

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Flawse v. Knapfl*,
2023 BCSC 1142

Date: 20230705
Docket: S09979
Registry: Courtenay

Between:

Claudette Louise Flawse

Plaintiff

And

Devon Richard Knapfl, doing business as Aces Roofing

Defendant

Before: The Honourable Justice A. Ross

Reasons for Judgment

The Plaintiff, appearing in person:

C. Flawse

Counsel for the Defendant:

A. Gubeli
J. Anderson, Articled Student

Place and Date of Trial/Hearing:

Courtenay, B.C.
April 24–28, 2023
May 1, 2023

Place and Date of Judgment:

Courtenay, B.C.
July 5, 2023

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[1] The plaintiff, Claudette Flawse, claims against the defendant for damages relating to a roof the defendant installed on the plaintiff's home in 2009. In short, she alleges that the roof leaked. As a result, she replaced the roof in 2011. The plaintiff claims for the cost of the new roof. She also alleges that she suffered damages resulting from the defendant's faulty workmanship including damage to the interior of her home and stress-related personal injuries.

[2] At the time of the roof installation, the defendant Devon Knapfl conducted business as a sole-proprietor under the name "Aces Roofing". He says that the plaintiff has failed to adduce the facts necessary to establish a claim in either negligence or breach of contract. Further, he says that there is no evidence that any of his acts caused any of the damages claimed by the plaintiff.

Issues

[3] The issues for me to decide are:

- a) Whether the plaintiff has established that the defendant's work failed to meet the standard of care required of a roofer either in contract or in negligence; and
- b) if the answer to that question is "Yes", then I must determine whether the plaintiff suffered the losses that she claims. This second issue can be broken down to sub-issues of "evidence in support" and "legal causation".
- c) If causation is found, then what are the damages suffered by the plaintiff?

[4] For the reasons set out below, I find that the plaintiff's claim fails because she failed to establish a breach of the standard of care by the defendant. She also failed to establish any causal link between the defendant's work and the damages she claims.

Relevant Procedural Background

[5] As noted, the defendant installed the roof in 2009. The roof was fully replaced in 2011. This action was commenced in September 2012. When this action was commenced, the plaintiff had counsel. However, counsel withdrew in 2014. The plaintiff has been self-represented since that time.

[6] There is a long procedural history to this matter. That history primarily involves the defence seeking orders requiring the plaintiff to take steps to move the action along and to prepare for trial.

[7] Soon after the plaintiff commenced this action, her counsel delivered a list of documents. That list, from 2012, represents the last list of documents produced by the plaintiff. Later in the proceeding, a court order required the plaintiff to deliver four boxes of documents to defence counsel's office. Those documents were delivered to (and subsequently returned by) the defendant. However, they were never listed by the plaintiff. Defence counsel had the opportunity to review them.

[8] In October 2018, the defendant applied to have this action struck for want of prosecution. That application was dismissed, but a timeline was set in place. Following that application, the defence conducted an examination for discovery of the plaintiff on March 11, 2019. Numerous requests for further information followed.

[9] There are three prior orders of this Court that affect the conduct of this trial.

[10] On August 6, 2019, following a case planning conference, Master Dick ordered the plaintiff to produce:

- a) documents relating to her personal injury claim by September 30, 2019;
- b) responses to outstanding requests from her examination for discovery by August 30, 2019.

[11] I understand that the plaintiff delivered a number of medical documents to the defendant. However, those documents were never set out in an updated list of

documents. The documents consisted of clinical records, some of which were introduced at trial.

[12] One of the outstanding requests from the examination for discovery was for the production of any written notes that the plaintiff had made regarding her claim. The plaintiff responded to that request in an email stating that she had notes “scattered” around the house which “have no order”. She invited defence counsel to attend at her house to view the documents. That invitation was not accepted. The documents were never collated or listed.

[13] The action was scheduled for trial commencing June 1, 2020. That trial date was lost due to the Covid pandemic.

[14] On June 23, 2021, Justice Saunders presided over a case planning conference. He ordered the plaintiff to deliver an amended list of documents by July 14, 2021. As of the commencement of trial, the plaintiff had not complied with that order.

