



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Margerison v. Travis Klettke (dba Aqua Trends Pool & Spa) et al*,
2019 BCCRT 795

B E T W E E N :

Daryl Margerison

APPLICANT

A N D :

Travis Klettke (Doing Business As Aqua Trends Pool & Spa) and Blue
Antler Waterscapes Ltd. dba. Aqua Trends Pool and Spa

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about swimming pool equipment and whether a pool heater was damaged by improper installation by the respondents. The applicant, Daryl Margerison, seeks \$5,000 in compensation.
2. The respondent Travis Klettke, named as Travis Klettke (Doing Business As Aqua Trends Pool & Spa), is an employee of the respondent Blue Antler Waterscapes Ltd. dba. Aqua Trends Pool and Spa. In this decision, I will refer to the corporate respondent as Aqua Trends, as distinct from Mr. Klettke personally. The respondents deny liability and say they properly installed the pool equipment, namely a chlorinator and heater. They allege the applicant improperly maintained the pool's water chemistry and that this caused the heater's damage.
3. Mr. Margerison and Mr. Klettke are each self-represented. Aqua Trends is represented by Evan Eccles, who I infer is a principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.

6. 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.
7. 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

8. The issue in this dispute is whether the respondents improperly installed the pool equipment causing damage to the pool's heater, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. In 2016, through Mr. Klettke, Mr. Margerison hired Aqua Trends to install a pool, pool deck, and related pool equipment. The equipment included a Hayward H200 heater, a chlorinator, and a check-valve to keep the chlorinated water from being back-siphoned or sucked into the heater when the pool's pump was shut off. The agreed price was around \$116,000, which Mr. Margerison paid in June 2017.
11. All parties agree the 2 failures of the pool heater (it was repaired once and replaced the second time) were due to a "chemical failure" or chemical damage. The parties disagree about what caused the chemical failures. The applicant says they were

due to the respondents' improper installation of the chlorinator upstream and higher than the pool's heater, contrary to the heater manufacturer Hayward's specifications. He says this led to the chlorinator's chemicals damaging the heater. The respondents say the failures were due to the applicant improperly maintaining his pool's chemistry balance.

12. Aqua Trends installed an "ultraviolet system" which Mr. Margerison says helped to keep the pool's overall chlorination needs to a minimum, with the chlorinator thus generally set to "relatively low levels". Mr. Margerison says that he followed Mr. Klettke's maintenance instructions.
13. I turn to the relevant chronology.
14. In June 2018, the heater started failing, namely it was leaking water. Around that time, Mr. Margerison had the heat exchanger part replaced. On July 30, 2018, there was another leak in the pool heater, and shortly thereafter the replaced exchanger was found to be corroded. This second failure ultimately led to the heater's entire replacement on or around August 22, 2018.
15. On August 16, 2018, Mr. Klettke texted Mr. Margerison and suggested he contact Hayward for a warranty, as Mr. Klettke said he had installed the heater and plumbed it "to the manufacturers specs." As discussed below, I find Mr. Klettke did not install it according to Hayward's specifications.
16. When Mr. Klettke attended on August 1, 2018 to install a bypass, so the applicant could have his pool water filtered without the heater, the chlorine-resistant check valve was found to be corroded.
17. Based on an August 22, 2018 email from Hayward's technician LM, the check valve failed and chlorine backed up into the heater and damaged the heat exchanger. LM wrote that the damage indicated "aggressive water chemical failure". LM's email does not mention the chlorinator.

18. In his reply submission, the applicant says that during the August 1, 2018 bypass installation the respondents installed a new chlorinator below the heater, without being asked. The applicant submits that this shows the respondents realized they had made an error in initially installing it above the heater, causing the damage. The respondent did not address how or why they installed the new chlorinator below the heater, and on balance I accept the applicant's description.
19. The respondents say the damaged check valve indicates low PH or acidic or unbalanced water. The respondents provided a December 3, 2018 field report from TW, a Hayward representative who evaluated the pool's heater and concluded the tubes had been consistently thinned, showing a "total water chemistry issue rather than a plumbing-related problem as any cases other than total water chemistry will result in visible patterns of worse corrosion closer to the source of the issue". However, there is no evidence before me showing any comparison of other corroded items in the applicant's pool.
20. The evidence also shows TW is Hayward's "District Sales Manager". I have no evidence before me that TW has the required technical knowledge about pool chemistry to allow me to rely on his opinion as expert evidence.
21. Further, there was nothing in TW's report that mentioned the chlorinator, including its placement above the heater. The respondents took a water sample on August 2, 2018, which they say showed above average chlorine levels and "incredibly acidic water". Mr. Margerison says it is undisputed the pool's water was out of balance on that date, as it was after the respondents moved the chlorinator on August 1 and the failed check-valve and exchanger were replaced. I find that I cannot rely on the respondent's water sample evidence to show the applicant mis-managed his pool chemistry, as alleged by the respondents.
22. The respondents say the applicant did not do any professional water testing before the destruction of 2 heat exchangers. They say the applicant took responsibility for the first destroyed heater due to "bad water chemistry", paid the bill, and never contacted Aqua Trends. The respondents say the majority of the destruction

occurred later when the water became more acidic and the check valve was not yet replaced. I find there was no reason for the applicant to have professional water testing done before the heaters failed. The evidence shows the applicant was in communication with the respondents. It is unclear to me on what basis the respondents say “the majority” of the destruction occurred later. I find the evidence shows the pool’s chemistry problem was resolved once the chlorinator was installed properly and all of the corrosion issues were corrected after the heater was replaced.

