



Civil Resolution Tribunal

Date Issued: July 4, 2022

File: SC-2021-004557

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Budd v. Apollo Landscaping Ltd.*, 2022 BCCRT 765

BETWEEN:

THOMAS BUDD and HEATHER CLARK

APPLICANTS

AND:

APOLLO LANDSCAPING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damage to an irrigation system. The applicants, Thomas Budd and Heather Clark, say they hired the respondent, Apollo Landscaping Ltd. (Apollo), to “blow out” Mr. Budd’s irrigation system. The applicants say Apollo improperly performed the work, causing damage to the system. The applicants seek \$4,699.19 for property damage.

2. Apollo says the blow out was done correctly. It denies owing the applicants any money.
3. The applicants are represented by Ms. Clark. Apollo is represented by a director, Andrew Steven.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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.

Proper parties

8. The evidence and submissions indicate that Ms. Clark is Mr. Budd's employee, and arranged the irrigation system blow out with Apollo on Mr. Budd's behalf. There is no indication Ms. Clark contracted with Apollo in her personal capacity. Therefore, I find the claims are those of Mr. Budd, not of Ms. Clark, his employee. So, I dismiss Ms. Clark's claims.

ISSUE

9. The issue in this dispute is whether Apollo owes \$4,699.19 in damages for an allegedly defective irrigation system blow out.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Budd must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. Apollo provided various landscaping services to Mr. Budd since 2013. In October 2020, Mr. Steven of Apollo contacted Ms. Clark to check if Mr. Budd's irrigation system had been blown out, due to upcoming winter weather. They made arrangements for Apollo to attend the property on October 27, 2020 to perform the work. Mr. Steven advised that if the temperatures dropped to -10 or -12 degrees Celsius before the work was completed, "there may be some exposed pipe damage".
12. Apollo performed the work on October 27, 2020. On March 24, 2021, when the irrigation system was started up again, damage to a pump and connected PVC pipes was discovered, due to frozen water in the pipes. None of this is disputed.
13. Mr. Budd says the damage is a result of Apollo improperly blowing out the system, specifically missing a portion of the system connected to the boat house pump. Mr. Budd seeks reimbursement of \$4,699.19, which he says is the difference between

the amount he paid to repair the damage (\$6,499.94) minus outstanding amounts owed to Apollo for other work completed on the property, unrelated to the irrigation system blow out.

14. Apollo argues the blow out was done properly, and the damage is likely from a combination of potential existing frozen water in the pipes before the blow out on October 27, 2020, combined with Ms. Clark having turned the pump on and off several times after the blow out, which would have flooded some of the lines with water that subsequently froze.
15. Both parties submitted expert evidence. Mr. Budd submitted evidence from Kelly Desjardins, owner and operator of OK Well and Pump, with over 25 years as a certified pump technician. I accept Mr. Desjardins as an expert under the CRT's rules. In his report, Mr. Desjardins said that during routine start-up of Mr. Budd's irrigation system on March 24, 2021, he discovered that the water lines under the pumphouse had burst due to frozen water that had expanded in the pipes. Mr. Desjardins stated that if the irrigation system had been turned on after Apollo's blow out, the "entire system would have been filled with water and frozen", not just the isolated area where the burst pipes were located. Mr. Desjardins also said he would not expect pipes to burst in this manner unless exposed to temperatures lower than -10 degrees Celsius or lower, for consecutive days in a row.
16. Mr. Budd also submitted a statement from Rick Sawatsky, a meter/utility technician for over 14 years. I accept Mr. Sawatsky's evidence as expert evidence under the CRT's rules. Mr. Sawatsky stated for a PVC irrigation pipe to freeze and break, there must be water in the pipes and temperatures cold enough to freeze that water. Mr. Sawatsky was shown the burst photo pipes and stated the photos led him to believe the system was not properly blown out before the water in the pipes froze over the winter months. Mr. Sawatsky said he was provided with "information" that said temperatures before October 27, 2020 were -2 degrees Celsius, which he said would not be cold enough to freeze the water. Mr. Sawatsky did not explain what this information was, or its source.

