



# Civil Resolution Tribunal

Date Issued: August 15, 2022

File: SC-2020-009960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schnack v. The Corporation of the City of Cranbrook*, 2022 BCCRT 920

**B E T W E E N :**

DEBRA SCHNACK and KEVIN WOODS

**APPLICANTS**

**A N D :**

THE CORPORATION OF THE CITY OF CRANBROOK

**RESPONDENT**

**A N D :**

681434 BC LTD. DBA ECONO VACUUM TANKERS, KEVIN CARL SMITH, TATIANA ZAVYALOVA and HIGH POINT PLUMBING & HEATING LTD.

**RESPONDENTS BY THIRD PARTY CLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about a blocked sewer line. The applicants, Debra Schnack and Kevin Woods, own a home in Cranbrook. In October 2020, shortly after they moved in, they had a sewer backup in their basement. They say that their sewer line was blocked by debris that came from a broken sewer line. They allege that the respondent municipality, the Corporation of the City of Cranbrook, damaged the sewer line when it repaired a nearby water main in March 2020. They claim \$3,940.44, the cost of investigating and repairing their sewer line. The applicants are self-represented.
2. Cranbrook denies that it damaged the sewer line or is otherwise responsible for the blockage. Cranbrook asks me to dismiss the applicants' claim. Cranbrook is represented by a lawyer who works for Cranbrook's insurer, Brian Lee.
3. Cranbrook also brings third party claims against 4 respondents: Kevin Carl Smith, Tatiana Zavylova, High Point Plumbing & Heating Ltd. (High Point), and 681434 BC Ltd., which does business as Econo Vacuum Tankers (Econo). If I determine that Cranbrook is liable to the applicants, Cranbrook asks that I order the third party respondents to pay the applicants' damages.
4. Kevin Carl Smith and Tatiana Zavylova are the applicants' home's previous owners. They did not provide their pronouns or preferred forms of address, so I will refer to them by their full names and together as the previous owners. Cranbrook says that the previous owners repaired the sewer line in the summer of 2020 with the help of High Point and Econo. Cranbrook alleges that these previous repairs caused the blockage.
5. The previous owners agree with the applicants that Cranbrook damaged the sewer main during its March 2020 water main repair. They deny responsibility and ask me to dismiss Cranbrook's third party claim against them. They are each self-represented.

6. High Point and Econo both say that their involvement with the sewer line was minimal. They both say that the previous owners did the pipe repairs themselves. They ask me to dismiss Cranbrook's third party claim against them. High Point is represented by its owner. Econo is represented by an employee of its insurer.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. What caused the sewer backup in October 2020?
  - b. Who, if anyone, is liable to the applicants for their investigation and repair costs?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicants must prove their claim on a balance of probabilities, which means “more likely than not”. Cranbrook must prove its third party claims to the same standard. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.
13. The following background facts are undisputed unless I indicate otherwise. The previous owners had water back up into their basement on March 15, 2020. A water main broke the same day (it is unclear when). Cranbrook repaired the water main on March 16 and 17, 2020.
14. On May 4, 2020, Kevin Smith noticed water backing up again, and called High Point. Kevin Smith said that High Point believed that the sewer pipe was partially collapsed. Kevin Smith dug up the sewer line but says that it was not broken or collapsed. Kevin Smith flushed the line and replaced that section of pipe.
15. On July 6, 2020, water backed up again. This time Kevin Smith called Econo to have the line cleared “professionally”, which Econo did.
16. The applicants took possession of the home on October 1, 2020. On October 6, 2020, they noticed water backing up through their sewer clean out and a floor drain. They called Roto Rooter, which attended on October 7, 2020. Roto Rooter ran a camera up the sewer pipe and found a blockage at about 60 to 80 feet.

17. The applicants next called Just Plumbing and Action Rentals to dig up their sewer pipe. They attended on October 8, 2020. Just Plumbing's plumber, Chris Casimer, took apart the pipe where Roto Rooter had identified the blockage and found that it was half full of sand. This was the same area of pipe that Kevin Smith had repaired. The applicants could see that the pipe towards their home was essentially clear, but the pipe towards the street was full of sand and gravel. This suggested to them that the source of the blockage was further up the pipe.
18. On October 9, 2020, Chris Casimer returned to begin installing an entirely new pipe from the property line to the applicants' house. The applicants wanted to be sure that the pipe was completely fixed. However, Chris Casimer observed that more sand and gravel had accumulated in the pipe.
19. Cranbrook workers also attended on October 9, 2020, with a vacuum truck and camera. They attempted to clear the pipe but encountered a blockage.
20. On October 13, 2020, Chris Casimer finished installing the new pipe. According to their written statement, they did not find any blockages or problems with the old pipe.
21. On October 14, 15 and 16, 2020, Cranbrook workers continued to investigate the issue. According to Cranbrook's utilities foreman, Kent Keiver, they put a camera down the cleanout but promptly got stuck. They ran into debris made up of sand or silt, rocks and broken green pipe. This is confirmed in the video that Cranbrook submitted as evidence. On October 16, 2020, Cranbrook dug up a 10 foot section of the pipe, which had 2 small cracks that Kent Keiver said were less than a millimeter wide. They replaced the pipe, but they believe that the rocks found in the pipe could not have fit through these small cracks. I return to this issue below.
22. The applicants have had no further issues with sewer backups.
23. The applicants do not explicitly say what the legal basis for their claim is. This is not uncommon for self-represented litigants in CRT disputes. The most obviously applicable legal doctrine to this dispute is nuisance. A nuisance occurs when a

person (which includes a municipality) unreasonably interferes with another person's use or enjoyment of their property. However, section 744 of the *Local Government Act* says, in part, that a municipality cannot be liable in nuisance for damages arising from the breakdown or malfunction of a sewer system. I therefore find that the applicants cannot rely on the law of nuisance.