[15] The matter was set for a second trial date, November 14, 2022. That trial did not proceed because no judge was available. However, in preparation for that date, at the trial management conference on August 23, 2022, Master Keighley made several orders requiring the plaintiff to take steps including delivery of: an updated list of documents, a trial brief, a witness schedule, an index of anticipated exhibits and a list of special damages.

[16] The plaintiff did provide a trial brief, although it contained no useful information. The plaintiff did not provide the updated list of documents nor the index of anticipated exhibits or special damages.

[17] On the first day of this trial, defence counsel applied to dismiss the plaintiff’s action on the basis that she had failed to comply with the three orders described above.

[18] I dismissed the defendant's application. However, my ruling in that application had an impact on the conduct of the trial. I accepted the defence submission that, given the numerous defaults of the plaintiff in relation to orders of this Court, it would be unfair to allow the plaintiff to rely on documents or reports that had not been properly listed or served. As a result of those defaults on the plaintiff's part, I ruled that the trial would proceed in a manner that would not prejudice the defence. I ruled that the plaintiff would not be able to introduce into evidence any documents that had not been properly listed or served in accordance with the prior orders.

[19] I was informed that, at some point prior to 2012, the plaintiff had obtained a report relating to the damage to her home. That report was never properly served on the defence, although it was delivered. I noted above that the plaintiff produced a trial brief (as ordered by Master Keighley). That trial brief did not indicate that she intended to rely on an expert opinion or call an expert to testify. I understand that defence counsel wrote to the plaintiff to indicate that if she intended to rely on any expert reports, the defence would require the author's attendance for cross-examination. The plaintiff made no arrangements for the author of any report to attend at trial. Hence, I ruled the plaintiff's report to be inadmissible.

[20] As a result of the foregoing, the plaintiff's testimony was the only evidence tendered on her own behalf. In compliance with my pretrial ruling, the plaintiff testified about her recollection of events. During her testimony, the plaintiff sought to rely on diaries that she kept in the relevant periods of time. Those documents had not been disclosed to defence counsel. I ruled that she could not rely upon them to refresh her memory of events.

[21] However, the plaintiff also kept (and properly listed) wall-calendars during the relevant times. She noted significant events on those calendars. As a result, she was able to provide a chronology based upon the calendars.

[22] Further, at trial, she described the damage that she alleges to the structure of her home by reviewing photos that she took in late 2011 and early 2012.

[23] As I describe below, the circumstances of the plaintiff representing herself resulted in gaps in the evidentiary foundation of her claim. I discuss those gaps below.

Credibility and Reliability

[24] The defence submits that there are significant problems with the plaintiff's reliability. The defence acknowledges that the plaintiff was doing her best to recall and relate the events that occurred more than a decade before trial. As discussed below, the defence submits that the plaintiff's memories are incorrect, and are coloured by her belief in the correctness of her case. In essence, the defence says that the problem with her testimony is that the plaintiff refuses to admit or accept evidence that contradicts her narrative.

[25] On the issue of reliability, it is evident many years have passed since the main events in this case. It can be expected that memories will fade. Having heard her testimony, I accept the defence submission that Ms. Flawse's memories have faded to some extent. As noted above, during her testimony, she relied on notes that she wrote contemporaneously in two calendars to refresh her memory about the timing of events. By her account, after the installation of the roof, at her request, the defendant returned to her home on approximately seven occasions. She had no independent recollection of either the dates of those visits, or the actions and statements of the defendant.

[26] I also note that the plaintiff was challenged throughout her cross-examination with her prior examination for discovery testimony. The plaintiff's testimony at trial was diametrically opposed to her evidence at her examination for discovery on eight separate occasions. When asked to confirm whether her testimony at discovery was true, she frequently answered, "I disagree." On this issue, I accept the defence submission that the plaintiff's differing testimony indicated a failure to maintain a consistent narrative.

[27] Based on my analysis of the plaintiff's testimony, I find that she was not a reliable witness. I find that in the period since these roofing issues arose, the plaintiff

has re-cast the state of affairs and the narrative of what happened, in her own memory. She has re-cast those events in a manner that, if believed, could form the foundation for an action against the defendant.

[28] In contrast to the plaintiff's testimony, I find that the defendant provided a cogent description of events, despite admitting that many of his memories had faded due to the passage of time. When his memory had dimmed, the defendant admitted that he was not sure about a particular event. However, on the whole, his testimony was consistent with the other parts of the evidence, including the documents. I find him to be credible and his testimony to be largely reliable.

