



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-007822

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JPN Construction Ltd. v. LALONDE*, 2019 BCCRT 585

B E T W E E N :

JPN Construction Ltd.

APPLICANT

A N D :

JUSTEN MARC LALONDE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, JPN Construction Ltd., owned 2 building lots across the street from a lot owned by the respondent, JUSTEN MARC LALONDE. The applicant says the respondent agreed to share the costs for Fortis BC to install a natural gas line on their street. The applicant says the respondent later refused to pay his share, so the

applicant had to pay the respondent's share to Fortis BC to obtain the natural gas service. The applicant seeks payment of \$3,455.33 for the respondent's share.

2. The respondent denies the applicant's claim. He agrees that the applicant contacted him about the possibility of sharing natural gas connection costs, but the respondent says he never agreed to such an arrangement, and later informed the applicant he was not interested in natural gas service.
3. The respondent is self-represented. The applicant is represented by Bhupinder Dhillon, who I infer is its principal.
4. For the reasons that follow, I find the applicant's claims must be dismissed.

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* (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 the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent must pay the applicant \$3,455.33 for natural gas connection costs.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Mr. Dhillon, on behalf of the applicant, says the respondent agreed to pay a share of obtaining natural gas service. I find that Mr. Dhillon, who bears the burden of proof in this dispute, has not established that the respondent ever agreed to pay \$3,455.33, or another amount, for installation of a natural gas line.
12. The respondent agrees that he and Mr. Dhillon discussed the possibility of sharing natural gas installation costs. The respondent says Mr. Dhillon contacted him in July or August 2016 about the applicant's interest in connecting the applicant's 2 lots to natural gas, and asked if the respondent would be interested in sharing the cost. The respondent says he told the applicant to keep him informed of the cost so he could make an informed decision. The respondent says that on September 12, 2016 he verbally informed the applicant he was not interested in connecting to natural gas because he was thinking of selling his property.

13. Mr. Dhillon denies that the respondent told him on September 12, or at another time, that he was not interested in sharing natural gas installation costs. Even if that is true, the applicant must prove that the respondent did agree to pay at one point., and that the parties agreed on an amount to be paid. I find the evidence before me does not support that conclusion.
14. I place significant weight on the written statements from SE, the Fortis manager who negotiated the natural gas line installation on the parties' street. In a February 4, 2019 email, SE wrote that the account for the gas line extension was opened by the applicant. SE said Fortis BC had no contract with the respondent or the respondent's property.
15. Thus, while Mr. Dhillon submits that the applicant paid the respondent's "share" to Fortis BC, SE's email confirms that the respondent never had a contract with Fortis BC, and did not owe Fortis BC any amount.
16. In a March 27, 2017 email, SE wrote a detailed summary of the events in question. His email included the following information:
 - Where there is not enough customer demand to offset construction costs in a new area, a customer may opt to pay Fortis BC the cost difference in order to have the gas line extended.
 - February 18, 2016 – Mr. Dhillon contacted Fortis BC to request service for his lots. He mentioned that the house to be built on the respondent's lot would likely want a gas connection.
 - Fortis BC did a survey, and in June 2016 told him the required customer contribution for installing the gas line would be \$13,000. Mr. Dhillon indicated that he planned to discuss a shared contribution with the respondent.
 - August 2, 2016 – SE sent a letter to Mr. Dhillon and the applicant confirming that the required contribution was \$13,553.43. Mr. Dhillon provided a cheque for \$9,487.40.

- September 9, 2016 – SE sent a reminder email to the respondent “about picking up a cheque for \$4,743.70”.
- September 12, 2016 – the respondent informed SE that he was unsure about contributing, as his plans for his lot were undecided.
- September 30, 2016 – the respondent emailed SE to ask about the impact of a new 40 year amortization schedule. SE responded that due to the new amortization, the required contribution was reduced to \$10,366, or \$3,455.33 per house. The respondent never responded to this email.
- October 24, 2016 – SE returned Mr. Dhillon’s original check, and picked up a new cheque from Mr. Dhillon for \$10,366 “with a request to proceed”.

17. I find that this chronology set out by SE establishes that while the respondent considered contributing to the natural gas line installation costs, and was involved in some negotiations, he never agreed to pay. The applicant has not proven that the respondent agreed to pay the applicant \$3,455.33. Rather, SE’s email shows that the applicant made the decision to pay the full amount and proceed with the installation, even though the respondent had not agreed to pay anything.

18. Mr. Dhillon relies on the fact that the respondent’s subsequent real estate sale listing says there is natural gas service to the lot. However, I find that does not prove that the respondent is obligated to pay, or that he was unjustly enriched. The letter from the respondent’s listing agent confirms that he mentioned the gas service in the listing because when preparing the listing he called Fortis BC, who confirmed there was gas on the street. The listing agent wrote that the respondent’s lot was not serviced or connected to gas.

19. While the applicant would have preferred the respondent to pay a share of the natural gas line costs, the respondent never agreed to do so. Rather, SE’s email indicates that the applicant decided to go ahead with the installation even without the respondent’s contribution. Thus, I find the applicant’s claim must be dismissed.

20. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

21. The applicant claimed reimbursement for legal fees. I would not order reimbursement of these legal fees in any event. Tribunal rule 9.4(3) says that except in extraordinary cases, the tribunal will not order payment of legal fees in small claims disputes. I see no reason to depart from this general rule in this case. I do not order reimbursement of legal fees.

ORDER

22. I order that the applicant's claim, and this dispute, are dismissed.

Kate Campbell, Tribunal Member