



Civil Resolution Tribunal

Date Issued: May 17, 2022

File: SC-2021-008828

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Cotton (dba Cotton Brothers)*, 2022 BCCRT 583

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

FRED COTTON (Doing Business As COTTON BROTHERS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says the named respondent, Fred Cotton (Doing Business As Cotton

Brothers), damaged a gas service line. Fortis claims \$1,035.94 for repair costs. Fortis says Mr. Cotton failed to hand dig first to identify the gas line as required.

2. Mr. Cotton says Fortis has named the wrong party and that an affiliated corporation, Cotton Bros. Contracting Ltd. (Corp), called Fortis for permission to dig. Otherwise, Mr. Cotton says BC One Call was called as required but Fortis gave incorrect information about the gas line's location. Fortis admits it gave the wrong information but says Mr. Cotton failed to hand dig first to expose the line.
3. Fortis is represented by an employee. Mr. Cotton is represented by Clifford Cotton, as discussed further below.

JURISDICTION AND PROCEDURE

4. 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). CRTA section 2 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. CRTA section 42 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.

7. 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.
8. I address whether Mr. Cotton is properly named as a respondent in my analysis below.

ISSUES

9. The issues in this dispute are:
 - a. Is Mr. Cotton a properly named respondent, and
 - b. If yes, to what extent, if any, must Mr. Cotton pay Fortis \$1,035.94 for the repairs Fortis completed to a damaged gas service line.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Fortis must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Fortis chose not to provide any final reply submissions, despite having the opportunity to do so.
11. As noted above, “Fred Cotton (Doing Business As Cotton Brothers)” was named as the respondent. Yet, the Dispute Response was filed by “Clifford Edward Cotton (Doing Business As Cotton Brothers)”. Fortis did not amend the Dispute Notice to claim against Clifford Edward Cotton (Doing Business As Cotton Brothers). Fortis also did not name the Corp as a respondent.

12. So, the style of cause is as noted above with the named respondent as Fred Cotton (Doing Business As Cotton Brothers). When I refer to Mr. Cotton below, I refer to Fred Cotton. When I refer to “Cotton Brothers” below, that is the name specified in the relevant documentation, without more.
13. In his submissions, Mr. Cotton says Fortis has named the wrong party. Mr. Cotton says “Cotton Brothers” is a non-entity, and the actual business is the Corp, which as noted is not named as a party to this dispute. Mr. Cotton also argues that the named respondent Fred Cotton (Doing Business as Cotton Brothers) is a non-entity. As named, Mr. Cotton is a sole proprietorship with a business name of “Cotton Brothers”. Mr. Cotton’s essential point is that there is no sole proprietorship, only the Corp.
14. I find Fortis’ submitted documentation is insufficient to establish Mr. Cotton is liable in his personal capacity, which is how he has been named. It is undisputed digging occurred on property somehow affiliated with Mr. Cotton and that Fortis’ gas line was damaged. However, corporations are separate legal entities, distinct from their officers, shareholders, and employees. Fortis notably has made no argument about why Mr. Cotton would be personally liable for the Corp’s conduct and there is no evidence before me to support such a conclusion. My further reasons follow.
15. First, the BC One Call ticket in evidence from Fortis is addressed to:

Fred Cotton
Cotton Brothers Contracting Ltd
16. Second, the Fortis technician’s report is not addressed to anyone nor does it mention Mr. Cotton, the Corp, or the business name Cotton Brothers. Third, Fortis’ invoice is issued to “Cotton Brothers” with no mention of Mr. Cotton personally or the Corp.
17. Significantly, Fortis did not address the naming issue. Ultimately, I find that Fortis has not proved Mr. Cotton is personally responsible, and so I dismiss its claim on that basis. With that, I find I do not need to address the merits or substance of

Fortis' negligence claim that contrary to section 39(7) of the *Gas Safety Regulation* hand digging was not properly done to expose the gas line before machinery was used.

18. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Fortis was unsuccessful, I dismiss its claim for reimbursement of \$125 in CRT fees. As Mr. Cotton was successful, I order Fortis to reimburse him \$25 for paid CRT fees.

ORDERS

19. I dismiss Fortis' claims against Mr. Cotton.
20. Within 21 days, I order Fortis to pay Mr. Cotton \$25 for CRT fees. Mr. Cotton is entitled to post-judgment interest, as applicable.
21. 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.
22. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair