



Civil Resolution Tribunal

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File: SC-2020-003476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Klaibert v. The Corporation Of The District Of Saanich*,
2020 BCCRT 1322

B E T W E E N :

DIXIE KLAIBERT

APPLICANT

A N D :

THE CORPORATION OF THE DISTRICT OF SAANICH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is a claim for reimbursement of expenses to repair sewer and storm drain connections. In 2014, the respondent municipality, The Corporation Of The District Of Saanich (Saanich), installed an inspection chamber to sewer and storm drain connections on property owned by the applicant, Dixie Klaibert.

2. Ms. Klaibert says Saanich negligently reversed the sewer and storm drain connections. Ms. Klaibert also says that Saanich improperly approved her plumber's connections to the sewer and storm drain and that Saanich should have verified the connections with a dye test. Ms. Klaibert asks for \$1,219.70 to properly reconnect her sewer and storm drain lines, \$2,932.16 to repair her landscaping, and \$95.18 for the cost of replacement plants.
3. Saanich admits that the service plates were reversed but says it is not responsible because this occurred when the property was originally developed in 1980 or 1981. Saanich says this error was caused by inaccuracies in the original engineer's as-built drawings from 1980 or 1981. Further, Saanich says it does not owe Ms. Klaibert a duty of care because its conduct is related to a municipal policy decision. Saanich further says that Ms. Klaibert's claim is too late under the *Limitation Act*. Also, Saanich argues that Ms. Klaibert's house construction permit releases Saanich from liability.
4. Ms. Klaibert is self-represented. Saanich is represented by an employee.

JURISDICTION AND PROCEDURE

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 in the interests of justice.

7. Section 42 of the CRTA says 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.
8. 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.
9. I find that the Dispute Notice incorrectly shows the name of the respondent as Saanich (District) and, based on the respondent's Dispute Response, I find that correct name of the respondent is The Corporation of the District of Saanich. Given the parties operated on the basis that the correct name of the respondent was used in their documents and submissions, I have exercised my discretion under section 61 of the CRTA to direct the use of the respondent's correct legal name in these proceedings. Accordingly, I have amended the respondent's name above.

ISSUES

10. The issues in this dispute are:
 - a. Is Ms. Klaibert's claim too late under the *Limitation Act*? If so, what is the remedy?
 - b. Did Saanich negligently install the inspection chamber or negligently inspect plumbing connections causing damage to Ms. Klaibert's property? If so, how much does Saanich owe?
 - c. Do the terms of Ms. Klaibert's house construction permit prevent her from recovering damages from Saanich?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Klaibert must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. Most of the relevant facts in this matter are not disputed. Saanich says a private developer installed the property's storm drain and sewer services in 1980 and 1981. In 2014, Ms. Klaibert began building a house on the property. On May 15, 2014, Saanich issued Ms. Klaibert a house construction permit. The permit says Ms. Klaibert agrees to "save harmless" Saanich from any claim relating to the construction or inspections of the property.
13. On April 9, 2014, Ms. Klaibert asked Saanich to install an inspection chamber on the storm drain and sewer services. Saanich says inspection chambers are installed to provide access to the storm drain and sewer services for cleaning. Saanich says inspection chambers were not required when the services were installed in 1980 and 1981, but they are required now. Saanich issued Ms. Klaibert a plumbing permit in August 2014 and Saanich approved the property's sewer services in October 2014.
14. Saanich admits that the service plates for the storm drain and sewage connections were reversed for Ms. Klaibert's property. Saanich says the reversal was caused by incorrect as-built drawings prepared by the original engineer. Ms. Klaibert says that, when her plumber connected the services at her property, her sewage line was connected to the storm drain and her storm drain line was connected to the sewer.
15. Saanich notified Ms. Klaibert that her sewer and storm drain connections were reversed on August 20, 2018. Ms. Klaibert says she incurred expenses excavating her yard, reconnecting her storm drain and sewage lines and replacing her landscaping.

Limitation Act

16. Saanich argues that this dispute was not filed on time. The *Limitation Act* (LA) applies to CRT claims. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful.
17. Saanich argues that this dispute was started after the expiration of the ultimate limitation period under the LA. Saanich refers to a 30-year ultimate limitation period which is no longer in effect. I find that a 15-year ultimate limitation period was in effect, under section 21 of the LA, when Saanich performed its services at Ms. Klaibert's property in 2014. Section 21 requires Ms. Klaibert to start her dispute within 15 years of the date the allegedly negligent conduct occurred.
18. Saanich argues that the connection error was caused by the original engineer and developer in 1980 and 1981 when the property was developed which was more than 33 years before Saanich installed the inspection chamber in 2014. Saanich relies on the decision in *Armstrong v. West Vancouver (District)* 2003 BCCA 73. In *Armstrong*, a homeowner sued a municipality after it was discovered, more than 30 years after their home was built, that their house was constructed on improper fill. The BC Court of Appeal found that the ultimate limitation period started when the damage occurred, which was during the original construction of the property. So, the court found that the homeowner's claim was too late. However, for the reasons that follow, I find the facts in this dispute differ from those in *Armstrong*.
19. In *Armstrong*, the court considered damage that occurred when the house was built. In this matter, Ms. Klaibert's claims that Saanich improperly marked or reversed the sewer and storm drain connections when it installed the inspection chamber and Saanich's inspection of her plumbing connections in 2014. Ms. Klaibert's claim is against Saanich for its conduct in 2014, not damage done by third parties during the original development in 1980 and 1981. Since it is undisputed that Saanich's services were performed less than 15 years before Ms. Klaibert started this dispute, I find that Ms. Klaibert's claim was filed in time.

Negligence

20. To prove negligence, Ms. Klaibert must show that Saanich owed her a duty of care, Saanich breached the standard of care, Ms. Klaibert sustained damage, and the damage was caused by Saanich's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
21. Saanich argues that it does not owe Ms. Klaibert a duty of care because its services were performed pursuant to a policy decision and a reasonable exercise of bona fide discretion. Saanich relies on the BC Court of Appeal decision in *Lowe v. Sidney (Town of)*, 2020 BCSC 335 which says that public authorities, such as Saanich, do not owe a duty of care for properly-exercised policy decisions such as allocating budgets. But Saanich can be liable for operational decisions that implement and perform policy decisions, including those based on administrative directions, professional opinion, or technical standards.
22. Although Saanich argues that its installation of the inspection chamber was related to a policy decision, Saanich did not explain how it was related. Saanich did not provide a policy basis for its level of service or say that its service was limited by financial, economic, or budgetary constraints. The only evidence Saanich provided was a reference to a Saanich policy which says that it will not perform formal periodic inspections of sewers, storm drains and water mains and services. However, I find that this policy is not relevant to this dispute. Ms. Klaibert's claim is based on Saanich's installation of the inspection chamber and Saanich's inspection of her plumber's connections, not periodic inspections. For the above reasons, I find that Saanich's inspection chamber installation was not related to a policy decision, but rather it was related to an operational decision. So, I find that Saanich does owe Ms. Klaibert a duty of care.
23. Ms. Klaibert argues that Saanich breached the standard of care by reversing the connections when it installed the inspection chamber, by failing to recognize that the connections were reversed when Saanich inspected her plumber's connections and by failing to perform a dye test to confirm that the connections were correct. Saanich

says it properly relied on the original engineer's as-built drawings from 1980 and 1981 and that dye tests are not required to meet the standard of care.

24. I find it is necessary for Ms. Klaibert to show a breach of the standard of care through expert opinion evidence in this dispute because the subject matter is technical and outside the knowledge and experience of the ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). An expert can explain the relevant standard of care and demonstrate how the conduct in the dispute fell below that standard. I find that such evidence is required to determine whether or not Saanich exercised the care and skill of a reasonably competent plumbing technician.
25. In the absence of expert evidence, I am unable to determine whether Saanich breached the standard of care by relying on the original engineer's as-built drawings. Similarly, I find that expert evidence would be needed to determine whether Saanich breached the standard of care by approving Ms. Klaibert's plumber's connections. Further, I find that Ms. Klaibert also needs to provide expert evidence to prove that the standard of care requires Saanich to perform dye tests to verify the connections. Yet, here there is no expert evidence.
26. For the above reasons, I find that Ms. Klaibert has failed to prove the standard of care or that Saanich breached it. So, I dismiss Ms. Klaibert's claim for negligence. Based on this finding, I do not find it necessary to decide whether the terms of the construction permit prevent Ms. Klaibert from recovering damages against Saanich.
27. Since Ms. Klaibert was unsuccessful, I dismiss her claim for CRT fees. Saanich has not claimed reimbursement of CRT fees or dispute-related expenses, so none are ordered.

ORDER

28. I dismiss Ms. Klaibert's claims and this dispute.

Richard McAndrew, Tribunal Member