owns a residential multi-unit building with a fairly large parking lot, fronting on St. Margaret's Bay Road. During a period of major municipal work being done on that road, the heavy vehicles operated by the Defendant or their subcontractors, routinely drove into the Claimant's parking lot, for the purpose of turning around, and sometimes parking, doing a certain amount of damage to the already compromised pavement. This was not just an isolated incident. The Claimant through its co-owner, Stacy Wentzell, repeatedly made it clear to the Defendant that they had no authority to bring their heavy vehicles onto his private property. Notwithstanding the many statements to that effect, the trucks kept rolling in and damaging the pavement.

[3] While I do not doubt that using the Claimant's property was convenient given its location near the site of significant municipal improvements, it was nevertheless brazen trespass on a persistent basis.

[4] The Defendant concedes that its trucks did some damage and has at all times apparently been willing to contribute something to the eventual cost of re-paving this parking lot. Nevertheless, the Claimant has been subjected to more than a year of run-around and frustration, bouncing between Halifax Regional Municipality, an insurance company and the Defendant itself, with no resolution.

[5] The amount claimed by the Claimant is a little over \$6,000.00, which represents 30% of the estimated cost to re-pave the entire 3,000+ square foot lot. The per square foot cost of re-paving (\$5.50) is actually based on a verbal estimate provided by the Defendant itself.

[6] The Defendant now takes the position that this estimate is high, because it would result in a better quality paving job than what currently exists. It also seeks to cut down the amount of pavement that it should be responsible for, as it takes the position that its trucks did not drive over certain parts of the lot. The amount conceded that it would owe is in the neighbourhood of \$1,500.00.

[7] As I openly stated at the hearing, I am not very sympathetic to the Defendant's position. It is impossible to estimate how much damage was done by the Defendant's vehicles, but my finding is that the damage was substantial, and it has made replacement of the entire paving much more urgent. I believe that the Claimant's estimate of 30% is reasonable, and possibly even generous. The photographic evidence suggests that the parking lot was already cracked and probably would need eventual repaving, but who knows how long it might have been nursed along had not all these heavy vehicles further damaged it.

[8] I do not think the principle of betterment really applies. Mr. Wentzell testified that he had a number of other verbal quotes to do the paving, and that the estimate from the Defendant is in line with those other estimates. I do not think it is reasonable given the tortious conduct of the Defendant, to force the Claimant to repair the damage by means of a substandard paving job. I believe the estimate given is for a reasonable paving job, which is what the Claimant is entitled to have.

[9] As such, I am inclined to grant the amount requested. The Claimant will have damages of \$6,156.51, together with its costs of \$199.35.

Eric K. Slone, Adjudicator