



Civil Resolution Tribunal

Date Issued: August 13, 2021

File: SC-2021-002861

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Wu*, 2021 BCCRT 889

BETWEEN:

FORTISBC ENERGY INC.

APPLICANT

AND:

CLEMENT WU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for gas service line repairs.

2. The applicant, FortisBC Energy Inc. (FortisBC), says the respondent Clement Wu, damaged an underground gas service line while excavating. FortisBC claims \$4,762.07 in repair costs.
3. Mr. Wu admits he damaged the gas line but says it was not his fault. He also disputes the cost of the repairs.
4. FortisBC is represented by an employee. Mr. Wu represents himself.

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.

ISSUES

9. The issues in this dispute are:
 - a. Is Mr. Wu at fault for damaging the gas line?
 - b. If so, how much must he pay FortisBC in repair costs, if any?

EVIDENCE AND ANALYSIS

10. In a civil claim like this, the applicant, FortisBC has the burden of proving its claims on a balance of probabilities. I have reviewed the parties' submissions and weighed their evidence but only refer to that necessary to explain my decision.
11. On Sunday, August 18, 2019, Mr. Wu was using an excavating machine in his yard when he struck a FortisBC gas line. Mr. Wu contacted FortisBC who sent a crew to the scene. The crew capped the pipe and stopped the gas leak. On Monday, August 19, 2019, another FortisBC crew returned to Mr. Wu's residence to remove the damaged steel pipe and replace it with a new PVC plastic pipe. On March 5, 2020 FortisBC invoiced Mr. Wu \$4,762.07 for repair costs, which Mr. Wu has not paid. None of this is disputed.

Is Mr. Wu at fault?

12. In order to establish a claim for negligence FortisBC must show Mr. Wu owed it a duty of care, his conduct did not meet the expected standard of care, his conduct caused the claimed damages and that the damages were reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
13. I find Mr. Wu owed FortisBC a duty to take care not to hit any gas service line buried in his yard. I find the duty extends to making reasonable inquiries about the existence, and location of, the gas line. I find Mr. Wu did this by undisputedly contacting "BC 1 call" (BC 1). Mr. Wu says BC 1 provided him with a map and directions how to find the gas line's location but he did not provide those in evidence.

14. FortisBC says that, along with the map and directions, BC 1 provided Mr. Wu with an information sheet with digging guidelines. Mr. Wu does not dispute that he received those guidelines, so I accept he did. The guidelines required Mr. Wu to hand dig to expose the gas line at several locations to find the gas line's exact location and depth before using any mechanical equipment and to follow all provincial laws and regulations for excavating. The guidelines say that, if hand digging does not expose the gas line in the place it should be, the digger should call FortisBC at the provided phone number.
15. Section 39(7) of the *Gas Safety Regulation* (Regulation) under the *Safety Standards Act* also instructs a person to hand dig to confirm the gas pipeline's location before using a machine. Subsection (9) requires the person to not use a machine to excavate, and to advise FortisBC, if the gas line cannot be located by hand digging.
16. Mr. Wu says he dug several holes by hand but did not find the gas line where the BC 1 map indicated it should be. So, Mr. Wu says he used his mechanical excavator to dig further. I find that Mr. Wu's conduct fell below the standard of a reasonable person because he did not continue to hand dig to locate the gas line, or call FortisBC when he failed to do so, as set out in BC 1's digging guidelines and as required under the Regulation.
17. Mr. Wu says the BC 1 information was inconsistent and misleading about the gas line's depth. Mr. Wu did not provide that information as evidence, so I find he has not proven the information provided was inconsistent. Further, even if the information was confusing, I find this does not excuse Mr. Wu from failing to follow the prescribed and required steps to find the gas line before excavating with a machine.
18. Mr. Wu also says that FortisBC failed to tell him that it offered location services which, means a FortisBC employee would locate and mark the gas line location on Mr. Wu's property. Although I agree with Mr. Wu that location services are not offered on the BC 1 information sheet submitted as evidence, I find Mr. Wu has not proven that providing such information would have prevented him from striking the gas line. Although he says he would have used such a service if he knew it were available,

there is no indication that Mr. Wu inquired about such a service or attempted to contact FortisBC when he was unable to find the gas line by hand digging, as he was required to do. On balance, I find Mr. Wu has not proven that he would have used the location services. Further, I find whether or not he knew of FortisBC's location services does not excuse Mr. Wu from failing to meet the required standard of care once he decided to locate the gas line himself.

19. On balance, I find Mr. Wu was negligent in failing to hand dig until he found the gas line and failing to contact FortisBC when he could not find the line. So, I find Mr. Wu is at fault for striking and damaging the gas line with his excavator.

How much must Mr. Wu pay in repair costs?

