



# Civil Resolution Tribunal

Date Issued: March 14, 2019

File: SC-2018-005776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Oksfeldt Developments Ltd. v. Metro Gate Motors Ltd.*, 2019 BCCRT 313

**B E T W E E N :**

Oksfeldt Developments Ltd.

**APPLICANT**

**A N D :**

Metro Gate Motors Ltd.

**RESPONDENT**

**A N D :**

Oksfeldt Developments Ltd.

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Oksfeldt Developments Ltd. (Oksfeldt) says the respondent Metro Gate Motors Ltd. (Metro Gate) incorrectly installed gate motors for a property gate so that there was not enough clearance for cars to drive through safely.
2. Oksfeldt claims \$1,917.50, made up of a refund of its \$500 deposit, \$367.50 to fix and re-coat the gate, \$210 for “new motor company re purposing, \$420 to have brick work re-done, \$420 for a component box and time spent to provide instruction to a new gate motor company.
3. In its counterclaim, Metro Gate says the gate installation work was satisfactory and Oksfeldt issued a cheque for the full amount of Metro Gate’s invoice on June 2, 2018. However, a few days later Oksfeldt put a stop payment on the cheque, at which point Metro Gate attended to remove its equipment. Metro Gate says Oksfeldt refused to return the remote and keypad. Metro Gate claims \$3,096.25 for loss of labour and equipment, and other damages.
4. Oksfeldt is represented by principal or employee Ian Molby. Metro Gate is represented by principal or employee Pritam Saggi.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a “he said, she said” scenario with both sides calling into

question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issue in this dispute is whether Metro Gate failed to install the gate motor to a satisfactory standard, such that it is responsible for damages to Oksfeldt.
11. In the counterclaim, the issue is whether Metro Gate completed the gate motor work satisfactorily such that it is entitled to compensation for time and equipment lost.

## EVIDENCE AND ANALYSIS

12. On April 24, 2018, Oksfeldt hired Metro Gate to install a gate motor at a property in West Vancouver for a total price of \$4,252.50. Oksfeldt paid a \$500 deposit to Metro Gate.
13. Mr. Molby provided evidence, which Metro Gate did not contest and I accept, that the work was to install gate motors, photo cells and an electric gate latch.
14. Metro Gate says the contract did not specify the size or angle for the opening. Oksfeldt says that 110 degrees or more of clearance was needed, but that Metro Gate's installation only allowed about an 85 degree opening. While I agree that the contract did not specify how far the gate should open, I find that the gate would have to open well to allow cars to pass in and out of the property. I find that good gate clearance, of more than 110 degrees, was an implied term of the installation contract.
15. On Wednesday May 30, 2018, Metro Gate installed a gate motor at Oksfeldt's property. The motor was installed on a 4x4 aluminum post. Metro Gate says the gate opened as much as possible given the position of the post.
16. Mr. Molby had to leave at about 11:30 a.m. that morning. He says Metro Gate requested a cheque for the gate installation from him before he left.
17. Because he could not stay to review the work, Mr. Moby provided a cheque, post-dated for June 2<sup>nd</sup>, in case the work turned out to be unsatisfactory.
18. Mr. Molby left Jordan Molby, who I infer is a relative, in charge of the work site.
19. Jordan Molby provided a written statement that he had to leave the site around 4:30, and the installation was not yet complete.
20. Metro Gate says the installation was completed around 4:30 p.m.

21. Based on evidence from another gate installer who indicated the job was difficult, I find that the gate installation was not yet complete when Jordan Molby left for the evening.
22. Metro Gate says Oksfeldt invited the owner of the home to provide the code, which Metro Gate then programmed. The owner opened the gate with the remote, was satisfied with it, took two remotes and a keypad and left. Metro Gate says Oksfeldt never returned these remotes and keypad. I find that Oksfeldt did not do so, based on a June 2, 2018 text from Oksfeldt saying showing it would return the remote if the \$500 deposit was returned to it.
23. Even if the owner used the gate remote that day, I find the important inspection was to occur the next morning.
24. On June 1, 2018, Jordan and Mr. Molby examined the gates and found that the south driveway gate was not opening past 85-90 degrees. Mr. Molby was not satisfied with the gate motor installation, because the lack of sufficient opening meant that cars could not pass through safely.
25. Mr. Molby says he told Metro Gate he was cancelling the payment due to unsatisfactory opening of the gate and incomplete work. Metro Gate agrees that Mr. Molby called that date but says that he told them the gate should open more than it does. Metro Gate said the gate would only open up to the column (a concrete and brick post). At that point, Mr. Molby told Metro Gate that the cheque had been stopped.
26. On June 6, 2018, Metro Gate went to the property to request payment. Metro Gate says it offered to make any changes Oksfeldt wanted, but that it needed to be paid for the work completed to date. By contrast, Oksfeldt says that Metro Gate indicated it could not fix the problem and that the gate was opening as far as it could.
27. Based on the evidence, I find that Metro Gate examined the gate installation and decided it could not fix it, due to the physical impediment of the stone pillar. This is consistent with evidence from the subsequent installer who had to ask that part of

the stone pillar be removed, in order to fix the installation so that the gate would open more.

