Civil Resolution Tribunal

Date Issued: April 24, 2020

File: SC-2019-008048

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seitz v. McGillis*, 2020 BCCRT 446

B E T W E E N :

ROBERT SEITZ

APPLICANT

A N D :

KEVIN MCGILLIS and DENISE MCGILLIS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about a shared well. The applicant, Robert Seitz, says that there is a well on his property that is shared with properties owned by the respondents, Kevin McGillis and Denise McGillis, as a result of a water sharing agreement and easement. The applicant says that the respondents did not follow a

cost-sharing agreement about the operation and maintenance of the well and opposed his installation of a geothermal system. He asks for an order that the respondents pay him $4,191.92 for $1,806.80 in pump operating expenses, $1,200 for outstanding maintenance and $1,185.12 for legal expenses.

2. The respondents have a differing view of the cost-sharing agreement, and say they have complied with it. The respondents admit that they are responsible for their portion of the ongoing costs for the well, but they disagree with the amounts claimed. The respondents deny that they are responsible for the applicant's claimed legal expenses.

3. The parties are self-represented.

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* (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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

8. The parties' disagreements are not confined to the issues identified in the Dispute Notice. The parties disagree about whether the ongoing well-related costs should be apportioned based on usage or the original water sharing agreement. The parties' submissions refer to the possibility that the respondents will drill a new well or arrange for another water source on their properties. The parties' submissions also discuss whether the applicant's geothermal system is permitted by the water sharing agreement or results in him using more than his share of the water produced by the well. As these issues are not before me in this dispute, I will not address them.

9. I would point out that the tribunal does not have jurisdiction over all matters covered by the water sharing agreement. Section 118 of the CRTA sets out the tribunal's jurisdiction over small claims matters as including debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property. I am satisfied that the claims set out by the applicant in his Dispute Notice are for debt and damages, and are therefore within the tribunal's jurisdiction. However, as the well system and water flowing through the well are not personal property, they do not fall within the scope of section 118 of the CRTA. I would not have been able to

address the other matters discussed by the parties even if they had been issues in the dispute.

ISSUES

10. The issues in this dispute are:

    a. whether the respondents must pay the applicant $1,806.80 in past pump operating expenses,

    b. whether the respondents are responsible for well maintenance and repairs at an estimated cost of $1,200, and

    c. whether the respondents must reimburse the applicant $1,185.12 in legal expenses from the disagreement about the geothermal system.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

12. The parties own adjacent lots in a recreational development. The applicant owns lot 1, and the respondents own lots 2 and 3. There is 1 dwelling on the applicant's lot and 5 cabins on the respondents' lots.

13. The parties share a well system which is located on lot 1. An August 1977 well sharing agreement states that the owners and occupants of lots 1, 2 and 3 will "share equally the water produced from the well" and "share equally the usual cost of the maintenance and operation" of the well and associated pipeline system. This agreement also created an easement to allow for the operation of the water system, and stated that the owner of the lot where the well is located (namely, lot 1) is the

well's operator "until relieved of that duty by agreement among the lot owners served by the system".

14. The BC Hydro electrical bills for the well's operating costs were mailed to the applicant's home in another jurisdiction. The parties agree that they shared water and electrical operating costs for the well equally between 1985 and 1999. According to the applicant, at some point in 1999 he reached a verbal "gentleman's agreement" with Mr. McGillis that the applicant would cover the electrical costs and the respondents would pay the maintenance costs for the well.

15. The applicant says the respondents did not pay anything towards the well's operating costs between 1999 and 2018. He also says that he paid maintenance costs between 2014 and 2019. The applicant says he approached the respondents in the spring of 2018 to change the "gentleman's agreement" and recover what he felt were outstanding contributions from the respondents, but they did not find a resolution.

16. Ms. McGillis says that she was not involved with the discussions about the costs of the well, but it is her understanding that they were shared equally among the 3 lots. Mr. McGillis says there was never an agreement to share costs as described by the applicant. He says that he paid the applicant cash for his share of the expenses between 1999 and 2006. Mr. McGillis says that he paid approximately $2,100 for maintenance work in 2007 and instead of paying his approximate $700 share of this cost, the applicant agreed to deduct the respondents' portion of the electrical operating costs from this amount until the $700 was "extinguished". The respondents say that they have paid over $1,800 to the applicant since 2008.

17. In the fall of 2015, the applicant connected a geothermal system to the shared well system. The respondents took the position that the geothermal system was not permitted by the well sharing agreement, that it resulted in increased operating costs, and that it caused problems with water pressure and supply on their properties. Both parties obtained legal advice about this issue, but they did not resolve their differences.

Operating Expenses

18. Under the water sharing agreement, the applicant has operational responsibility for the well but the lot owners have equal responsibility for the electrical operating costs. The water sharing agreement specifically contemplates the possibility that the lot owners may make changes to their responsibilities under the agreement. It does not require that such changes be set out in writing. Verbal contracts can be binding, but they must be proven.

19. In this case, the parties disagree about whether there was an agreement (verbal or otherwise) to alter their responsibilities. As the applicant bears the burden of proof, he must establish the existence of the agreement and its terms.

