

- [6] I am satisfied that Georgios was notified of the trial date. Georgios did not appear today.
- [7] Pursuant to Rule 17.01(2)(b) if a defendant fails to attend an action which was called for trial, the court may strike out the Defence and allow the Plaintiff to prove the Plaintiff's Claim.
- [8] Accordingly, this Court struck out Georgios's Defence and the trial proceeded. The Plaintiff testified.

The Evidence:

- [9] On June 26, 2021, the Plaintiff, Sorosh Saberian ("Plaintiff"), entered into a contract with RoofTechIndustries for the repair of the roof at 129 Lamb Avenue, Toronto, Ontario, M4J 4M5, ("Work"). The amount agreed upon for the repair contract was \$11,000.00 ("Contract") [Ex C].
- [10] As required under the Contract, upon signing the Contract, on June 26, 2021, the Plaintiff e-transferred a deposit of \$3,300.00 to Georgios.sa@gmail.com [Ex D].
- [11] Exhibits E and F contain text messages between the Plaintiff and Georgios where the Plaintiff is inquiring when the Work would begin and Georgios promising to commence the Work. However, Georgios never attended to commence the Work. Instead he continuously excused his failure to commence the Work stating that the weather did not permit working on the roof or that his crew was behind on other projects.
- [12] Starting July 1, 2021, Georgios also tried to extract an additional payment from the Plaintiff stating that since RoofTechIndustries secured a large project with the City it could purchase materials for the repair of the roof at a discounted price and it offered to pass this discount to the Plaintiff provided that the Plaintiff pay it an additional deposit. When the Plaintiff refused, Georgios offered to discount the Contract if the Plaintiff paid an additional deposit. [Ex F page 75 – July 1, 2021 5:26:39 pm text message].
- [13] The Plaintiff agreed to pay an additional amount of \$3,300 and Georgios reduced the contract amount to \$9,500.00. [Ex f page 72 – text message July 16, 2021 11:08:36]
- [14] The Plaintiff paid Georgios the additional \$3,300.00 on July 16, 2021 by e-transfer to Georgios.sa@gmail.com [Ex D]. The Plaintiff testified that he made the second deposit payment in an effort to encourage Georgios to give the Work priority and with the hope that Georgios would commence the Work.
- [15] Georgios did not attend to commence the Work.
- [16] On July 24, 2021, the Plaintiff asked for a refund of his money as Georgios still did not attend to commence the Work [Ex E page 86 - July 24, 2021 10:57:42 pm text message]. Georgios answered that he transferred the request for refund to RoofTechIndustries accounting department and that the Plaintiff would be contacted with a refund.

- [17] On July 26, 2021, Georgios advised the Plaintiff that he fell off a ladder on July 25, 2021 and fractured his knee. He offered to commence the Work the following week [Ex J page 91- July 26, 2021 8:07:12 am text message].
- [18] On August 1, 2021, Georgios offered to commence the Work on Tuesday/Wednesday [Ex K page 93 text messages].
- [19] On August 3, 2021, the Plaintiff received a letter by email. The letter was from RoofTechIndustries and it informed the Plaintiff that the owner of RoofTechIndustries – Georgios – sustained severe injuries from a workplace accident and as a result had to cease its operations effective immediately. The Corporation offered to return the outstanding deposits it was holding by monthly payments of \$100.00 [Ex A].
- [20] On August 3, 2021, the Plaintiff notified Georgios that given that the services it contracted for were not delivered he wanted full refund of all amounts paid, immediately. [Ex B]
- [21] On August 8, 2021, the Plaintiff contracted Sign Roofing Inc. for the repair of the roof. [Ex I] The contract amount was \$10,200.00.
- [22] The Plaintiff claims that considering that the Contract with RoofTechIndustries was reduced to \$9,500.00 (once he paid the second deposit on July 16, 2021), and the new contract with Sign Roofing Inc. was for \$10,200.00 (for the same roof repair), he is entitled to the \$700.00 difference in price.
- [23] RoofTechIndustries filed for bankruptcy on or about January 31, 2022.
- [24] Exhibit G contains Georgios' medical records, which were provided to the Plaintiff by Georgios. They demonstrate that Georgios sustained an injury to his right knee on June 17, 2021. The injury caused Georgios severe pain. Georgios had an MRI done. A fracture clinic note dated July 26, 2021 indicates that Georgios' prognosis was poor in terms of returning to his previous regular work and that he would need a total knee replacement. A letter dated October 12, 2021 from Georgios' family physician indicated that Georgios sustained the injury on June 17, 2021 and that he was not working as of the date of the letter.
- [25] The Plaintiff testified that he met Georgios once in June of 2021, around the time the contract was signed, and that at that time he did not notice, and was not informed, that Georgios had injured his knee and that he could not work.
- [26] The Plaintiff also referred this Court to the following paragraphs pleaded in the Fresh as Amended Defence which was marked as Exhibit H:
- [27] Paragraph 2(f) where Georgios pleaded that at the time that Georgios suffered injuries while at work, there was no other staff available at RoofTechIndustries to start or complete work because RoofTechIndustries was going through serious financial difficulties.
- [28] Paragraph 7 where Georgios pleaded that the Covid-19 pandemic with all the emergency restrictions imposed by the Ontario Provincial Government and the social distancing

requirements prevented RoofTechIndustries from hiring someone to replace Georgios to continue the work that was previously contracted.