24. I therefore find that the only applicable legal basis for the applicants' claim is the law of negligence. To succeed in negligence, the applicants must prove:
  - a. Cranbrook owed them a duty of care,
  - b. Cranbrook breached the applicable standard of care, causing damage, and
  - c. The damage was a reasonably foreseeable consequence of the negligent act.
25. In other words, as part of their negligence claim, the applicants must prove that Cranbrook did something unreasonable to cause the sewer line blockage. I note that the applicants initially alleged that Cranbrook broke the sewer line when it repaired the water main in March 2020. In submissions, they say that the sewer line was likely already broken when Cranbrook repaired the water main. They say that Cranbrook made the existing break worse by driving its heavy equipment over the pipe on ground that had been softened by water.
26. The applicants undisputedly have no direct evidence of Cranbrook damaging the pipe in this way. Rather, they essentially ask me to draw reasonable inferences based on the available evidence.
27. For its part, Cranbrook argues that the applicants' theory is speculative, and that the true cause of the blockages remains unknown. They also suggest that Kevin Smith's previous repair was responsible for the blockages.
28. I accept that the applicants' theory of what happened is logical, and certainly possible. However, I find that the evidence falls short of proving that this explanation is more likely than not to be correct. I say this for several reasons.

29. First, the applicants point out that the problem went away after Cranbrook repaired the pipe. While this may be true, the applicants replaced their own pipe at around the same time. So, I find that the absence of further blockages does not prove that it was Cranbrook's repair that ultimately fixed the problem.
30. Second, there is no clear evidence about where the debris came from. Kent Keiver ruled out the section of pipe under municipal land and Chris Casimer ruled out the section of pipe under the applicants' land. I find that these 2 witnesses are equally qualified to assess whether the debris came from the section of pipe they each observed. I note that Kent Keiver's opinion in their written statement is consistent with the notes they took at the time, which are also in evidence. I ultimately see no reason why I should doubt either witness's evidence or believe one over the other.
31. Third, I find that the fact that the debris included green pipe fragments creates even more uncertainty. Cranbrook says that its pipe is black. The applicants say their pipe is white. The applicants say that green pipes are used in industrial applications, but did not say how they know this, or how this proves that Cranbrook damaged the pipe. Ultimately, the green pipe fragments suggest that the 2 small cracks that Cranbrook found were not the source of the debris.
32. Fourth, I disagree with the applicants' argument that the timing of the first backup supports their theory that the water main repair was related. The reason that the applicants changed their theory of what happened appears to be because the first backup occurred the day before Cranbrook began repairing the water main, which rules out their initial theory that the pipe broke during the water main repairs. I find that this timing suggests that the 2 events may have been a coincidence.
33. In any event, if I accepted that the pipe was already broken on March 15, 2020, there is no evidence about how it broke or whether Cranbrook was involved.
34. Finally, even if the debris came through a crack in the pipe that Cranbrook repaired, I find that the applicants have not proven that Cranbrook did anything to cause or worsen the crack. Even assuming that Cranbrook used heavy equipment on wet soil

over the sewer pipe during the water main repairs, I find that the question of whether this would likely break the buried pipe is a technical question that is outside the common knowledge of an ordinary person. It therefore would require expert evidence to prove. See *Bergen v. Guliker*, 2015 BCCA 283. The applicants did not provide any such expert evidence.

35. I therefore find that the cause of the blockage is ultimately unknown. It may have been Cranbrook's water main repair, it may have been Kevin Smith's sewer pipe repair, or it may have been something else entirely. Since the applicants bear the burden of proof, I find that their claims must be dismissed as unproven. Given that conclusion, I find it unnecessary to address the parties' other arguments.
36. Cranbrook's third party claims were all contingent on Cranbrook being found liable to the applicants. Because I have found that Cranbrook is not liable, I dismiss its third party claims.
37. 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. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. I also dismiss Cranbrook's claim for CRT fees and dispute-related expenses from its unsuccessful third party claims. Cranbrook did not pay any CRT fees or claim any dispute-related expenses related to defending the applicants' claim.
38. None of the third party respondents paid any CRT fees. Econo claims reimbursement of \$2,617 in legal fees. CRT rule 9.5(3) says that the CRT will not order reimbursement of legal fees except in extraordinary circumstances. Econo did not refer to this rule or explain what extraordinary circumstances exist that would justify reimbursement of legal fees. Econo simply argues that it should have been obvious to Cranbrook that Econo's minimal involvement in the sewer pipe could not possibly have caused or contributed to the blockages. While I agree somewhat that Cranbrook never provided any reasonable explanation for Econo's involvement, I



find that does not, by itself, amount to an extraordinary circumstance. I dismiss Econo's claim for legal fees.

39. None of the other third party respondents claimed any dispute-related expenses.

## **ORDERS**

40. I dismiss all of the parties' claims, and this dispute.

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Eric Regehr, Tribunal Member