[29] As I discuss below, I find that the defendant's description of events provides a more logical and probable narrative. Where there is a dispute between the plaintiff's and the defendant's recollection of events, I prefer the defendant's version.

Chronology

[30] Given the problems with the reliability of the plaintiff's testimony, I set out below the chronology of events that is not in dispute. I then set out the different versions of the parties and my finding of facts.

- a) In the second half of 2009, the plaintiff and her husband sought estimates for the replacement of the cedar shake roof on her home at 3803 South Island Highway, Royston, B.C. The house was built in the early 1980s, and the cedar shake roof had never been replaced.
- b) The plaintiff and her husband selected the defendant, Mr. Knapfl, who operated under the business name of Aces Roofing. His original estimate for the work was \$11,930. That estimate was later amended to be slightly lower. Another amendment related to the installation of an opening skylight.

- c) During late September and early October 2009, the defendant and his crew removed the old cedar shake roof and installed a new asphalt shingle roof. They also disposed of the old roofing materials.
- d) I discuss below the evidence regarding the status of the soffits in the plaintiff's attic. The soffits are a feature of roofing systems located under the roof. They are designed to provide ventilation into the attic area. The lower portion of the soffit allows cool air to enter below the eaves. The air is meant to be carried up in the open area between the trusses. The upper portion of the soffit is in the attic. The design concept is that the soffits provide cool airflow into the attic which displaces hot air which exits through vents in the roof. There is conflicting evidence on the functionality of the soffits in the plaintiff's attic areas.
- e) When the plaintiff's original shake roof was installed, the roofer applied 1 x 4-inch wood "strapping" that runs horizontally along the length of the house. The lowest ten feet of the strapping is solid (*i.e.*, each strapping board lays on the strap below it). Above the bottom ten feet of strapping, roofers applied the strapping with 4-inch gaps between each strap. The original shake roof, with strapping, was installed correctly. However, as a result of the solid strapping on the lowest ten feet of the roof, Mr. Knapfl and his workers were unable to view the status of the soffits. The solid strapping at the lower areas of the roof blocked any view of the inside of the soffits.
- f) Because the defendant and his crew were installing an asphalt shingle roof, they applied 4 x 8 sheets of "Oriented Strand Board" ("OSB") over the entire roof. They then applied a waterproof tarpaper membrane. The defendant says that the membrane makes the roof waterproof.
- g) Following the application of the tarpaper, the defendant installed the asphalt shingles.

h) Following installation of the roof, the plaintiff paid the defendant 90 percent of the contract price and held back 10 percent.

[31] At the request of the plaintiff, the defendant returned on several occasions in late 2009, 2010, and finally in 2011 to deal with issues. There is a dispute between the parties on whether those issues were cosmetic or structural. I address those issues below.

[32] The plaintiff's evidence described three main areas of complaint with the defendant's work. I outline each of those complaints below.

Skylight

[33] As noted, the plaintiff held back 10 percent of the contract price. That holdback was specifically to address an apparent problem with a skylight.

[34] The defendant agrees that he was unable to properly "frame" the skylight. Hence, the skylight would not seal. He agreed to the holdback on the basis that a contractor would attend to properly install the skylight.

[35] The plaintiff arranged for that contractor, and the work was completed. Although it is unclear when that framing was performed, it was within a couple of months of the completion of the roof. The plaintiff paid the contractor from the 10% holdback on the roofing contract.

[36] Based on the evidence of the plaintiff, I understand that two rugs had become wet due to the problem with the skylight. Those rugs were cleaned by the plaintiff. However, following repair and reframing of the skylight, there were no further problems noted by the plaintiff in that area.

Gap in Shingles

[37] As noted above, the defendant returned on several occasions in late 2009, 2010, and finally in 2011 to deal with issues raised by the plaintiff.

[38] On one of the early visits, the plaintiff complained about an area where two parts of the roof joined. The upper portion of the roof had a steeper pitch than the lower portion. The plaintiff complained that there was a vertical gap of approximately six inches between the shingles from the upper roof portion and the lower roof portion. According to the plaintiff, that area is above the kitchen table.

