

ONTARIO
Superior Court of Justice

Plaintiff's Claim
Form 7A Ont. Reg. No.: 258/98

Seal

TORONTO
Small Claims Court
47 SHEPPARD AVENUE E., 3RD FLOOR
TORONTO, ON
M2N 5N1
Address
(416) 326-3554
Phone number

SC-00012345-0000
Claim No.

Plaintiff No. 1

Additional plaintiff(s) listed on attached Form 1A.

Under 18 years of age.

Last name, or name of company SMITH		
First name JOHN	Second name	Also known as
Address (street number, apt., unit) 123 MAIN STREET		
City/Town TORONTO	Province ON	Phone no. (416) 555-5555
Postal code M1A 1A1	Email address	
Representative JUSTIN CASE	Law Society of Ontario no. P01234	
Address (street number, apt., unit) 100 BAY STREET, SUITE 100		
City/Town TORONTO	Province ON	Phone no. (416) 555-1000
Postal code M9Z 9Z9	Email address JUSTIN@LEGALISSUES.CA	

Defendant No. 1

Additional defendant(s) listed on attached Form 1A.

Under 18 years of age.

Last name, or name of company ROOFING EXPERTS INC.		
First name	Second name	Also known as
Address (street number, apt., unit) 987 TROUBLE LANE		
City/Town TORONTO	Province ON	Phone no. (416) 555-6666
Postal code M1Z 1Z1	Email address NEWROOF@NEWROOF.CA	
Representative GITAR DUNN	Law Society of Ontario no. P09876	
Address (street number, apt., unit) 111 BAY STREET, SUITE 111		
City/Town TORONTO	Province ON	Phone no. (416) 555-9999
Postal code M2Y Y2Y	Email address GITAR@DUNN.LEGAL	

Les formules des tribunaux sont affichées en anglais et en français sur le site www.ontariocourtforms.on.ca. Visitez ce site pour des renseignements sur des formats accessibles.

SC-00012345-0000

Claim No.

Plaintiff No. TWO (2)

Defendant No.

Last name, or name of company SMITH		
First name MARY	Second name	Also known as
Address (street number, apt., unit) 123 MAIN STREET		
City/Town TORONTO	Province ON	Phone no. (416) 555-5555
Postal code M1A 1A1	Email address JOHNANDMARY@SMITHS.CA	
Representative JUSTIN CASE	Law Society of Ontario no. P012345	
Address (street number, apt., unit) 100 BAY STREET, SUITE 100		
City/Town TORONTO	Province ON	Phone no. (416) 555-1000
Postal code M9Z 9Z9	Email address JUSTIN@CASE.LAW	

Plaintiff No.

Defendant No. TWO (2)

Last name, or name of company JONES		
First name BRUCE	Second name	Also known as
Address (street number, apt., unit) 987 TROUBLE LANE		
City/Town TORONTO	Province ON	Phone no. (416) 555-6666
Postal code M1Z 1Z1	Email address BRUCE@NEWROOF.CA	
Representative GITAR DUNN	Law Society of Ontario no. P09876	
Address (street number, apt., unit) 111 BAY STREET, SUITE 111		
City/Town TORONTO	Province ON	Phone no. (416) 555-9999
Postal code M2Y Y2Y	Email address GITAR@DUNN.LEGAL	

Plaintiff No.

Defendant No.

Last name, or name of company		
First name	Second name	Also known as
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code	Email address	
Representative	Law Society of Ontario no.	
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code	Email address	

REASONS FOR CLAIM AND DETAILS

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

If you are relying on any documents, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

What happened? **SEE ATTACHED SCHEDULE 'A'**

Where?

When?

How much? \$ 35,000.00
(Principal amount claimed)

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.

The plaintiff also claims pre-judgment interest from AUGUST 7 2020 under:
(Date)

(Check only one box) **the Courts of Justice Act**
 an agreement at the rate of _____ % per year

and post-judgment interest, and court costs.

