



Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2020-007418

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dame v. Duke*, 2021 BCCRT 922

BETWEEN:

COLLETTE DAME

APPLICANT

AND:

TIMOTHY DUKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about an allegedly defective sprinkler system installation.
2. The applicant, Collette Dame, hired the respondent, Timothy Duke, to install a sprinkler system in her yard in July 2019. Miss Dame says the sprinkler system does not work, and that Mr. Duke's work rendered her existing sprinkler system inoperable

as well. Miss Dame also says Mr. Duke took over a year to install the sprinkler system and that he has refused to fix the alleged defects. She claims a refund of her \$3,000 payment for the system.

3. Mr. Duke denies his work was defective and says the system worked when he tested it upon completion. Mr. Duke says that Miss Dame knew that he was not licensed to install sprinkler systems by which I infer he means Miss Dame could not expect him to expertly install the sprinkler system. I infer Mr. Duke asks for the dispute to be dismissed.
4. Each party represent themself.

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. As a preliminary matter, the Dispute Notice was issued against “Tim” Duke, based on Miss Dame’s application for dispute resolution. However, Mr. Duke identified himself as “Timothy” in his Dispute Response. The parties have consented to amend the style of cause to reflect Mr. Duke’s correct name and I have done so above.

ISSUE

10. The issue in this dispute is whether Mr. Duke’s sprinkler installation was defective and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one Miss Dame, as the applicant, must prove her claim on a balance of probabilities (meaning more likely than not). I have reviewed both parties’ submissions and weighed their evidence, but only refer to that necessary to explain my decision.
12. Mr. Duke did some plumbing work inside Miss Dame’s house. Miss Dame asked Mr. Duke if he had installed sprinkler systems in the past and whether he would install a system for her. Mr. Duke agreed. None of this is disputed.
13. The parties agree that their written agreement about the sprinkler system is contained in their July 2, 2019 text messages but failed to provide a copy of those messages in as evidence in this dispute. However, the parties agree that the contract required Mr. Duke to provide materials and labour to install an irrigation system in Miss Dame’s back yard and to add on to the existing front yard irrigation system. They also agree that Miss Dame was required to pay Mr. Duke a fixed price of \$3,000 for the work.
14. It is undisputed that Miss Dame had a pre-existing sprinkler system for her front lawn, but not for her front flower beds. Since Mr. Duke does not dispute this, I accept it as

true. Based on Miss Dame's photos and videos taken in July 2020, text messages between the parties in 2019 and 2020, and the parties' submissions, I find Mr. Duke installed underground water pipes and sprinkler heads in Miss Dame's back yard, underground irrigation lines and mister heads in Miss Dame's front and rear flower beds, and 2 timer boxes. I also find Mr. Duke replaced Miss Dame's front yard sprinkler heads and connected the new irrigation lines to the house's water supply.

Alleged Deficiencies

15. Miss Dame says 2 out of 5 of the sprinkler heads Mr. Duke replaced in the front yard do not work, that many mister heads in the garden beds pop off, that Mr. Duke failed to install any backflow valves or enough irrigation boxes, and that he did not bury the installed irrigation lines deep enough in the ground.
16. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).
17. Miss Dame relies on an April 20, 2021 estimate from Jinglepot Landscaping and Irrigation. I disagree with Miss Dame that the estimate contains an assessment of mistakes and deficiencies in Mr. Duke's sprinkler system. While the estimate lists the work required, such as replacing all the sprinkler heads, it does not contain any opinion that the work is needed because it was initially done incorrectly by Mr. Duke. Further, if it did contain such an opinion, I would find it was not expert opinion evidence under the CRT rules. This is because the estimate does not say who created the estimate or how they were qualified to provide any opinion about whether Mr. Duke's installation was below the expected industry standard.
18. Miss Dame also relies on a webpage from irrigationbc.com from the Irrigation Industry Association of BC's publication "Standards for Landscape Irrigation Systems". Although the webpage does not include the author's name or qualification, I find the

Irrigation Industry Association of BC is more likely than not qualified to publish accepted industry standards for irrigation systems.

