

LEGL 1501: Litigation I

Case Scenario

Party 1:

Patricia Jane Rowley ("Patricia") is a 33-year-old woman who lives in Calgary, Alberta. She works as a bank customer service representative and is a single mother of one.

Patricia hired a landscaping company to design and landscape her back yard, when she won some money in Lotto 6/49.

Patricia signed a contract for the services, with the landscaping company.

The contract contemplated that the company would hear Patricia's design ideas, create a digital representation of the design, and present her with the design ideas in electronic media so that she could see precisely how the yard would look, when it was finished.

Once approved, the construction and excavation of the yard was to begin and be completed within one month from the date of commencement.

Party 2:

The landscaping company is incorporated in Alberta as Lampman Development Corporation (the "Corporation"). The primary contact for the company is Christian Virgil Lampman ("Christian"). He runs this very popular business.

The Facts:

On August 1, 2015, Christian attended at Patricia's home located at 93123 Lake Canning Way S.W., Calgary, Alberta T3G 0E2 to discuss the project and to obtain the information required to formulate a design and to provide a quote.

On August 8, 2015, the two parties signed a contract for landscaping services with the following details:

- 1) The Corporation would provide Patricia with an initial design on or before August 20, 2015;

- 2) Upon adjustment and approval of the design, the Corporation would begin work on the development no later than September 1, 2015, with a completion date of September 30, 2015;
- 3) The agreed contract price was \$56,000.00 plus 5% G.S.T., which was inclusive of costs for design, materials, equipment and labour;
- 4) Any changes in the design were to be discussed between the parties and agreed upon, prior to being instituted;
- 5) Any changes in the pricing were to be discussed between the parties and agreed upon, prior to being instituted; and
- 6) Patricia would pay \$30,000.00 up front, to cover the initial costs of purchasing the materials required to complete the design, with the balance due upon completion of the project.

The Issues:

On September 1, 2015, Christian and his work crew arrived at Patricia's property to begin the following work:

- 1) building a large raised patio with two tiers that were to house a hot tub;
- 2) excavation of a sloped back yard and creating various retaining walls out of stone to support the shrub and flower garden;
- 3) building a fence around the entire perimeter of the yard; and
- 4) installing lawn, shrubs, trees, and flowers throughout the entire yard area.

Patricia had the property line with her neighbour's house marked by a surveyor for the construction of a fence. However, Christian's work crew moved the markers, resulting in an inaccurate identification of the boundary between Patricia's property and her neighbour's property.

The work in Patricia's yard continued. There were no changes to the design or pricing and the work was completed on budget, and on time. Patricia paid the Corporation, the balance of the contract price.

On March 15, 2016, Patricia and her neighbour discovered that the fence and some of the landscaping features including the patio, hot tub and retaining wall constructed or inserted by the Corporation encroached on her neighbour's property. This was because the markers for the boundary was moved.

Patricia also discovered that the Corporation did not obtain the necessary permits from The City of Calgary for the work performed.

Patricia's neighbour was very unhappy with the encroachment and demanded that Patricia move the fence and the landscaping features, so as not to encroach on his property. Unfortunately, the work involved would result in the destruction of the

fence, patio, hot tub and retaining wall and they would need to be replaced.

Patricia wants the Corporation to pay the costs to correct the problems. The estimated costs are \$50,000.00 plus G.S.T.. However, the Corporation wants to complete the corrections and refuses to pay the estimated costs.

Patricia has no faith and trust in the Corporation's ability to correct the problems and wants payment instead.

Both parties have retained lawyers to handle this matter.

The law firm you work for represents Patricia.

Details for this firm:

Bemann, Voorzman, and Cyrants LLP
832, 221 – 91st Street NW
Calgary, AB T3Y 0G1

Phone: (403) 555-5555
Fax: (403) 555-5556

Patricia's lawyer: Ms. Ethel Cyrants; File Number assigned for the case: 35649/EC

Details for the law firm representing the Corporation are as follows:

Fixum, Mixum and Grant LLP
1, 8900 Centre Street SW
Calgary, AB T2I 7Q1

Phone: (403) 777-7777
Fax: (403) 777-7778

Their lawyer: Mr. Peter Mixum; File Number assigned for the case: 19864/PM