[39] The defendant agrees that the plaintiff called him and that he attended to inspect the roof. He says that the gap in the shingles was normal and complied with the relevant building codes. He also stated that the area under and behind this gap was fully shingled. Despite his confidence in the secure nature of the roof in that spot, the defendant installed some matching brown flashing to cover the gap between the two portions of the roof. He says he did this for cosmetic reasons, and not for the integrity of the roof.

Leaking into Kitchen Area

[40] The plaintiff says that during late 2010 (more than a year after installation), she first noticed dripping from the underside of the ceiling over her kitchen table. This problem compelled her to access the attic where she found the whole area (which she could access) to be moist. She says that she had stored certain items in the attic and in the passages leading to the attic. She says that:

- a) In the cubby-holes that lead to the attic, she stored miscellaneous bedding including blankets and sleeping bags. She says that those items became moist and filled with mould.
- b) In the attic itself, she had numerous collections of things. She says that all of the contents of the attic were covered with mildew or mould and had to be thrown out.

[41] Part of the plaintiff's damage claim relates to the value of the items that were destroyed by mould and mildew.

[42] According to the plaintiff's testimony, she first noticed this situation on December 24, 2010, when water pooled on her kitchen table. However, when the plaintiff reviewed her calendar for 2010, she had notes regarding leaking on November 5, 2010. The notes indicate that she spoke with Mr. Knapfl on November 15, 2010. The defendant does not dispute that the plaintiff called him in late 2010 or early 2011 and that he attended.

[43] The defendant does not dispute that there was moisture in the plaintiff's attic. However, the parties do not agree on the nature of the problem. I deal with that evidence below.

[44] With respect to his inspection of the attic, the defendant says that he found the following:

- a) In the areas he inspected, the attic was wet or moist.
- b) He inspected the underside of the OSB boards that his crew had installed and he found the undersides to be dry. That meant that water was not permeating the roofing membrane.
- c) Given that there was moisture throughout the attic, he formed the opinion that there was insufficient airflow within the attic. As noted above, airflow is provided through the soffits and the vents. He testified that, to the extent he could see down the soffits, they appeared to be blocked. There were no baffles in the soffits allowing for airflow.
- d) He also testified that if there is a leak in a roof (*i.e.*, a place where the water penetrates the roofing system), then there will be one point of entry for the water. He stated that in those situations, the homeowner always has a bucket out to catch the drips that are coming from a specific spot in the ceiling. He contrasted that situation in the plaintiff's attic where the entirety of the contents of the attic were moist or wet. As a result, he concluded that there was a ventilation problem, and he placed a fan in the attic area to assist with air circulation.

- e) The plaintiff agrees that the defendant placed the fan, but says that she did not know why.
- f) The defendant says that he advised Ms. Flawse of his opinion regarding the problem with the soffits and the lack of ventilation. He says that she did not accept his opinion.

Chimney Seepage

[45] The plaintiff also called the defendant back when she noticed water seeping down the brickwork of her chimney. She noticed this moisture both in the attic and at the bottom of the chimney in the basement or crawlspace area.

[46] The plaintiff testified that, when she went into the attic, she could see a noticeable gap between the chimney and the flashing that attached to the roofing system. She says that there was daylight visible between those structures. She presented photos of the bricks of the chimney with water bricks and water stains. She did not present a photo of the alleged gap at the top of the chimney.

[47] The defendant agrees that the plaintiff called him to address this issue. The defendant says that he advised the plaintiff that the bricks and grout in her chimney had become porous over time. He says that rain was hitting the exposed top exterior of the chimney and seeping into the bricks. That water then dripped down toward the base of the chimney. The defendant says that he advised the plaintiff that there was nothing wrong with the roof and she needed to retain a mason to re-point the chimney. He says that the plaintiff did not accept his advice on that issue.

The Next Stage

[48] The events set out above describe the interactions between the plaintiff and defendant in the first year after installation. In January 2011, the plaintiff contacted her insurer, and by the end of 2011, she and her husband had retained a second roofer to replace the roof.

[49] Presumably on the instructions of the insurer, the plaintiff took photographs of the roof and mould in the attic. She also took photographs of areas of her home that, she says, have been damaged by the moisture issues. She points to areas where walls have become separated from ceilings, and to gaps at joints and electrical outlets. She also says that the house is full of black mould.

[50] There are further facts that are not in dispute:

- a) In the period between January 2011 and August 2011, a number of adjusters, inspectors, and restoration experts came to view the home. The plaintiff tendered some correspondence from those individuals. Those documents were not admitted for their truth, nor for the opinions expressed.
- b) Apart from the fan placed in the attic by the defendant, none of the professionals placed any drying fans in the attic.
- c) The plaintiff says that she was making a papier-mâché sculpture with her daughter in July 2011. She left the sculpture to dry. She tendered a photo of the sculpture which, she says, had turned mouldy.
- d) In August 2011 the plaintiff commenced obtaining estimates to replace the roof. She retained All-Coast Roofing, which provided an estimate of \$30,340. The estimate prepared by All-Coast included roof replacement along with the application of a product that would kill any mould in the roofing structures. It also stated: "Roof may need new insulation baffels (sic) installed".
- e) This action was commenced on September 8, 2011.
- f) All-Coast completed the installation of the new roof in November 2011.

[51] Although the plaintiff testified that it was she, not her husband, who contracted with All-Coast Roofing, she also testified that:

- i. her husband paid All-Coast the full amount invoiced; and
- ii. All-Coast later successfully sued her husband in small claims court for a further unpaid amount.

[52] Following the installation of the replacement roof by All-Coast, the plaintiff continued to have problems with water seeping down the chimney. According to the plaintiff's testimony, she later hired a mason to come and perform work on the chimney.

Positions of the Parties

[53] The plaintiff says that the combination of issues with leaking and moisture indicate that the roofing system installed by the defendant did not meet the standard of workmanship that was required, either by their contract, or by the standard of care required of a reasonably competent roofer.

[54] The plaintiff further says that, as a result of the defendant's breaches, she has suffered the following damages:

- a) the cost to replace the roof;
- b) the destruction of the items in the attic due to mould;
- c) the general degradation of the condition her home, including separation and warping of walls; and
- d) the psychological damages suffered as a result of the ongoing problems with the roof.

[55] The defendant puts forward several defences.

[56] First, the defendant says that there is no evidence that he breached a standard of care that he owed. On this point:

- a) he concedes that he owed a duty of care to the plaintiff, both in contract and under the principles of negligence; but

- b) he submits that the plaintiff presented no evidence of the standard of care of a reasonable roofer in these circumstances.

He submits that, to the contrary, the only expert evidence (which he tendered) establishes that he met the standard of care. I address that evidence below.

[57] Second, the defendant submits that there is no evidence to establish that the work that he did caused the problems of which the plaintiff complains. He says that her evidence did not establish that there were any actual leaks.

[58] For the reasons set out below, I accept the defendant's submission on both of these points.

Analysis

[59] First, with respect to the standard of care, as noted, the plaintiff was the only witness on her own behalf. She did not tender any expert evidence. I accept the submission of the defendant that an allegation against a roofer requires expert evidence to establish both the standard of care and the fact that the defendant breached that standard. In saying that, I note that there are exceptions, for example where a wind-storm removes the entire roof. However, this case does not fall within any of those exceptions.

[60] The plaintiff did not call any expert evidence regarding the standard of care. The defendant did.

[61] First, the defendant called Mr. Blake Erickson who was qualified as an expert roofer. He provided opinion evidence, both on the standard of care and on the cause of the moisture in the attic. Mr. Erickson inspected the home on March 28, 2011, and opined that:

- a) The roofing system was properly installed by the defendant, including the placement of roof ventilation.

- b) The moisture in the attic was caused by condensation. He reached this conclusion, in part, because the moisture was throughout the attic. He testified that when a roof has a “leak”, then the homeowner inevitably has a bucket under the one place where the water is infiltrating the home.
- c) His inspection noted inconsistent placement of fibreglass insulation and a lack of a polypropylene vapour barrier between the second-storey ceiling and the attic. These aspects were not within the scope of work of the defendant.
- d) In his opinion, the moisture in the attic was caused by warm air from the living areas of the home escaping upwards to the attic. The absence of a vapour barrier allowed that warm air to rise into the attic. That warm air mixed with the colder air in the attic and condensed forming the moisture that was throughout the attic area.
- e) The former shake roof, by its nature, was less air-tight (*i.e.*, more breathable) than the asphalt shingle roof system installed by the defendant. He believes that the heat and moisture had always been problems, but the old roof allowed more moisture to escape.
- f) This escape of warm air, and moisture, was not within the scope of work of the roofer. He noted that the defendant did not have access to the interior of the home and could not have known about the lack of insulation and vapour barrier.
- g) He inspected the soffits, and found them to be open (where he could see).

[62] The defendant also called Mr. Arthur McArthur, a building envelope engineer. I did not find Mr. McArthur’s report to be of assistance. First, he did not inspect the home. Second, he relied on certain assumptions that were not established on the evidence at trial. Primarily, he assumed that the soffits were all blocked. As noted, Mr. Erickson inspected the home and found the soffits to be open.

[63] I do note, however, that both Mr. Erickson and Mr. McArthur point to the fact that the plaintiff's dryer vented into a closed carport area that was below a part of the attic. I accept the evidence that the venting of warm moist air from the dryer would put additional moist warm air into the attic area.

Finding

[64] On the basis of the evidence at trial, I accept that the plaintiff failed to establish the standard of care of a reasonably competent roofer in the circumstances of her home and this contract. It follows that I find that she failed to establish a breach of that standard. To the contrary, I accept the defendant's expert evidence which establishes that the defendant met the applicable standard.

[65] I further accept the defence position that the plaintiff has failed to establish that some form of breach by the plaintiff was the cause of the problems within her attic and her residence.

[66] As noted, the plaintiff complains of three separate instances of water ingress into her attic. Each of those complaints has a different basis.

- a) The defendant acknowledges the difficulty with the installation of the skylight. However, it is evident that the parties reached a subsequent contract to remedy that problem. The plaintiff paid a contractor 10 percent of the roofing cost to properly frame the skylight. No damage, apart from two wet carpets, arose from that issue. Hence, no damage can be claimed in this action.
- b) The plaintiff noted water seeping down her chimney. The defendant advised her that she needed to have a mason re-point the chimney to make the bricks and mortar water-resistant. The plaintiff did not accept that advice. However, the evidence is undisputed that, even after the installation of the second roof, the water continued to seep down the chimney. The plaintiff ultimately did have the chimney re-pointed by a mason. In my opinion, this evidence establishes that the problem with the

water dripping down the chimney was caused the chimney itself being porous. There is no evidence to tie that problem to the defendant.

- c) The third issue relates to the moisture in the attic. On the evidence, there were several theories put forward as the cause of this problem:
- i. The plaintiff's theory is that the roof installed by the defendant leaked and allowed moisture into the attic.
 - ii. The defence puts forward the following theories:
 - (1) The lack of insulation and a vapour barrier allowed warm moist air to rise up from the home and into the attic. The standard ventilation (as installed) was insufficient to deal with the amount of warm air that entered the attic.
 - (2) Alternatively, the soffits were not in working order.

[67] As with all aspects of the plaintiff's case, the onus lies with the plaintiff to establish her factual foundation of each element. On the issue of causation, there are at least three theories. In my opinion, the most likely cause of the moisture in the attic is the lack of a vapour barrier, combined with the new roofing system which provided less ventilation than the former shake roof.

[68] This finding of the probable cause of the moisture is sufficient to defeat the plaintiff's claim. The plaintiff has failed to establish that any error or breach on the part of the defendant led to the moisture in the attic. There is no evidence that the problem she faced was reasonably foreseeable or that it was a known risk. It follows from this finding that the plaintiff has not established that the defendant's actions were the cause of the moisture.

[69] It follows that the plaintiff has failed to establish two essential elements of her claim:

- a) The only evidence at trial regarding the standard of care supports the defence submission. That evidence indicates that the defendant met the standard of care. The roofing system that he installed was waterproof.
- b) The evidence of causation also supports the defendant. The plaintiff has failed to establish that a leak in the roof, or a breach by the defendant, caused the moisture problem. Instead, I find that the moisture problem was caused by factors that fell outside the knowledge or foreseeability of the defendant.

[70] It follows that the plaintiff's claim must be dismissed. Because I have dismissed the claim, I will not address the issue of damages.

[71] Absent any offers of which I am not aware, the defendant is entitled to his costs.

"A. Ross J."