19. The webpage says that residential irrigation piping must be buried 8 to 12 inches below grade. Based on photos provided by Miss Dame I find Mr. Duke did not bury the back yard water pipes 8 to 12 inches below the surface in all areas because the photos show the backyard pipes buried only 2 to 4 inches below ground in several areas. I find Mr. Duke's installation of the water pipes deficient because it did not meet the industry standard for depth.
20. Miss Dame's video clips and photos show 2 sprinkler heads in the front yard either dribbling or shooting a jet of water across the yard in a straight line. They also show several mister heads in various gardens shooting water out like a fountain, rather than misting or spraying water over the garden. I find the videos and photos show obvious deficiencies in either Mr. Duke's installation work or the product he used as the sprinklers do not spread water over Miss Dame's lawn and garden. I find the deficiencies obvious and so find no expert evidence is required to show that Mr. Duke failed to provide a fully working sprinkler system.
21. Mr. Duke says that he tested the sprinklers before he left Miss Dame's house which I find was on July 25, 2020, based on text messages between the parties. Mr. Duke says that all the garden sprinklers were working fine, and that the lawn had full coverage. He says that something else must have happened to the sprinkler system between his installation and when Miss Dame had the system assessed by Jinglepot.
22. I accept Miss Dame's statement that she took the video clips and photos of the sprinkler system either on, or shortly after, Mr. Duke left on July 25, 2020 because Miss Dame's July 25 to 27, 2020 text messages to Mr. Duke included the same videos and photos. Further, I find the front lawn sprinkler shooting a jet of water is the same sprinkler Miss Dame described in her August 16, 2019 text to Mr. Duke, asking him to fix it. So, I find the obviously defective sprinkler heads were left that way by Mr. Duke, and their defects were not caused by any later event.

23. Overall, I find Mr. Duke failed to bury the water pipes deep enough and failed to install properly working sprinkler heads in Miss Dame's front lawn and both front and rear gardens. I disagree with Mr. Duke that Miss Dame knew he was not licensed to install sprinkler systems and so knew what she was getting. Whether he was licensed or experienced, Mr. Duke agreed to provide a sprinkler system and so I find he had an obligation to provide a system that was up to industry standard. On balance, I find Mr. Duke failed to provide such a system.
24. Miss Dame also says Mr. Duke took too long to complete the project. On the evidence before me, I find no agreed upon completion date or time frame for the project. So, I find Mr. Duke did not breach any time frame agreement. However, given that I award Miss Dame her claimed damages below, I find I need not further consider any argument about the time the project took.

Remedy

25. In his submissions Mr. Duke says he is willing to return and repair any sprinkler heads that are not working. However, Miss Dame's text messages on July 25, 2020 and over the next few months show that she told Mr. Duke about the sprinkler head issues and asked him to come fix the deficiencies several times, but Mr. Duke did not respond. So, I find Miss Dame offered, but Mr. Duke declined, the opportunity to fix the identified deficiencies.
26. Based on Miss Dame's e-transfer records, I find she paid Mr. Duke \$2,000 on July 3, 2019 and \$1,000 on July 6, 2019, for a total of \$3,000. Miss Dame asks for a full refund because she says she cannot use any of the system Mr. Duke installed except the 2 timers valued at \$125 each.
27. Mr. Duke says the cost of replacing a few inoperable sprinkler heads is less than \$3,000 but provided no estimate. In any event, given my findings about the depth of the installed irrigation lines, I agree with Miss Dame that the lines Mr. Duke installed will need to be dug up and reinstalled, if not entirely replaced. I also find Miss Dame has proven that at least some, but not all, of the sprinkler and mister heads are

inoperable. On balance, I conclude it is more likely than not that the entire system Mr. Duke installed will need to be removed and replaced, given the concern with the depths of the pipes laid and the defective sprinkler heads.

28. Jinglepot estimated 32 hours of labour to replace Mr. Duke's installed sprinkler system, including new PVC piping, re-laying the irrigation lines to the gardens and replacing all the sprinkler heads. The estimate also included \$850 for parts, for a total of \$3,244.50. Based on this estimate, I find replacing the sprinkler system will cost Miss Dame more than she originally paid Mr. Duke to install it. I find Miss Dame is entitled to a \$3,000 refund for Mr. Duke's defective work.
29. The *Court Order Interest Act* applies to the CRT. However, as Miss Dame has not yet paid any repair costs, I find she is not entitled to any interest on her damages.
30. 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 Miss Dame is entitled to reimbursement of \$150 in CRT fees and \$99.75 in dispute-related expenses for Jinglepot's irrigation assessment. Although I found the assessment did not constitute expert evidence under the CRT rules, I still found it useful to determine Miss Dame's anticipated repair costs.
31. As Mr. Duke was unsuccessful in this dispute, I dismiss his \$50 claim for reimbursement of CRT fees.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Duke to pay Miss Dame a total of \$3,249.75, broken down as follows:
 - a. \$3,000 in damages, and
 - b. \$249.75, for \$150 in CRT fees and \$99.75 for dispute-related expenses.

33. Miss Dame is entitled to post-judgment interest, as applicable.
34. I dismiss Mr. Duke's claim for CRT fees.
35. 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.
36. 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