



Civil Resolution Tribunal

Date Issued: June 25, 2020

File SC-2020-001719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Atwal v. Southwest Contracting Ltd.*, 2020 BCCRT 706

BETWEEN:

RAYMOND ATWAL

APPLICANT

AND:

SOUTHWEST CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Raymond Atwal, says that the respondent, Southwest Contracting Ltd. (Southwest), performed “heavy duty construction” in his neighborhood which caused vibrations that allegedly damaged his home. Mr. Atwal seeks \$703.50 in damages to repair his drywall and crown moldings.

2. Southwest agrees that it performed construction work in the neighborhood, but it denies that it damaged Mr. Atwal's home. It says it is not responsible for Mr. Atwal's home repair costs.
3. Mr. Atwal is self-represented. Southwest is represented an employee or officer.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Throughout his arguments, Mr. Atwal challenges the credibility of Southwest's witnesses. Credibility is about whether a person is being fully truthful in their evidence. I considered whether an oral hearing is more appropriate here. For the following reasons, I decided that it is not.
6. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or CRT 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.
7. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I find that I am

properly able to assess and weigh the documentary evidence and submissions before me through written submissions.

8. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

10. The issue in this dispute is whether Southwest's construction work damaged Mr. Atwal's home.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Atwal as the applicant must prove his case on a balance of probabilities. I have reviewed all of the evidence and arguments but only refer to them to the extent necessary to explain and give context to my decision.
12. Mr. Atwal says that in 2018 Southwest performed heavy construction work about 90 to 100 meters from his home. He says that his home vibrated and shook constantly for over a week during the construction. Mr. Atwal says he noticed drywall and crown molding damage on October 24, 2018 and says he had no damage prior to the "fall of 2018". As mentioned above, Mr. Atwal alleges that the damage was caused by Southwest's construction work.
13. Southwest says that the work site was about 100 meters from Mr. Atwal's home. It says that it performed site grading, trench excavations, storm and sewer pipe installation, and pavement cutting and reinstallation (construction work). Southwest

says that its machines caused some vibrations but not enough to damage Mr. Atwal's home.

14. The statement in evidence from Southwest's site supervisor says Southwest performed the construction work from October 17 to 31, 2018. Mr. Atwal says this is "not truthful". He says that the City of Surrey's documents in evidence show the construction happened over several months. However, I find the city's documents just show some field testing by others. I prefer the evidence of Southwest's supervisor that the dates were October 17 to 31, 2018, since he oversaw the construction work and Mr. Atwal has not provided other specific dates. I find it is not clear on the evidence exactly when Southwest caused the vibrations within that 2 week period.
15. The issue before me is whether Southwest's construction work damaged Mr. Atwal's home.
16. To support his claim, Mr. Atwal submitted two statements as expert opinion evidence under CRT rule 8.3. Southwest did not dispute the admissibility of the expert opinions. I find they substantially comply with the CRT rule 8.3 and I accept them as expert evidence.
17. One statement is from Jetender Sekhon, a licensed builder who says he does home construction and renovations. Mr. Sekhon stated that he looked at the drywall and crown moldings in Mr. Atwal's home and the damage "could easily been cause[d] by construction equipment vibrations". Mr. Sekhon did not state the type of construction equipment that could cause the damage. So, I do not know if he meant the equipment used by Southwest. I find that Mr. Sekhon's opinion that equipment vibrations "could" cause damage is speculative and insufficient to establish causation.
18. The second statement is from Vito Schifano, a geotechnical and mining engineer. Mr. Schifano did not inspect Mr. Atwal's home but stated that generally, there are various factors that contribute to building damage due to vibrations, such as the

distance from source, soil condition, and structural details. However, Mr. Vito was not asked to provide an opinion on the cause of the damage in Mr. Atwal's home. I find that Mr. Vito's opinion does not establish that the vibrations damaged the home. There is also no objective evidence that the machines used by Southwest caused the level of vibrations required to damage Mr. Atwal's home.

19. Mr. Atwal also submitted a letter from the City of Surrey's claims department adjuster that states that Southwest's construction work "may have led to the damage sustained in your residence". The statement in the letter has no other details relevant to causation, the source of information the claims adjuster relied on, or her qualifications. I find the adjuster's opinion that it "may have led to the damage" is speculative and does not prove on a balance of probabilities that Southwest caused the damage.
20. Further, it is undisputed that some other company demolished some homes at the work site around the same time as Southwest performed the construction work. I have no other specifics on the home demolitions. Mr. Atwal does not address whether these homes' demolition was the cause of his home's damage, though he had the opportunity to do so in his submissions. I find this supports a conclusion that he has not proven that Southwest damaged his home.
21. Mr. Atwal says that his home had no damage in the fall of 2018. He does not say exactly when he checked his home for damage, if at all, before noticing the damage on October 24, 2018. Therefore, I do not know whether the damage preexisted Southwest's construction work. The evidence is also unclear as to when Southwest caused the vibrations. Considering there were home demolitions by others, I find Mr. Atwal's evidence is insufficient to infer causation on the timing of Southwest's construction work.
22. I note that the parties provided evidence and made arguments on the lack of damage to other homes in the neighborhood. I have not discussed them in detail here because I find nothing turns on it.

23. As mentioned, Mr. Atwal has the burden to prove that his position is the most likely. I find that he has not met that burden. I find that Mr. Atwal has not established on a balance of probabilities that Southwest caused the damage to his home.

24. I dismiss Mr. Atwal's claim for reimbursement of his repair costs.

25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the unsuccessful party, I find that Mr. Atwal is not entitled to reimbursement of his CRT fees. Southwest did not pay any CRT fees and neither party claimed dispute-related expenses.

ORDER

26. I dismiss Mr. Atwal's claims and this dispute.

Trisha Apland, Tribunal Member