17. Apollo also submitted reports from 2 experts. The first, Kevin Mackenzie, is the General Manager for True North Landscape Service, and has over 26 years' experience in lawn care, irrigation and landscaping. Mr. Mackenzie was Mr. Budd's former "irrigation contractor", so was very familiar with the property. I accept Mr. Mackenzie's evidence as expert evidence under the CRT's rules.
18. In his statement, Mr. Mackenzie advised that Mr. Steven from Apollo called him several times while completing Mr. Budd's blow out in October 2020 to ensure the blow out was completed properly. Mr. Mackenzie noted by the time the blow out was done, below freezing temperatures and snow had already arrived and some of Mr. Mackenzie's customers were already experiencing frozen pipes. Mr. Mackenzie said that a blow out can only blow liquid through the system, so if there is any frozen water in the pipes already, it will not be cleared out of the system. In his report Mr. Mackenzie stated that when a system is successfully blown out, water can be seen coming out of the irrigation heads. He also said if any fragments of ice are in the system during a blow out, there may be some damage that would only be detected during the start up of the system in the spring. Mr. Mackenzie further stated that if there is any water left in the lines after a blow out, or if the system is accidentally turned on after the blow out, even for a short time, water can enter the system and freeze, causing damage. He also stated if a pump is turned on, it will draw water into the pipe system, and the longer the pump is on, the more water is drawn into the system.
19. Apollo also submitted a report from Travis Turner, Branch Manager at ProSource Irrigation. Mr. Turner is a Certified Irrigation Designer with 13 years' experience as an irrigation salesperson. I accept Mr. Turner's evidence as expert evidence under the CRT's rules. In his report, Mr. Turner advised that an irrigation system can sustain damage from freezing temperatures if it is not winterized (blown-out) before the freezing temperatures arrive. If the pipes have already frozen and then blown out, Mr. Turner said there is no telling what damage could have been due to the freeze until the system is charged in the spring.

20. Mr. Turner stated that there are 2 possibilities to explain damage to pipes and a pump after an irrigation system has been blown out: (1) the water was turned on by mistake and water got back into the pipes which froze over the winter, (2) a harsh winter causing ground movement possibly bursting pipes, or (3) the system was not blown out correctly. Mr. Turner said that water can get into the pump and pipes even by turning the water back on for a “very short” period of time after the blow out.
21. Basically, Mr. Budd says that Apollo failed to properly blow out the irrigation system, which meant water was left in the pipes which froze over the winter. Mr. Budd argues the temperatures before the blow out on October 27, 2020 were not cold enough to have left frozen water in the pipes causing the damage.
22. In contrast, Apollo argues either that the early winter weather in October meant there was already ice in the pipes when the blow out was done, or that Ms. Clark turned the system back on for enough time that water entered the pipes and subsequently froze over the winter, or both.
23. Both parties submitted weather evidence. Mr. Budd’s evidence from Accuweather for Kelowna, British Columbia states that between October 21 and 27, 2020, the low temperatures ranged from -1 to -6 degrees Celsius. Mr. Steven submitted temperature reports for Kelowna International Airport from Weather Spark for October 24 and 25, 2020 which show low temperatures of around -6.5 degrees Celsius for both days. Although Mr. Desjardins would expect temperatures lower than -10 degrees Celsius to result in burst pipes, he did not say it was impossible. I also accept that Mr. Sawatsky was given incorrect information about the temperatures leading up to the blow out. Mr. Turner and Mr. Mackenzie both acknowledge having dealt with frozen/burst pipe issues as a result of the October 2020 cold snap. On balance, I find the low temperatures in the week leading up to the blow out were likely cold enough to freeze water in the pipes.
24. As for Apollo’s allegation that Ms. Clark turned the system on and off quickly after the blow out, Ms. Clark denies this. She says if she had turned the system on, all the pipes would have been filled with water, requiring the entire system to later freeze

and need to be completely ripped up later to fix. Mr. Desjardins agrees. However, Mr. Turner and Mr. Mackenzie state that the amount of water in the system depends on how long the system is turned on for. I find Mr. Turner's and Mr. Mackenzie's explanations reasonable, and I accept them over Mr. Desjardins' opinion that the entire system would fill with water and everything would freeze and break if the pump was turned on at all.

25. To the extent Mr. Budd argues Apollo "missed" a section of the irrigation system resulting in the damage, I disagree. Apollo submitted a photo Mr. Steven took while performing the blow out, which shows water/steam coming out of the irrigation system around the boat house, as would be expected according to the expert reports. So, I find Apollo did not miss the section in question.
26. I find the most likely explanation is that before Apollo performed the blow out, some water had frozen in the pipes and was not removed during the blow out. Although Mr. Desjardins said he would expect only lower temperatures to result in freezing pipes, Mr. Turner and Mr. Mackenzie both indicate they dealt with frozen pipes for other customers around this time. I also note Mr. Steven advised Ms. Clark through text message that he was running late to perform Mr. Budd's blow out as he was dealing with a frozen pipe issue for another customer. Mr. Steven also warned Ms. Clark that given the upcoming winter weather there was already a chance the pipes would be damaged before the blow out. On balance, I find there is insufficient evidence to prove Apollo's work was negligent or substandard. So, I dismiss Mr. Budd's claims.
27. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were not successful, I find that they are not entitled to reimbursement of paid tribunal fees. Apollo did not pay tribunal fees or claim any dispute-related expenses.

ORDER

28. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair