



# Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-007934

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morse v. Hudyn*, 2019 BCCRT 582

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

Ted Morse

**APPLICANT**

**A N D :**

Stephen Hudyn

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. This dispute is about repair work on a stream connecting two ponds.
2. The applicant Ted Morse says he paid the respondent Stephen Hudyn \$500 to repair a stream or “transition” area connecting two ponds on his property. The

applicant says the respondent failed to complete the repair in a satisfactory manner. The applicant claims a refund of the \$500 paid.

3. The respondent says the \$500 payment was for work on both ponds and the transition stream. He says the work in the transition area was \$200 of the total value. For the other \$300, the respondent says both ponds were vacuumed and cleaned, and cracks in the waterfall repaired. The respondent says the transition stream was working well when he accepted payment. The applicant then called him a few months later, asking him to rebuild the stream so that the stream could handle a higher flow rate. The respondent said this would cost additional money. The respondent says the work done for the \$500 was completed in a satisfactory manner. He asks that the dispute be dismissed.
4. The parties are each self-represented.

## **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, he 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.

7. The applicant raised concerns that this dispute was not the subject of an oral hearing, such as those held by “Judge Judy” on television. In addressing this concern, I find that the assessment of what is the most likely account depends on its harmony with the rest of the evidence and not, as the applicant suggests, being able to look someone in the eye (see *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA)). In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
8. 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.
9. 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.
10. Under tribunal rule 9.3(2), 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.

## **ISSUE**

11. The issue in this dispute is whether the respondent’s work on the applicant’s pond and stream was unsatisfactory and, if so, what remedy is appropriate.

## EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
13. On May 12, 2017, the applicant agreed to have the respondent complete some repair work on his ponds and transition area.
14. The parties disagree about what the respondent was asked to do, and whether he did it satisfactorily.
15. A May 12, 2017 quote describes the work as follows:
  - a. The respondent would pour concrete in the transition area being a 3-4-foot-long area “to contain water within the pond structure”. The applicant quoted \$400 cash for this part of the job.
  - b. Pond holding area 1 would be drained, cleaned and repaired, with a price to be quoted at the time of repair, since the extent of needed repairs could only be assessed once the pond was drained.
  - c. The respondent would do investigative work for pond piping on an “open book contract” with all labour and materials are charged at \$20/person for two people and \$25 per working supervisor, plus a 40% markup on labour only.
16. The applicant says the respondent agreed to “make a cement border” on each side of the stream between the large and small pond on his property.
17. The concrete border is central to this dispute. The applicant suggests that the respondent was asked to build up a border wall to a 4-inch height, so that water of a certain flow rate would not exit the stream. The respondent says there was no specification about the height of the edging.

18. The applicant says the respondent failed to do the work properly, because the grass on each side of the stream is still wet. The respondent says the stream flowed properly when it was tested at the end of the job.
19. The respondent says the applicant called him a few months later, wanting to run the stream at a higher flow rate. At the time, the respondent told the applicant it could do additional work, for more money, or the applicant could reduce the stream's flow rate.
20. Because the written quote says nothing about a requirement that the concrete be poured to form a 4-inch-tall side border, I find, on balance, that no such specification was agreed between the parties. The quote only refers to concrete pouring in the transition area.
21. The respondent says the concrete pouring was completed, and that the applicant's wife reviewed the work, which included showing the system with water flowing through in a satisfactory manner. It is undisputed, and I find that, at that time, the applicant's wife paid \$500 for the work. I find below that this total price included some clean up and repair work in other areas of the pond system.
22. The applicant says he asked the respondent to drop any leftover cement down in the waterfall area, but that the respondent filled that area completely with cement, contrary to his wishes. Based on the photographs filed in evidence, I am unable to find that there was any deficiency in the cementing work done by the respondent.
23. The photographs show a concrete repair, completed by hand. The applicant says this repair should have been completed with a trowel. I find, that the type of tools used for repair were not specified in the agreement between the parties.
24. The 'before' photo shows there was no wall at the stream's edge, but I have found that there was no agreement requiring one. The photograph of the waterfall area also does not show any obvious deficiency in the respondent's repair work.

25. The applicant did not file any other evidence to prove that the job was done poorly. Though the applicant filed a photograph showing the concrete border after it was built up by a different contractor, he did not file evidence from that contractor saying the respondent's workmanship was defective.
26. As well, the respondent says he did some work cleaning up the applicant's ponds. At one point in his submissions, the applicant says his sons "were spring cleaning both ponds which they completed and Def (sic) did not help." At another point in his submissions, the applicant writes that there were some leaves left in the ponds, and that he offered the respondent a wet/dry vacuum to clean them up. The applicant did not file evidence from his sons. For this reason, and because the applicant's submission was internally inconsistent about whether the respondent did some or none of the pond clean-up, I prefer the respondent's evidence on this point.
27. I find the applicant has not discharged the burden of proof upon him. The applicant has not proven that the pond work, and in particular the edges of transition stream, were completed in an unsatisfactory manner. If the work was deficient, why did the applicant's wife assess the job as satisfactory and provide payment?
28. 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. As the respondent did not pay tribunal fees, I make no order in this regard. I dismiss the applicant's claim for tribunal fees.

## **ORDER**

29. I dismiss the applicant's claims and this dispute.

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Julie K. Gibson, Tribunal Member