- [29] Paragraph 9 where Georgios pleaded that Georgios was the only one working installing and repairing roofs for RoofTechIndustries and when Georgios could not work the business had to cease operation.
- [30] Paragraph 10 where Georgios pleaded that when the business closed towards the end of the July 2021, it became clear that all deposits received RoofTechIndustries had to be returned to the customers.
- [31] Paragraph 11 where Georgios pleaded that Georgios, on behalf of RoofTechIndustries, contacted its customers and offered them to repay the deposits; however, the amount was large and therefore RoofTechIndustries could not refund the deposits in one lump-sum payment to each customer.
- [32] The Plaintiff did not provide evidence or legal submissions with respect to his claim for exemplary damages at trial.

The Issues:

- [33] RoofTechIndustries had acknowledged that it held deposits, including the Plaintiff's Deposit, which had to be repaid [Ex A and H]. As such RoofTechIndustries admitted that it breached its Contract with the Plaintiff and that the Plaintiff was entitled to at least a refund of the deposits paid.
- [34] What remains for this court to decide is:
- a. What is the amount of damages the Plaintiff is entitled to?
 - b. Whether Georgios is personally liable to repay the deposits paid under the Contract?
 - c. Is the Plaintiff entitled to damages arising from the difference between the Contract amount and the amount paid to Sign Roofing Inc.?

The Law:

- [35] The Plaintiff relies on the *Consumer Protection Act* S.O. 2002 c.30, and in particular on sections 14(1) subsections 8 and 9; Sections 15(1) and 15(2)(g); Sections 17(1) and (2); and Sections 18(1) and 18(12) - which state as follows:

[36] ***“False, misleading or deceptive representation***

14 (1) It is an unfair practice for a person to make a false, misleading or deceptive representation. 2002, c. 30, Sched. A, s. 14 (1).

Examples of false, misleading or deceptive representations

(2) *Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:*

8. *A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.*

9. *A representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.*

Unconscionable representation

15 (1) It is an unfair practice to make an unconscionable representation. 2002, c. 30, Sched. A, s. 15 (1).

Same

(2) *Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,*

(g) *that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment;*

Unfair practices prohibited

17 (1) No person shall engage in an unfair practice. 2002, c. 30, Sched. A, s. 17 (1).

Rescinding agreement

18 (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages. 2002, c. 30, Sched. A, s. 18 (1).

Liability

(12) *Each person who engaged in an unfair practice is liable jointly and severally with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled under this section. 2002, c. 30, Sched. A, s. 18 (12)."*

[37] The Plaintiff also relies on the case of *Polito v. 120155 Ontario Limited*, 2007 CanLII 54969 (ON SC).

Findings:

- [38] Based on the evidence reviewed above and based on the Plaintiff's testimony I find that Georgios was injured on June 17, 2021, prior to RoofTechIndustries entering into the Contract with the Plaintiff.
- [39] I find that Georgios made false, misleading and deceptive representations as defined in section 14(1) and 14(2) sub-sections(8) and (9).
- [40] I find that at the time that Georgios was communicating with the Plaintiff, including when he negotiated the Contract with the Plaintiff and when he was negotiating the payment of an additional deposit, he knew that RoofTechIndustries would not be able to deliver on that Contract because he (Georgios) was the only employee who worked for that Corporation installing and repairing roofs and he was severely injured and could not work.
- [41] I also find that the Contract was materially breached. The Plaintiff is entitled to the repayment of the deposits (which is not denied by RoofTechIndustries or Georgios). The Plaintiff is also entitled to be placed in the financial position that he would have been had the breach did not occur.
- [42] I find that the Plaintiff rescinded the Contract.
- [43] I find that under section 18 (12) of the *Consumer Protection Act* and pursuant to *Polito v. 120155 Ontario Limited*, Georgios engaged in an unfair practice and as such Georgios is jointly and severally liable with RoofTechIndustries, who is the 'person' that entered into the Contract with the Plaintiff, to damages in the total amount of \$7,300.00.

Costs:

- [44] In making a costs award the court is governed by Sections 29 and 131 of the Courts of Justice Act, Rule 14 and Rule 19 of the Small Claims Court Rules, and the principle that in awarding costs proportionality with the amounts in dispute must be maintained considering what is fair and reasonable in all of the circumstance.
- [45] The Plaintiff made an offer to settle prior to the commencement of this action in the amount of \$8,000.00. The Plaintiff's offer did not trigger the costs consequences stipulated in Rule 14.07 as the Plaintiff did not obtain a judgment as favourable as or more favourable than the terms of that Offer.

Judgment:

- [46] Judgment is awarded to the Plaintiff, Sorosh Saberian, payable by the Defendant, Georgios Sakellaris, forthwith, as follows:
- A. Damages in the amount of \$7,300.00 plus pre-judgment interest from September 28, 2021 until May 29, 2024 under the *Courts of Justice Act* and post-judgment interest from May 30, 2024 under the *Courts of Justice Act*;
 - B. Representation fee of \$1,095.00;

C. Court disbursements in the amount of \$458.00.

A handwritten signature in blue ink, reading "O. Kahane-Rappoport". The signature is written in a cursive style with a large initial "O".

Deputy Judge O. Kahane-Rappoport

Released: May 29, 2024

COURT FILE NO.: SC-21-7298
DATE: 20240529

ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

BETWEEN:

BETWEEN:

SOROSH, SABERIAN

Plaintiff(s)

– and –

SAKELLARIS, GEORGIOS

Defendant(s)

REASONS FOR JUDGMENT

Deputy Judge O. Kahane-Rapport

Released: May 29, 2024