20. As noted, FortisBC charged Mr. Wu \$4,762.07 in repair costs, which Mr. Wu disputes. Based on the invoice I find FortisBC charged \$272.80 for materials, \$334.49 for vehicles, \$2,504.58 for FortisBC employee labour, \$1,607.63 for third-party contractors and \$42.57 for "other". The parties agree that the third-party contractor cost was for traffic control and a backhoe or excavator machine.
21. First, Mr. Wu says FortisBC could have fixed the gas line with 2 to 3 crew members excavating by hand and spared the third-party contractor expense. However, he has not explained how such a job could be done by hand or how he has the expertise to provide such an opinion. I infer this is part of Mr. Wu's argument that the existing steel gas pipe could have been repaired, rather than replaced by a PVC pipe, which is what FortisBC did.
22. FortisBC provided an undated statement from Marshall Wilson, a FortisBC Operations Supervisor. The supervisor said the Sunday, August 18 crew members clamped the existing steel pipe to stop the gas leak. After discussing the situation with a FortisBC supervisor, the Sunday crew leader decided a gas service renewal (pipe replacement) was the best option. This is supported by the Sunday crew leader's notes and diagram, as well as Fortis BC's computerized diary notes.

23. The supervisor says the Sunday crew conducted a “cold squeeze” which causes further damage to the steel pipe but quickly and safely stops the gas leak. They say FortisBC considers many factors in deciding whether to replace or repair a gas service pipe, including the degree of damage, length of pipe damaged, number of welds required, and amount of digging and reburying involved. They say a PVC pipe requires less joins than steel, which takes less time, and that PVC pipe is now the industry standard in gas service.
24. Fortis did not provide Marshall Wilson’s qualifications, other than their job title as an Operations Supervisor at FortisBC. CRT rule 8.2(2) requires an expert to provide their qualifications but CRT rule 1.2(2) allows me to waive the application of a rule to facilitate the fair resolution of a dispute. Keeping in mind the CRT’s mandate, which includes flexibility, I accept Marshall Wilson’s statement under the CRT rules. This is because, as an employee and supervisor, I find they are qualified to explain the factors considered by a crew lead and supervisor at FortisBC in deciding whether to replace or repair a gas service line. Further, Mr. Wu has not disputed Marshall Wilson’s qualifications to provide his opinion. So, I accept Marshall Wilson’s opinion that a PVC pipe replacement was the preferred choice to fix the damage Mr. Wu caused.
25. Mr. Wu says FortisBC’s crew leader on Monday, August 19, 2019 told him that the Sunday crew could have fixed the gas line with less crew and less equipment the same day, rather than wait for a gas line replacement on Monday. FortisBC says that, when asked, the Monday crew leader could not recall that conversation with Mr. Wu. I agree with Mr. Wu that does not mean the conversation did not happen, but just that the Monday crew leader could not recall it.
26. However, I place little weight on Mr. Wu’s recollection of the crew leader’s comment nearly 2 years later, given that Mr. Wu provided no notes about the conversation or any explanation how he clearly remembered such a conversation. Further, the second-hand information contains no explanation why fixing the steel pipe would work

just as well, and be less expensive than, replacing it with a PVC pipe. So, I find FortisBC' decision to replace the damaged steel pipe with a PVC pipe is reasonable.

27. I disagree with Mr. Wu that FortisBC increased the costs by calling out a second crew on Monday, August 19, rather than completing the repair or replacement work on Sunday, August 18. Marshall Wilson explains that the pipe replacement is scheduled during regular business hours, and not for standby crew, which I find the Sunday crew were. I find this approach reasonable, given FortisBC' labour breakdown which shows the pipe replacement took 6 hours at regular time. Had the Sunday crew replaced the pipe that day, I find the labour cost would have been higher because of the standby crew's overtime rates listed in FortisBC' labour breakdown document. So, I find FortisBC' decision to delay the needed work to Monday, August 19 did not increase the repair costs.
28. I also disagree with Mr. Wu that FortisBC should have provided him with a repair estimate and a choice whether to repair the existing steel gas pipe or replace it with a PVC pipe before completing the work. First, the pipe belongs to FortisBC and not Mr. Wu so I find FortisBC is entitled to decide how best to repair the damage Mr. Wu caused. Second, Mr. Wu has not shown how he has the expertise or knowledge to decide the best way of fixing the damage. Third, I agree with FortisBC that a damaged and leaking gas pipe is unsafe and must be fixed quickly. I find it unreasonable to expect FortisBC to wait for a homeowner to decide how to fix a potentially dangerous damaged gas line.
29. On balance, I find FortisBC' repair costs were incurred to fix the gas pipe damaged by Mr. Wu. I accept FortisBC' explanation for the costs and find them reasonable. I note that Mr. Wu agreed with FortisBC' material costs, vehicle costs and "other" costs. I find FortisBC' repair costs were reasonably foreseeable consequences of Mr. Wu's negligence. I order Mr. Wu to pay FortisBC \$4,762.07 in repair costs.
30. The *Court Order Interest Act* applies to the CRT. FortisBC is entitled to pre-judgment interest on the \$4,762.07 from the March 5, 2020 invoice to the date of this decision. This equals \$54.21.

31. 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. I find FortisBC is entitled to reimbursement of \$175 in CRT fees. It did not claim any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Wu to pay FortisBC a total of \$4,991.28, broken down as follows:

- a. \$4,762.07 in debt,
- b. \$54.21 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

33. FortisBC is entitled to post-judgment interest, as applicable.

34. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member