Civil Resolution Tribunal

Date Issued: February 14, 2022

File: SC-2020-009236

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robinson v. Dewit*, 2022 BCCRT 168

B E T W E E N :

KIMI ROBINSON and KARI ROBINSON

APPLICANTS

A N D :

DEBORAH MARY DEWIT and JACQUES DEWIT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for half the repairs to a shared well.

2. The applicants, Kimi Robinson and Kari Robinson, have a well on their property which services their property and that of their neighbour respondents, Deborah Mary Dewit (Debbie) and Jacques Dewit. The applicants say they paid for a new

well pump to be installed on June 1, 2018 but that the respondents have not paid the remaining $1,865.40 they owe for their share of the repair cost, as agreed.

3. In their Dispute Response, the respondents agreed they owed the remaining $1,865.40 for their share of the pump. However, in their later filed submissions they say they owe nothing because they did not agree to the new pump installation. They also say the well could have been fixed by "shocking" the water.

4. As the applicants share the same last name, and the respondents share their last name, I will refer to all parties by their first names, meaning no disrespect.

5. A family member (WR) represents the applicants. Debbie represents the respondents.

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.

10. The applicants initially asked the CRT to order the respondents to pay their half of the hydro cost of running the well pump, dating back to 2004. As the applicants withdrew this claim before adjudication, I will not address it in this decision.

ISSUE

11. The issue in this dispute is whether the respondents must pay the applicants part of the well pump installation costs and, if so, how much?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.

13. Around May 31, 2018, the applicants contacted Mayfair Gas, Plumbing and Heating (Mayfair) to inspect their well as they had no water. On June 1, 2018, Mayfair installed a new well pump, at a cost of $5,730.80. The applicants sent Debbie a copy of the invoice and asked for $2,865.40 as payment for half the costs. On June 9, 2019, the respondents paid the applicants $1,000 toward that cost. None of this is disputed.

14. It is undisputed that the applicants own and live on Lot 2 of a rural land parcel, while the respondents own and live on Lot 1. In 1991 the former owners of Lots 1 and 2 signed an easement agreement and filed it in the Land Title Office in 1992. The then owners of Lot 2 agreed to install a well on their property to provide water for both Lots 1 and 2. According to the easement, all expenses incurred in the

construction, operation, maintenance and repair of the well and its associated equipment would be paid for equally by the owners of Lots 1 and 2. All owners agreed to keep the well and equipment properly repaired. If 1 party failed to make necessary repairs, the other owner could do so and charge the non-repairing owner ½ of the repair costs. The agreement applies to the former owners and their "heirs and assignees" which, I find includes future owners of Lots 1 and 2 such as the parties to this dispute.

15. Although the easement was amended in 1996, I find the amendment relates only to changes to the location of the right of way granted to Lot 1 owners for access to the well and its equipment located on Lot 2. The amendment specifically says it is part of the original easement. Contrary to the respondents' argument, the 1996 amendment did not discharge the expense sharing obligations set out in the 1991 easement agreement. I find the 1991 agreement applies to this dispute.

16. Contrary to the respondents' argument, I also find the 1991 easement agreement does not require the parties to agree to the repairs. However, I find the agreement requires the repairs to be reasonably necessary in order to share the costs between the owners.

17. The respondents say the pump replacement was unnecessary and that the well water could have been "shocked" with chlorine to eliminate mineral deposits so as not to clog the pump. However, they have submitted no supporting expert evidence. I find well maintenance and repairs are beyond ordinary common knowledge and so require expert evidence (see *Bergen v. Gulliker,* 2015 BCCA 283). In any event, the parties' text messages show the respondents shocked the well just prior to the pump replacement. So, I am not persuaded the well could have been fixed with a shock treatment, rather than a pump replacement.

18. The applicants say the pump had been misfiring for a few years, which is consistent with the parties' June 1, 2018 text messages to Debbie. The applicants also texted that the "last thing they wanted to do" was replace the pump. It is undisputed that the applicants took out a loan to pay for the pump repair costs, so I find it was an

expensive repair for them. I accept the applicants' undisputed statement that the repair technician told them the 30-year-old well pump needed to be replaced. Without the repair technician's opinion in evidence, I cannot determine what they said, or why. However, I find it unlikely the applicants would have taken a loan to replace the well pump unless it was a necessary repair. I also accept the applicants' undisputed statement they had no running water at the time. There is no indication the applicants chose to replace the well pump for reason other than necessity. On balance, I find replacing the well pump was a necessary repair and so the respondents are responsible for paying ½ that repair cost under the 1991 agreement.

19. As noted above, the respondents have already paid $1,000 of $2,865.40, which is undisputedly half the repair costs. So, I find the respondents owe the application the remaining $1,865.40 and order them to pay it.

20. The *Court Order Interest Act* applies to the CRT and must be applied in a case like this one. The applicants are entitled to pre-judgment interest on the $1,865.40 well pump repair costs from the date of the June 1, 2018 repairs to the date of this decision. This equals $83.65.

21. The applicants are not entitled to their cost of borrowing funds to pay the repair costs. I find this would result in double recovery, as I have already awarded interest above.

22. 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. It is undisputed that the respondents attempted to pay the outstanding $1,865.40 on April 20, 2021 by giving a cheque to the applicants' brother. I find this is not adequate settlement attempts as the brother is not a party to this dispute. Further, the attempt was made after the applicants filed their dispute application. So, I find no reason to depart from the general rule that the applicants are entitled to reimbursement of their CRT fees, which are $175 here. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of $2,124.05, broken down as follows:

    a. $1,865.40 in damages for ½ the well repair costs,

    b. $83.65 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

24. The applicants are entitled to post-judgment interest, as applicable.

25. 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.

26. 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