



# Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-001785

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coey v. Procter (dba Hudson Procter Contracting)*, 2021 BCCRT 934

B E T W E E N :

TREVOR COEY

**APPLICANT**

A N D :

HUDSON PROCTER (Doing Business As HUDSON PROCTER  
CONTRACTING)

**RESPONDENT**

A N D :

DES PROPERTY SERVICES LTD.

**RESPONDENT BY THIRD PARTY CLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicant, Trevor Coey, says he paid the respondent, Hudson Procter (dba Hudson Procter Contracting), \$4,000 to perform some drain tile work around the perimeter of his property due to water penetration in his basement.
2. Mr. Coey says Mr. Procter's work did not resolve the basement leak. Mr. Coey seeks reimbursement of \$3,000, the amount he paid a second contractor to allegedly redo Mr. Procter's work to solve the leak issue.
3. Mr. Procter denies the claim. He says he is only a landscape and excavation contractor with no experience diagnosing leak issues. He says the named third party, DES Property Services Ltd. (DES) hired him to dig out and replace the perimeter drain and that he performed this work as required. He says diagnosing and resolving the basement leak was outside the scope of his work. He seeks a declaration of fault against DES and an order that DES pay Mr. Coey anything I order Mr. Procter to pay.
4. DES says it did not hire Mr. Procter. It says it only referred Mr. Procter to Mr. Coey and it denies it is responsible for the claimed damages.
5. Mr. Coey and Mr. Procter are self-represented. DES is represented by an employee or officer.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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.
8. 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.
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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Does Mr. Procter owe Mr. Coey any money for the drainage and leak repair?
  - b. If so, must DES pay Mr. Procter some or all of the money he owes Mr. Coey?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Mr. Coey must prove his claims on a balance of probabilities. Mr. Procter has the same burden on the third party claim against DES. I have read the parties' submissions but refer only to what I find relevant to provide context for my decision. I note Mr. Procter submitted evidence but declined to make any arguments in this proceeding.

### ***Mr. Coey's claim***

12. Mr. Coey says he had hired Mr. Procter to fix a water penetration issue in his basement. He says after Mr. Procter's work he continued to have water ingress into his basement, which was allegedly worse than before. He says he had to pay a second contractor, "Hoe Down Excavating" (HDE) \$3,000 to "have the area fixed properly with industry standard hydraulic cement to fix the crack and the pipes set at the proper depth". He says he has had no further leaks after HDE's repair was done and seeks reimbursement of the \$3,000 HDE expense.
13. As set out in the Dispute Response, Mr. Procter denies he was hired by Mr. Coey to fix the water ingress issue. Mr. Procter says he was hired by DES just to replace Mr. Coey's perimeter drainage system and this is the job he says he did.
14. DES says it had no contract with either Mr. Coey or Mr. Procter. It says its only role was to refer Mr. Procter by passing along Mr. Procter's contact information to Mr. Coey.
15. While someone clearly contracted with Mr. Procter to perform work on Mr. Coey's property, there is no documentary evidence about it. Neither Mr. Coey nor Mr. Procter submitted any documents such as a written contract, an invoice, correspondence, or payment records establishing who contracted Mr. Procter to perform the work.
16. Even accepting Mr. Coey hired and paid Mr. Procter for this job, I find Mr. Coey has not proven his claim for reimbursement on a balance of probabilities. My reasons follow.
17. First, I find no persuasive evidence that Mr. Procter agreed or represented his work would resolve the unspecified water penetration issue in Mr. Coey's basement. Mr. Coey did not describe having any conversation with Mr. Procter about it and again, there is nothing in writing about this job.
18. Second, Mr. Coey submitted no evidence to support his assertion that his continuing water ingress issue was related to Mr. Procter's work or that Mr. Procter made the

leak worse. There are no photographs, investigation report, or witness statement, or other evidence documenting the water ingress issue. There is also no documentary evidence proving the water was entering the basement because of the depth Mr. Procter installed the pipes or some other drainage system issue.

19. While Mr. Coey says Mr. Procter used “improper foam” to fill a crack in the foundation wall, he does not say it was the source of the continued basement leak. Based on the photographs, the foam filled crack appears to be on the outer concrete wall of an open carport. There is no specific evidence that water was leaking through the foam filled crack and into the basement. I come back to the crack repair below.
20. Next, I find Mr. Coey has not proven that Mr. Procter’s work was otherwise deficient or substandard and needed to be redone.
21. In general, where an allegation of deficient work is based on a claim that the work fell below the required industry standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove it. 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. For this perimeter drainage related work, I find the standard is not obvious and it requires expert evidence.
22. Mr. Coey relies on a May 14, 2021 statement from HDE employee “TM”. TM stated that HDE had to open up the drainage on the right side of the home, remove the foam someone used to repair the foundation and repair it “properly” with hydraulic cement and tar. TM also stated that HDE dug up and dropped “the pipe work to the appropriate depth since this has been done there has been no leaking issues”. TM does not say anything else or more specific about Mr. Procter’s work or the water ingress issue itself.
23. I accept TM’s statement as evidence of the work HDE performed for Mr. Coey. However, I do not accept it as an expert opinion about the quality of Mr. Procter’s work. Mr. Coey did not provide TM’s experience or qualifications to establish that TM was qualified to assess the crack repair and drainage issue. I find TM’s statement is