28. When Oksfeldt refused to pay, Metro Gate removed the gate motor it had installed and took away the motor and equipment. Because the parties were in a dispute about whether this was appropriate, Mr. Molby called the police.
29. Some time later, Mr. Molby hired another gate installer, GC, to install the gate. GC confirms that the main gate could only open to about 90 degrees, because there was a stone pillar obstructing the motor bracket. This is consistent with the photographs filed in evidence. GC says he asked Mr. Molby to remove some stone to have the motor bracket installed in a different position so that the gate could open to 115 degrees. It was also necessary for GC to move the gate bracket 2 inches closer to the centre to achieve this result.
30. GC noted the job was a difficult one that required him to make two extra trips to the site specifically to address changing the opening from 90 degrees to 115 degrees. He invoiced Mr. Molby \$3,675.
31. On his July 5, 2018 invoice GC noted "Original motor installation was for a "push out" to open which would not have worked because the photo cells were mounted on pillars. The gate would have kept reversing to close and not have opened."
32. Based on GC's opinion and the photographic evidence, I find that Metro Gate did not install the gate motor in a satisfactory way, largely because it was responsible for placing the photo cells, which it mounted on the pillars and the motor bracket, which it placed in a less than ideal location. I accept GC's observation, given his long experience with gate motor installation, that Metro Gate's installation was not going to permit the gate to open fully due to the location at which the photo cells were mounted, and the placement of the motor bracket. In order to achieve full gate opening, GC had to mount the motor bracket on the stone pillar, which involved removing some stone from the pillar.

33. I find that Metro Gate failed to provide a satisfactory installation of the gate motors. Oksfeldt is entitled to damages caused by this failure, but not for costs it would have incurred either way.
34. Because Oksfeldt never paid Metro Gate the balance of its invoice, I find it cannot claim for installation costs of the gate motor in general. However, I find it is entitled to a refund of the \$500 it paid Oksfeldt.
35. I also allow the claim for \$367.50 to fix and re-coat the gate, because these costs flow from locating the motor bracket where it would not allow the gate to open fully. I do not allow the claims for \$210 for the new motor company “repurposing”, because the next motor installer had to do the installation over again, and the installation was more complex in order to ensure the gate opened fully.
36. I find that Oksfeldt would have incurred these costs anyway, had the first installation been properly planned. As for the stone work, I find that it would have required removal if the bracket had been properly placed by the first installers. That is, the proper location for the bracket required that some of the stone on the pillar be removed, something Metro Gate did not do. It was not an extra cost associated with Metro Gate’s failed installation. For the same reason, I dismiss the time spent and new box claims for \$420, since a box would have been required anyway and Oksfeldt paid only the deposit toward the Metro Gate install.
37. As for Metro Gate’s counterclaim, I find it did not suffer a loss that was caused by Oksfeldt. Rather, its own failure to properly plan the gate motor installation caused it to fail. Metro Gate reclaimed its motors and equipment. The additional time it had to spend doing so was a consequence of the initial work being less than satisfactory. I dismiss the counterclaim except in regard to the remotes and key pad, which I order Oksfeldt to return to Metro Gate within 7 day of it receiving the monies I have ordered Metro Gate to pay to it.
38. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable

dispute-related expenses. I see no reason in this case not to follow that general rule. I find Oksfeldt is entitled to reimbursement of \$125 in tribunal fees and \$74.99 in dispute-related expenses. I dismiss Metro Gate's claim for reimbursement for tribunal fees and dispute related expenses, as it was largely unsuccessful in this dispute.

## **ORDERS**

39. Within 30 days of the date of this decision, I order Metro Gate to pay Oksfeldt a total of \$1,078.02, broken down as follows:
  - a. \$867.50 for the deposit and fixing and re-coating the gate,
  - b. \$10.53 in pre-judgment interest under the *Court Order Interest Act*, from May 30, 2018 to present, and
  - c. \$199.99, for \$125 in tribunal fees and \$74.99 for dispute-related expenses which I find to be reasonable.
40. Oksfeldt is entitled to post-judgment interest, as applicable.
41. Within 7 days of receiving payment from Metro Gate, I order Oksfeldt to return the two remotes and 1 key pad to Metro Gate, unless the parties resolve that issue otherwise by mutual agreement.
42. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.



43. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Julie K. Gibson, Tribunal Member