Prepared on: NOVEMBER 2, 20 20 _____
(Signature of plaintiff or representative)

Issued on: NOVEMBER 2, 20 20 _____
(Signature of clerk)

CAUTION TO DEFENDANT: IF YOU DO NOT FILE A DEFENCE (Form 9A) and an Affidavit of Service (Form 8A) with the court within twenty (20) calendar days after you have been served with this Plaintiff's Claim, judgment may be obtained without notice and enforced against you. Forms and self-help materials are available at the Small Claims Court and on the following website: www.ontariocourtforms.on.ca.

CAUTION TO PARTIES: Unless the court orders or the rules provide otherwise, **THIS ACTION WILL BE AUTOMATICALLY DISMISSED** if it has not been disposed of by order or otherwise two (2) years after it was commenced and a trial date or assessment under subrule 11.03(2) has not been requested.



For information on accessibility of court services for people with disability-related needs, contact:



Telephone: 416-326-2220 / 1-800-518-7901 TTY: 416-326-4012 / 1-877-425-0575

SCHEDULE A

CLAIMS

1. The Plaintiff, John Smith, (“John”), claims as against the Defendants as follows:
 - (a) Actual damages in the sum of thirty thousand and 00/00 (\$30,000.00) dollars or such further and other amounts as may become known and disclosed prior to trial, all as to reimburse expenses incurred to remedy inadequate work performed by the Defendants upon the property of the Plaintiffs; and
 - (b) General damages of five thousand 00/00 (\$5,000.00) dollars from the Defendants for the anxiety, disappointment, disruption, disturbance, distress, threats, frustration, irritation, lost pleasure and expected peace of mind benefits caused by the acts, or omissions, of the Defendant;
 - (c) Pre-judgment interest and post-judgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) The full costs incurred for paralegal-client representation and the full costs incurred for disbursements plus applicable taxes; and
 - (e) Such further and other relief as the nature of this Plaintiff’s Claim may require and that this Honourable Court deems just.

2. The Plaintiff, Mary Smith (“Mary”), claims as against the Defendants as follows:
 - (a) Actual damages in the sum of thirty thousand and 00/00 (\$30,000.00) dollars or such further and other amounts as may become known and disclosed prior

to trial, all as to reimburse expenses incurred to remedy inadequate work performed by the Defendants upon the property of the Plaintiffs; and

- (b) General damages of five thousand 00/00 (\$5,000.00) dollars from the Defendants for the anxiety, disappointment, disruption, disturbance, distress, threats, frustration, irritation, lost pleasure and expected peace of mind benefits caused by the acts, or omissions, of the Defendant;
- (c) Pre-judgment interest and post-judgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) The full costs incurred for paralegal-client representation and the full costs incurred for disbursements plus applicable taxes; and
- (e) Such further and other relief as the nature of this Plaintiff's Claim may require and that this Honourable Court deems just.

PARTIES

3. The Plaintiff, John, is a human person, a resident of the City of Toronto, residing at, and a co-owner of, the premises known municipally as 123 Main Street, Toronto, Ontario (the "Premises"), and is the spouse of Mary.

4. The Plaintiff, Mary, is a human person, a resident of the City of Toronto, residing at, and a co-owner of, the Premises, and is the spouse of John.

5. The Defendant, Roofing Experts Inc. ("Roofing Experts"), is a corporation duly incorporated within the Province of Ontario as Ontario.

6. The Defendant, Bruce Jones (“Bruce”), is a human person, the principal of Roofing Experts as employee, contractor, or otherwise, residing at 987 Trouble Lane, Toronto, Ontario.

PARTICULARS

Forming Contract Relations

7. In or about July 2019, John and Mary (the “Plaintiffs”) entered into contractual relations with Roofing Experts.

8. The contract with Roofing Experts was for the purpose of installing asphalt shingles upon the dwelling structure located upon the Property (the “Project”).

9. The contract pricing for the Project work was twenty-five thousand 00/00 (\$25,000.00) dollars plus HST.

10. The contract required an advance deposit payment of five thousand 00/00 (\$5,000.00) dollars with the balance due upon completion.

