



Civil Resolution Tribunal

Date Issued: September 18, 2019

File: SC-2019-003619

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ferguson v. Jamie Wright (dba King Koncrete)*, 2019 BCCRT 1097

B E T W E E N :

MIKE FERGUSON

APPLICANT

A N D :

JAMIE WRIGHT (Doing Business As KING KONCRETE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a contract for a concrete pad.
2. The applicant, Mike Ferguson, hired the respondent, Jamie Wright (Doing Business As King Koncrete), to install a concrete pad on his property. Due to an alleged error

in the concrete pump hose length, the concrete was never poured. The applicant says the respondent coordinated the pump and is responsible for the error. The applicant claims reimbursement of \$2,262.40, the cost of the wasted concrete.

3. The respondent agrees that the concrete was wasted but denies that it was his fault. The respondent says he should not have to pay for the wasted concrete.
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* (CRTA). 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, or a combination of these. Some of the parties' submissions amount to a "he said, he said" scenario. However, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided to hear this dispute through written submissions.
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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

9. The issue in this dispute is to what extent, if any, the respondent must reimburse the applicant for the wasted concrete.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The root of this dispute is whether there was insufficient hose to reach the job site, and if so, who is responsible. The applicant says the concrete was wasted because there was insufficient hose length.
12. On about March 30, 2019, the applicant hired the respondent to perform the finishing work on a concrete pad for a set price of \$1,200. The parties had no written contract setting out the terms or scope of the job. I find the parties organized and confirmed the details of the job by text message. Since the texts are the only independent record of what the parties discussed, I rely on them in determining the facts.
13. On April 5, 2019, the applicant texted the respondent that they would need to “get in a pumper and lean mix concrete to fill the hole”. The applicant suggested that he (the applicant) could have City Pumping or Concrete Pumping (Coho) do the work

and provide “a guy” to guide the hose to fill it up. The respondent agreed to the applicant’s plan. I infer from the later text messages that the applicant intended to hire City Pumping or Coho but did not then book it himself.

14. Coho and City Pumping provided no evidence and are not parties to this dispute.
15. On April 27, 2019, the respondent texted the applicant to ensure they were “good to go” for April 30, 2019. The respondent asked the applicant whether he would like the respondent to book the concrete for him and the volume needed. I infer the applicant agreed because he gave the respondent the concrete volume. The applicant asked if the respondent would like to look at the unfinished pad. The respondent said he was busy and asked for pictures. The applicant sent pictures of the unfinished pad. The respondent asked how many feet the pad was from the driveway. The applicant did not provide any distance but told the respondent “the slab is way down at the water so it is a lot of hose.” The applicant suggested he call City Pumping because they had been there twice before. The respondent responded a few hours later confirming that they were “all booked” for April 30, 2019.
16. The respondent booked Coho rather than City Pumping to pump the concrete. He submits City Pumping was unavailable, which I accept. There is no evidence to find otherwise.
17. On April 30, 2019, Butler Concrete (Butler) supplied the concrete and Coho arrived to pump it to the pad site. It is undisputed that the concrete was pre-mixed in Butler’s truck and had a limited life span of a few hours. The applicant says that Coho had insufficient hose to reach the site to pour the concrete. The applicant claims the respondent either gave Coho no measurement or told Coho the pour would require only 100 feet of hose, when it actually required 300 feet. The applicant provided no direct evidence of what the respondent told Coho.
18. The applicant says Coho attempted to locate additional hose. The applicant says he also tried to rearrange the pump through City Pumping, but it was too busy. It is

undisputed that no one was able to locate additional hose on time. The applicant says that Butler had to dump and waste the concrete before it started to harden in the mixer.

19. The applicant's invoice from Butler shows he paid \$2,262.40 for the wasted concrete, the claimed amount in this dispute. There is no Coho invoice or other details of Coho's contract. The respondent says Coho would have invoiced the applicant directly. The applicant says the respondent was responsible for coordinating Coho but does not say that Coho's contract was with the respondent as a subcontractor. On the weight of the evidence, I find that the applicant's contract was directly with Coho, with the respondent acting as the applicant's authorized agent in making the initial arrangements.
20. The respondent says that he did not give Coho any measurements when he booked the job because he did not know the distance to the pad site. He says he only notified Coho when the pump was required based on scheduling. I accept this to be the case. I find there is no reason that the respondent would have told Coho a specific distance. It is undisputed that the respondent had neither measured the site nor been given the specifications for the hose length.
21. The applicant argues that it is "normal procedure" for the finisher to "be responsible for and coordinate the pumping". He argues that the respondent should have attended the site in advance and directed "the pumper on what is required, or at least have the pumper attend the site ahead of time to ascertain the site conditions". He says he "directed" the respondent to use City Pumping who had experience with the job site, but the respondent booked Coho instead.
22. The respondent's position is that it is normal practice for the pump company salesperson to measure the job ahead of time. The respondent says Coho should have measured or called prior to the pour if they needed the measurements. He denies that this was his responsibility as a finisher.

23. The respondent also denies there was insufficient hose. He says the applicant wanted to route the hose around the house so as not to damage his stairs, and this route required additional hose length. The respondent submits that had the applicant allowed them to use the alternative stairs route, they could have completed the job and not wasted the concrete. In his reply, the applicant makes no submissions on the alternative route. I have no evidence on whether there was a real potential for stair damage had the hose used that route. Since the applicant does not specifically refute that there was an accessible alternative route, I infer an alternative route might have existed to pour the concrete.
24. The applicant has the burden of proof on a balance of probabilities. I find he has not established that it was the length of hose rather than his choice of route that caused the concrete waste. I find this is enough to dismiss the claim. However, even if the hose length was wrong, I find the applicant has not proved that the respondent is responsible for the error.
25. I find it more likely than not that the respondent had coordinated the job with Coho on a voluntary basis, as an agent for the applicant. The applicant has not established that coordination or oversight was part of their contract. Based on the parties' text messages, I find their contract included only the finishing work and not any oversight responsibilities. The applicant provided no supporting evidence to establish the "normal procedure" for a finisher such that I should find oversight responsibilities were an implied term in the contract.
26. Though the respondent booked with Coho rather than City Pumping, I find he did so reasonably. I find the parties' texts show the applicant only suggested City Pumping and did not "direct" it. The evidence shows that Coho is a professional pumping company and City Pumping was unavailable. I find the respondent could have reasonably expected Coho to ensure it had the equipment to perform the job. In terms of the applicant's reliance, I find it more likely than not that the applicant would have relied on the concrete pumper and not the respondent to have the necessary equipment. If the applicant relied on the respondent, I find his reliance

was unreasonable because he knew or ought to have known the respondent had no specifications for the hose distance.

27. For the reasons set out above, I find the applicant has not established on a balance of probabilities that the respondent caused his loss or that the respondent was otherwise liable for the wasted concrete. So, I dismiss the applicant's claim.

28. Under section 49 of the CRTA 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. Since the applicant is unsuccessful, I award no fees or expenses. The successful respondent did not claim any fees or expenses.

ORDER

29. The applicant's claim and this dispute are dismissed.

Trisha Apland, Tribunal Member