23. The respondents also say that installing chlorinators above the heater’s elevation was common and they have had no other problems. Plus, they say they always use a corrosion resistant Jandy check valve, which had never failed before the applicant’s did. Yet, the respondents do not explain why they re-installed the heater above the chlorinator and they do not explain why the first time they felt there was good reason to install the heater contrary to Hayward’s specifications.
24. So, what is the applicable law for a negligence claim like this one?
25. It is uncontroversial that the general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent’s failure to meet that standard could cause the applicant’s damages, and the failure did cause the claimed damages.
26. This dispute comes down to the evidence about how the chlorinator ought to have been installed, and, whether an improperly installed chlorinator or improperly maintained pool chemistry caused the heater’s damage.
27. On the one hand, the subject matter is technical and outside the knowledge and experience of the ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). Generally, this means expert evidence is required.
28. I have TW’s evidence, which I have found above I cannot rely on as I do not have evidence of his having the appropriate technical expertise. LM’s August 22, 2018

email from Hayward that the problem was “aggressive water chemical failure” also does not show an improperly installed chlorinator caused the heater’s damage.

29. However, here Mr. Klettke texted the applicant in August 2018 that he had installed the heater according to the manufacturer Hayward’s specifications. Yet, based on the Hayward manual in evidence, the heater clearly should have been installed above the chlorinator, not below it as the respondents had done before correcting the chlorinator’s placement on August 1, 2018. In particular, the manual clearly states that a chlorinator must be installed downstream from the heater and at a lower elevation than the heater, to prevent highly concentrated sanitizers from back-siphoning into the heater. The manual states that back-siphoning usually occurs when the pump is shut off and a pressure differential is created. In their submissions, the respondents do not dispute that they initially installed the heater below the chlorinator, and photos in evidence show the heater below it. They simply say this was standard practice at the time. The respondents also provided no explanation for Mr. Klettke’s earlier assertion that he had installed the heater according to Hayward’s specifications. On balance, I find the respondents improperly installed the chlorinator. Based on the Hayward manual’s description of why the chlorinator should be installed below the heater, I find it more likely than not that the improperly installed chlorinator caused the “aggressive” water chemistry. It is undisputed that the unbalanced chemistry is what damaged the pool’s heater.

30. In summary, I find the applicant has proved Aqua Trends is responsible for the heater’s failures. I dismiss the applicant’s claims against Mr. Klettke personally, as I find he was Aqua Trends’ employee and the applicant’s contract was with Aqua Trends. Aqua Trends is responsible for Mr. Klettke’s work as its employee.

31. I turn then to the applicant’s claimed damages.

32. The applicant’s compensation claims are: \$770 for a replacement part after the heater failed the first time, \$2,619.16 for a replacement Hayward heater after a second failure, \$1,675 in the applicant’s labour in dealing with the pool issues at 67 hours x \$25 per hour, \$940 for loss of use of his pool for 47 days at \$20 per day,

and \$775.37 in chemicals and related equipment to get the pool running properly again. The applicant abandoned the excess over \$5,000, the tribunal's small claims monetary limit.

33. The applicant provided \$4,096.67 in receipts for the following, which I allow as reasonably related to his claim: \$770 for the heat exchanger, \$133.88 for removal and installation of pool heater, \$2,485.28 for the new pool heater, \$372.59 for replacement pool filter, \$334.92 for pool chemicals. I do not allow the claimed \$67.86 for an increase in the applicant's water bill as I find the applicant has not shown the claimed increase was caused by the heater damage.
34. The respondents argue the heater could have been fixed rather than replaced, but have provided no evidence in support. They similarly say the filters could have been purchased for half-price and say Hayward offered replacement parts for free, but again provided no evidence in support.
35. On a judgment basis, I allow \$500 for loss of pool use. I say this in part because the applicant was vague in saying only that his family had to entertain themselves in other ways, but it is not necessarily clear they would have used the pool daily. Only the applicant is a party to this dispute. However, I find a daily rate of \$20 is reasonable and I accept the pool's poor chemistry meant for some of the time the applicant could not use the pool.
36. Finally, I turn to the applicant's claimed \$1,675 in his own labour to deal with the pool management. The applicant did not provide a time tracker or any break-down for the claimed 67 hours of clean-up, which on balance I find is excessive. I find the evidence is insufficient to support significant time spent removing stains on tiles and concrete. On balance, I allow \$250 for clean-up related to the heater damage and associated chemical imbalance damage. This brings the applicant's total compensation award to \$4,846.67.

37. The applicant is entitled to pre-judgment interest on the \$4,846.67 under the *Court Order Interest Act* (COIA), from September 1, 2018, the date I find most reasonable in all of the circumstances given the timing of the pool's repairs. This equal \$71.13.
38. In accordance with the Act and the tribunal's rules, as the applicant was largely successful I find he is entitled to reimbursement of \$175 in tribunal fees. The applicant also claims \$46.01 in dispute-related expenses, for registered mail and a company search, which I find reasonable.

ORDERS

39. Within 14 days of this decision, I order Aqua Trends to pay the applicant a total of \$5,138.81, broken down as follows:
- a. \$4,846.67 in damages,
 - b. \$71.13 in pre-judgment interest under the COIA,
 - c. \$221.01, for \$175 in tribunal fees and \$46.01 in dispute-related expenses.
40. The applicant's remaining claims, including all claims against Mr. Klettke, are dismissed. The applicant is entitled to post-judgment interest as applicable.
41. 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.

42. 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.

Shelley Lopez, Vice Chair