



Civil Resolution Tribunal

Date Issued: October 8, 2020

File: SC-2020-003188

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Lawn Genius Manufacturing (Canada) Inc. dba Drain Master*,
2020 BCCRT 1139

B E T W E E N :

GORDON WONG

APPLICANT

A N D :

LAWN GENIUS MANUFACTURING (CANADA) INC. dba Drain Master

RESPONDENT

A N D :

GORDON WONG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about home drainage construction services.
2. The applicant (and respondent by counterclaim), Gordon Wong, hired the respondent (and applicant by counterclaim), Lawn Genius Manufacturing (Canada) Inc. dba Drain Master (Drain Master), to replace his home's perimeter drainage because he had water leaking into his basement. He says he paid for Drain Master's services, but it did not fix the leak. Specifically, Mr. Wong says that Drain Master failed to fix the pipes and drain tile depth when it replaced the drainage along the front of his house, and then later charged him to re-do a portion of the same area in order to fix the drain tile depth after it discovered the error.
3. In the Dispute Notice, Mr. Wong said he was seeking an order that Drain Master correct the drain tile installation around his house, which he valued at \$5,000. I infer that when Mr. Wong filed this dispute, he had not yet paid all of Drain Master's invoices in full. In his submissions, Mr. Wong says he seeks a \$4,000 refund of the amount he paid to Drain Master for its work, as Drain Master had by then charged Mr. Wong's credit card for its outstanding invoices.
4. Drain Master denies Mr. Wong's claims. It says that it properly completed the work Mr. Wong hired it to do. Drain Master says the reason it had to re-do a portion of its previous work is because Mr. Wong did not follow Drain Master's recommendations due to the cost.
5. Drain Master also says that it gave Mr. Wong a \$2,500 discount for its services. Drain Master now wants to revoke the discount and counterclaims for the \$2,500 discount applied to one of its invoices.
6. Mr. Wong is self-represented. Drain Master is represented by an employee or principal.

JURISDICTION AND PROCEDURE

7. 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.
8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
9. 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.
10. 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.
11. Drain Master says that it counterclaims for the \$2,500 discount it gave Mr. Wong at least in part because Mr. Wong allegedly slandered Drain Master. I find that a claim for slander is not within the CRT's jurisdiction because section 119 of the CRTA expressly excludes it. So, I make no further comments or findings about any alleged

slander. I will restrict my analysis on the counterclaim to whether there is any other legal basis on which Drain Master can recover the \$2,500 discount from Mr. Wong.

ISSUES

12. The issues in this dispute are:

- a. Whether Drain Master's drainage construction services were deficient?
- b. If so, what refund is Mr. Wong entitled to, if any?
- c. Is Drain Master entitled to reimbursement of the \$2,500 discount it previously applied to Mr. Wong's invoice?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Mr. Wong bears the burden of proof on a balance of probabilities. Drain Master bears this same burden on its counterclaim. While I have considered all of the parties' evidence and submissions, I have only referenced the evidence and arguments as necessary to explain my decision.

14. It is undisputed that Mr. Wong hired Drain Master to investigate drainage issues at his home in April 2019. Drain Master says that it recommended Mr. Wong completely replace the drainage system due to its age, which would cost about \$30,000 and come with a 100% guarantee. Mr. Wong does not specifically dispute that Drain Master made this recommendation, and I find it likely did so. However, it is undisputed that Mr. Wong agreed to Drain Master's quote to replace the drain tile only along the front of his house. Mr. Wong says he thought this would fix his water leakage problem.

15. Drain Master says that when it did the excavation for the drainage along the front wall, it discovered that the pipes and drainage were placed too high. It says that to bring the pipes and drainage depth down to *BC Building Code* requirements would involve moving the pipes along both sides of the house, as well as along the front, so water would flow downward to the storm sump at the rear of the house.

16. Drain Master says that it told Mr. Wong the pipes should be lowered, but that Mr. Wong could not afford to replace all the drainage at that time. So, Drain Master says it had no choice but to proceed with the work as quoted, only replacing the drain tile along the front, at the existing level. It is undisputed that Mr. Wong paid Drain Master's April 24, 2019 invoice totaling \$6,615 for this work.
17. Mr. Wong disputes that Drain Master advised him about the pipe and drainage depth issue when Drain Master was working along the front of his house. He says he continued to experience water leakage problems after that work was completed, so he called Drain Master again. He says that Drain Master then recommended replacing the drain tiles along his home's right side, to which he agreed. When Drain Master did the excavation, it discovered the pipes along the home's right side were also too high. Mr. Wong says this was when he learned the pipes and drainage around his house were not at the correct depth. He says he realized he was likely going to continue having water leakage problems unless he fixed it.
18. Drain Master ultimately fixed the pipe and drainage depth along the home's right side when it replaced the drain tile. Drain Master then provided Mr. Wong with a \$7,000 quote to fix the pipe and drainage depth along a portion of the front of the house and a portion of the left side of the house. Drain Master says that Mr. Wong complained about the price, so it offered Mr. Wong a \$2,500 discount, so long as it could do the work after the rainy weather slowed down. Drain Master says that Mr. Wong agreed to the \$4,500 plus tax quote. Drain Master's April 1, 2020 invoice shows that it applied the \$2,500 discount and Mr. Wong paid a total of \$4,725 including tax for this work.

Was Drain Master's work deficient?

19. I find the main thrust of Mr. Wong's claim against Drain Master is based on his belief that the water leak in his basement was caused by the pipes and drainage around his house being set at the incorrect depth. Mr. Wong says Drain Master should have identified and corrected this problem when it first worked on the front of his house in 2019. He argues that only replacing the drain tile at the existing level was not going

to fix the leak, forcing him to pay Drain Master to re-do the work a year later to fix the drainage depth.

20. The burden is on Mr. Wong to prove any alleged defective work: see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 24. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283.
21. I find that whether the incorrect depth of the pipes and drainage was the cause of water leaking into Mr. Wong's basement, is technical and outside ordinary knowledge. The question of whether Drain Master met the standard of care of a competent plumbing professional by only replacing the drain tile at the existing level at the front of Mr. Wong's house in 2019 is also outside ordinary knowledge. Therefore, I find expert evidence is required and here there is none.
22. Mr. Wong submitted several photographs purporting to show measurements of the depth of the installed drain tiles and pipes, both inside and outside Mr. Wong's home. However, based on these photographs alone, without an expert to interpret the measurements, I am unable to reach any conclusions about Drain Master's work. Therefore, I find that Mr. Wong has not met his burden to prove that Drain Master's work in 2019 was deficient or failed to meet the required standard of care.
23. Further, Drain Master argues that it did identify the pipes and drainage were at the incorrect depth when it excavated the front of Mr. Wong's home. It says, despite being informed, Mr. Wong decided to leave the pipes at the existing level because he was concerned about cost. Drain Master says it completed the work it was hired to do.
24. Mr. Wong denies that cost was an issue and says if there was an extra cost to lower the pipes along the front of his house, he would have paid it. He submits that he did not learn of the incorrect pipe and drainage depth until Drain Master did the work along the right side of his house.

25. There is no supporting evidence of either parties' version about when Drain Master advised Mr. Wong about the drainage level issue. There are no quotes or Drain Master attendance records or notes showing what recommendations Drain Master made to Mr. Wong along the way or what instructions Mr. Wong provided to Drain Master in response. I find both parties' versions are equally plausible. Therefore, on this issue I find there is an evidentiary tie. Mr. Wong bears the burden of proving his claim on a balance of probabilities. In the absence of any other evidence supporting Mr. Wong's allegations that Drain Master either failed to detect the problem in April 2019 or failed to advise him of it then, I find these allegations are not proven.
26. In any event, Mr. Wong does not dispute that he was aware of the pipe and drain tile depth problem before he hired and agreed to Drain Master's quote to re-do a portion of his front wall, which he now says should have been fixed at the outset and re-done for free. I find Mr. Wong has not shown any basis on which he should receive a refund for work he agreed to pay for, and which was undisputedly completed.
27. Mr. Wong also alleges that Drain Master lost some of his walkway paving stones. While Mr. Wong submitted a photograph that appears to show the walkway has a few stones missing, there is no evidence before me about how the walkway looked before, how many stones Mr. Wong alleges are missing, or whether reconstructing the walkway was within Drain Master's scope of work. I find there is insufficient evidence to prove that Drain Master is responsible for any missing stones.
28. Overall, I find that Mr. Wong has not proven Drain Master's work was deficient such that he is entitled to any refund of the amount he paid. I dismiss Mr. Wong's claims.

Drain Master's counterclaim

29. As noted above, Drain Master claims a \$2,500 reversal of the discount it provided to Mr. Wong for its April 1, 2020 invoice. It says it has issued a new invoice to Mr. Wong for this amount but did not submit a copy of that invoice into evidence.
30. I find that Drain Master has not provided any legal basis on which it can demand Mr. Wong pay an additional \$2,500. Drain Master offered Mr. Wong a \$2,500 discount,

which Mr. Wong accepted, and Mr. Wong paid Drain Master's invoice with the \$2,500 discount applied. While Drain Master may regret offering the discount, it cannot retroactively and unilaterally change the terms of the contract.

31. Given that Mr. Wong did not agree to pay Drain Master \$2,500 and Drain Master has not argued any other basis within the CRT's jurisdiction on which it is entitled to damages, I dismiss Drain Master's counterclaim.

CRT fees and expenses

32. I find the parties were equally unsuccessful. Under the CRTA and CRT rules, I find the parties are not entitled to any reimbursement of CRT fees or dispute-related expenses.

ORDER

33. I dismiss Mr. Wong's claims, Drain Master's counterclaims, and this dispute.

Kristin Gardner, Tribunal Member