20. It is not clear to me why the respondents would agree to the cost sharing arrangement the applicant says he proposed, given the potential disparity between maintenance expenses and electrical costs. Further, I find that the parties' conduct does not suggest the presence of an alternate agreement. An exchange of email messages in March of 2017 about a maintenance item suggests that Mr. McGillis thought that well maintenance was a shared responsibility, possibly based on who was at the property when repairs needed to be done. I also find that it would be inconsistent with a different cost sharing agreement for the applicant to pay all the operational costs between 1999 and 2018 and, with the exception of the $2,100 in work done by the respondents in 2007, also take on maintenance responsibilities.

21. The parties may have had conversations (and perhaps misunderstandings) about taking on different responsibilities for the well, but I find that the applicant has not proven that there was an agreement in this regard. Accordingly, I find that the terms of the water sharing agreement applied, with each lot being responsible for one third of the electrical operating costs of the well. The next consideration is whether the applicant has established that the respondents owe him $1,806.80 for their share of the well operating expenses.

22. The applicant did not explain precisely how he arrived at the claimed amount or provide supporting evidence in the form of invoices. He submitted a detailed spreadsheet setting out the electrical costs he attributes to the well operation between 1999 and 2020. However, he did not provide the BC Hydro invoices themselves. The spreadsheet shows the operating costs between September of 1999 and August of 2019 as being $3,196.18, two thirds of which would be the respondents' responsibility. The spreadsheet identifies the respondents' portion as $1,981.76, but my arithmetic results in $2,109.48. Both of these numbers differ from the claimed amount of $1,806.80. The applicant did not explain the discrepancy.

23. Further, the respondents have sent a number of electronic transfers to the applicant, including 2 transfers in March of 2019 which were not accepted by the applicant. Another 4 transfers in 2019 totalled $1,121.69, and 1 of these payments was sent to the applicant after he filed his Dispute Notice. Based on the correspondence in evidence, it also appears that there may have been other payments from the respondents to the applicant during the time frame in question. It is not clear to me what payments, if any, the applicant may have applied to his claim for amounts owing.

24. Based on the evidence before me, I am unable to determine what amounts may be owing to the applicant by the respondents. Bearing in mind that the applicant bears the burden of proof, I find that the applicant has not established that the respondents owe him $1,806.80 for operating expenses. Given my finding, I do not find it necessary to consider whether any portion of the applicant's claim for operating expenses was brought outside the applicable limitation period in the *Limitation Act*. I dismiss this claim.

Pump Maintenance and Repairs

25. The applicant's position is that the well's pressure tank may be compromised as a result of "regular maintenance neglect". The applicant asks for an order that the respondents pay for $1,200 in well maintenance and repair expenses that he says are required as a result of their failure to perform their agreed-upon maintenance

obligations. The applicant says that the $1,200 is a “guesstimate” of the cost of repairs.

26. The respondents say the applicant is the operator of the well and if maintenance was required, he should have completed it. The respondents say that if the tank is leaking, it should be replaced as part of regular maintenance with each lot being responsible for one third of the cost. The respondents suggest that if there is a problem with the tank, it is probably due to age.

27. The applicant’s view is that the respondents’ apparent failure to repair a switch in 2017 resulted in damage to a tank, and that the respondents have agreed to replace it. In a March 26, 2019 email message, Mr. McGillis indicated that he would pay for the cost of replacing the tank “if it is deemed to be compromised upon evaluation”. This message appears to have been sent in an attempt to resolve the parties’ disagreement, and I do not find that it amounts to an admission of fault or responsibility.

28. Further, the evidence before me does not contain an evaluation or inspection to show the tank’s condition, or to comment on whether maintenance issues could have damaged the tank. A November 28, 2019 letter from the installer of the applicant’s geothermal system says that the water interruptions and shortages were due to unspecified “maintenance issues with well pumping equipment”. This letter does not state that the tank (or any other part of the well) is in need of repair or replacement, nor does it comment on the estimated cost of any such work.

29. Based on the evidence before me, I also find that the applicant has not established that the respondents’ actions or inactions damaged any part of the well, that the tank requires replacement, nor has he established the cost of this work. In addition, as discussed above, I have found that there was no agreement that the respondents would assume responsibility for well maintenance. I find that the applicant has not proven that the respondents bear responsibility for any repair or maintenance outside of the water sharing agreement, and I dismiss this claim.

Legal Expenses

30. The applicant asks for reimbursement of $1,185.12 in legal costs he incurred as a result of the respondents' opposition to the geothermal system. The respondents say that the applicant sought legal advice "on his own accord" and should be responsible for the expenses.

31. There is nothing in the water sharing agreement that prevents the parties from seeking legal advice or that requires the parties to reimburse each other for legal expenses. In dealing with their dispute about the installation of the geothermal system, the parties chose to obtain legal advice. While it was open to them to do so, I find that there is no basis, in the context of this dispute, for the respondents to reimburse the applicant for his expenses. Accordingly, I dismiss this claim.

32. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member