11. The contract payments were properly paid by the Plaintiffs.

Workmanship Performance

12. On or about August 1 2020, Roofing Experts commenced the Project work.

13. Bruce, with employees or other persons, performed the Project work.

14. At all times, Bruce instructed and supervised the employees or other persons.

15. On or about August 3 2020, Bruce, on behalf of Roofing Experts, purported proper completion of the Project work to the Plaintiffs.

16. On or about August 3 2020, Roofing Experts was paid the full balance owing per the contract terms as by the Plaintiffs.

Roofing Failures

17. On or about August 7 2020, a thunderstorm accompanied by high winds occurred resulting in many of the newly installed asphalt shingles being torn from the roof with a resulting ingress of water and consequential damage to interior ceilings, walls, and contents.

18. Subsequently, the Plaintiffs discovered that the asphalt shingles were installed without adequate caulking used as an adhesive and seal against water ingress.

19. Additionally, the Plaintiffs discovered that many of the asphalt shingles were installed without proper use of roofing nails whereas many asphalt shingles were installed with less than four roofing nails per shingle.

20. Furthermore, the Plaintiffs learned that the asphalt shingles were improperly installed over the existing asphalt shingles whereas the existing asphalt shingles were of a type that precludes the installation of an additional layer of asphalt shingles.

Requested Corrections

21. On August 8 2020, the Plaintiffs contacted Roofing Experts and spoke with Bruce.

22. The Plaintiffs requested that Bruce attend at the Premises to inspect the roofing deficiencies performed by Bruce and Roofing Experts.

23. Subsequently, Bruce attended at the Premises.

24. Bruce inspected the Project work and denied that the work was performed improperly and declined to make corrections to the roofing and declined to make repairs to the damaged interior ceiling, walls, or contents.

Corrections

25. On or about August 9 2020, the Plaintiffs contacted Complete Restoration Services Inc. ("Complete").

26. The Plaintiffs requested a quotation from Complete for the cost to correct the defective workmanship by Roofing Experts.

27. Complete provided a quotation in the amount of fifty thousand 00/00 (\$50,000.00) dollars plus HST for the cost to correct the defective workmanship to the Plaintiffs.

28. The Plaintiffs also requested a quotation from Complete to repair the interior damage caused by Roofing Experts.

29. Complete provided a quotation in the amount of ten thousand 00/00 (\$10,000.00) dollars plus HST for the cost to repair the interior damage to the Plaintiffs.

30. The Plaintiffs accepted the quotations from Complete.

31. On August 10 2020, Complete performed the corrective workmanship and interior repairs.

32. On August 11 2020, the Plaintiffs paid the sum of sixty thousand 00/00 (\$60,000.00) plus HST as due to Complete.

CAUSE OF ACTION

33. The Plaintiffs claim, as against Roofing Experts, breach of contract for failing to complete the Project in accordance to the usual standards of the trade and implied terms of the contract.

34. Furthermore, and alternatively, the Plaintiffs claim in negligence for negligent workmanship, negligent supervision, negligent inspection, and negligent approval of the workmanship, as against Bruce.

35. Furthermore, and alternatively, the Plaintiffs claim in negligence for negligent workmanship, negligent supervision, negligent inspection, and negligent approval of the workmanship, as against Roofing Experts.

36. The particulars of the breach of contract by Roofing Experts and the negligence by Bruce and Roofing Experts, or by contractors, subcontractors, agents, employees or servants, for whom in law Roofing Experts is vicariously responsible, are;

- (a) Roofing Experts and Bruce failed to take reasonable care in performing to proper standards of workmanship as usual to the roofing trades;

- (b) Roofing Experts and Bruce failed to follow the installation specifications and procedures required to properly complete the Project work;
- (c) Roofing Experts and Bruce failed to follow the designs, plans, specifications, and procedures required to properly complete the Project work;
- (d) Roofing Experts and Bruce hired incompetent contractors, subcontractors, employees, servants, and agents, whom were without the proper knowledge and skills required to properly complete the Project work;
- (e) Roofing Experts and Bruce failed to adequately, if at all, ensure that the contractors, subcontractors, employees, servants, and agents, were capable of properly performing their respective functions including ability to meet the reasonable standards of proper workmanship;
- (f) Roofing Experts and Bruce failed to adequately, if at all, train the contractors, subcontractors, employees, servants, and agents, as to how to properly perform their respective functions including ability to meet the reasonable standards of proper workmanship;
- (g) Roofing Experts and Bruce failed to ensure the contractors, subcontractors, employees, servants, and agents, were physically fit and capable of proper performance of their respective functions including ability to meet the reasonable standards of proper workmanship;