also vague. TM did not describe the issue with the foam product, what they meant by “appropriate” depth, or state the depth that Mr. Procter had installed the pipes or why it was a problem. For these reasons, I find TM’s statement is not helpful in determining the quality of Mr. Procter’s work and I have put no weight on it.

24. Mr. Coey also relies on a statement from HDE employee “KB”. Again, Mr. Coey does not state KB’s qualifications or job title. KB’s statement references a photograph showing 2 short pieces of pipe. KB wrote that the “lower” perimeter pipe was placed to the top of a “footing” and “ideal placement is 2” below the footing. KB wrote that it should be low enough to catch the water. KB does not explain which exact “footing” and the photograph does not show the pipe location in relation to Mr. Procter’s drainage work. I find KB’s unqualified statement is not helpful to assess the depth or quality of Mr. Procter’s pipework and I have put no weight on it.
25. Mr. Procter submitted a May 19, 2021 opinion report by Jim Buchanan, P.Eng. of JE Anderson & Associates. There is no dispute that Mr. Buchanan is qualified to provide an opinion about the drainage work and I accept his opinion as expert evidence.
26. Mr. Buchanan based his May 19, 2021 report on photographs of Mr. Procter’s work taken before HDE redid the drainage. The photographs show a person standing in a large open trench, which gives perspective. The pipework appears to be several feet below the foundation wall. The photographs also show layers of materials covering the concrete and the trench after it was backfilled.
27. Mr. Buchanan wrote that on his review of the photographs he observed separate perimeter drains and roof drains, drain rock, and filter cloth over the drain rock, the concrete foundation was sealed, and a layer of materials was placed against the wall “as expected”. Mr. Buchanan further wrote: “It appears that this one side of the building was protected from flooding by the new drain”. Based on that Mr. Buchanan’s expert opinion, which I find is uncontradicted, I am satisfied that Mr. Procter’s work met industry standards.

28. Again, Mr. Coey says he had to pay HDE to replace an “improper” foam product that Mr. Procter used to fill a crack with hydraulic cement. Mr. Coey relies on an email from Chris Schmidt of Island Basement Systems Inc. (undated). Chris Schmidt stated that they do not recommend “foam in can” for waterproofing below-grade cracks because the failure rate is high and they have had to “do a bunch of warranty repairs”. Chris Schmidt recommended Mr. Coey use “urethane injection resin” because it is proven and designed specifically for his application. He quoted \$1,000 plus GST to fill a 4-foot crack.
29. As the recommended product is “resin”, I find it is likely a different product than the hydraulic cement product Mr. Coey ultimately used to fill the crack. The evidence does not establish that hydraulic cement meets industry standards or was correct for Mr. Coey’s application. So, even if I accepted Mr. Procter used a substandard foam product to fill a crack, I find Mr. Procter would not be responsible to pay to replace it with a different product that might be equally substandard.
30. For the reasons above, I find Mr. Coey has not proven on a balance of probabilities that Mr. Procter owes him anything for the drainage or waterproofing work performed by HDE. I dismiss Mr. Coey’s claim against Mr. Procter.

### ***Third Party Claim***

31. Because I have not ordered Mr. Procter to pay anything, Mr. Procter has nothing to claim from DES. I dismiss Mr. Procter’s claim against DES.

### ***CRT Fees and Expenses***

32. 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.
33. As Mr. Coey is unsuccessful, I dismiss his claim for his paid CRT fee and dispute related expenses. I find Mr. Procter paid \$75 for his third party claim against DES, an

expense I find he reasonably incurred to defend himself against Mr. Coey's unsuccessful claim. I find Mr. Coey must reimburse Mr. Procter's paid CRT fees.

## **ORDERS**

34. I dismiss Mr. Coey's claim against Mr. Procter.

35. I dismiss Mr. Procter's claim against DES.

36. Within 30 days of this decision, I order Mr. Coey to pay Mr. Procter \$75 as reimbursement of Mr. Procter's CRT fees.

37. 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.



38. 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.

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Trisha Apland, Tribunal Member