- (h) Roofing Experts failed to use, provide, or ensure availability, of the proper machinery and tools and supplies required to carry out the work as necessary to the Project work;
- (i) Roofing Experts and Bruce failed to properly instruct, control, and supervise the Project work conducted by contractors, subcontractors, employees, servants, and agents; and
- (j) Roofing Experts and Bruce undertook to complete or perform the Project despite lacking the requisite experience, equipment, supplies, knowledge, skills, and qualifications.

37. Furthermore, and alternatively, whereas Roofing Experts was enriched by overpayment for the value of the work completed, and whereas such overpayment or enrichment was at the deprivation of the Plaintiffs, and whereas such occurred without a juristic reason, the Plaintiffs claim unjust enrichment.

DAMAGES

38. The Plaintiffs claim sixty thousand 00/00 (\$60,000.00) dollars plus HST, being thirty thousand (\$30,000.00) dollars plus HST each, jointly and severally as against the Defendants for;

- (a) The cost incurred to correct the Project by paying other contractors to correct, rework, or complete, the improper and defective or incomplete work as arising from the breach of contract by Roofing Experts and as arising from the negligent supervision, negligent workmanship, and other negligent

or tortious conduct particularized herein by Roofing Experts as well as arising from the negligent supervision, negligent workmanship, and other negligent or tortious conduct particularized herein as by Bruce;

- (b) The anguish, annoyance, distress, disturbance, frustration, irritation, interference in reasonable enjoyment of the Premises, loss of pride in ownership of property, upset, stress, and other usual human emotions as arising from the breach of contract by Roofing Experts as well as the tortious conduct of Roofing Experts as well as the tortious conduct of Bruce.

PLEADINGS AND RELIANCES

39. The Plaintiffs plead and rely upon:

- (a) The *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (b) The *Negligence Act*, R.S.O. 1990, c. N.1;
- (c) The amendments to, and regulations of, the statutes as above; and
- (d) The common law and further statutes as shall be disclosed prior to trial.

40. Whereas the Plaintiffs claim general damages as against Roofing Experts and as arising from allegations of breach of contract, as in addition to general damages commonly claimed in tort, the Plaintiffs do so in accordance to the *Hadley v. Baxendale* principle as recently reiterated by the Supreme Court of Canada per *Fidler v. Sun Life*, 2 S.C.R. 3, among other cases, confirming that general damages are a proper form of damages arising from a breach of contract where such general damages arise from a

loss of emotional benefits that were reasonably contemplated as bargained for during formation of the contractual agreement such as pleasure, pride of property ownership, satisfaction, among other usual things, and as were indeed reasonably contemplated during contract formation.

Monetary Jurisdiction

41. Whereas the Plaintiffs bring a joint Action, each with claims at the limit of the Small Claims Court, the Plaintiffs do so in accordance to the right to do so per the doctrine established within the common law including the cases of *Tope v. Stratford*, *Lock v. Waterloo*, *Kent v. Conquest Vacations*, *Bleeks, et al v. Keenan*, et al, as well as *McCrudden v. Nead*.

42. To the extent that the damages assessed in this Plaintiff's Claim exceed the monetary jurisdiction of this Honourable Court as allowable to each Plaintiff, each Plaintiff agrees to waive the amount which is in excess of the monetary jurisdiction.

Jurisdiction

43. The corporate Defendant carries on business at or from office premises located in Toronto, Ontario.

44. The human Defendant, Bruce, resides in Toronto, Ontario.

45. Accordingly, the Plaintiffs respectfully request that the Trial of this action take place at the Superior Court of Justice (Ontario) - Small Claims Court as is located in Toronto, Ontario.