



Civil Resolution Tribunal

Date Issued: October 11, 2022

File: SC-2022-001402

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Buckner's Excavating Ltd.*, 2022 BCCRT 1110

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

BUCKNER'S EXCAVATING LTD.

RESPONDENT

A N D :

Kuljit Gill

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says the respondent, Buckner's Excavating Ltd. (Buckner's), damaged a gas line. Fortis claims \$3,179.82 for repair costs. Fortis says Buckner's did not have a BC 1 Call Ticket and failed to properly identify the gas line as required.
2. Buckner's agrees that it damaged the gas line while digging a basement, but it says the homeowner, Kuljit Gill, had removed the gas meter and advised Buckner's there was no gas line. Buckner's filed a third party claim against Kuljit Gill, claiming that Kuljit Gill is responsible for the damage and agreed to pay the costs. Kuljit Gill did not file a Dispute Response and is in default, as discussed further below.
3. Fortis is represented by an employee. Buckner's is represented by its director.

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 the dispute's parties that will likely continue after the CRT process has ended.
5. 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.
6. 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.

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.

ISSUES

8. The issues in this dispute are:
 - a. Must Buckner's pay Fortis \$3,179.82 for repair services to a damaged gas line?
 - b. If so, must Kuljit Gill indemnify Buckner's for its obligations to Fortis?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Fortis must prove its claims on a balance of probabilities (meaning "more likely than not"). Buckner's bears the same burden to prove its third party claim. I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision. Kuljit Gill did not provide evidence or submissions because they are in default and did not participate in this dispute.
10. As noted, Buckner's admits that it damaged Fortis' gas line while using an excavator to dig a basement on February 5, 2021. Buckner's says that it asked the homeowner it was working for, Kuljit Gill, whether there was a gas line, and they said "no". Buckner's also says there was no gas meter present, and it later learned that Kuljit Gill had moved it. Given Buckner's submissions, I find that it did not call BC 1 Call, nor did it hand-dig to expose the gas line before starting its excavation.
11. Without using these words, I find Fortis essentially alleges that Buckner's was negligent, resulting in the damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that Buckner's owed it a duty of care, that Buckner's

breached the standard of care, that Fortis sustained a loss (damages), and that Buckner's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

12. I find Buckner's clearly owed Fortis a duty of care as a contractor excavating around potential Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. For the reasons set out below, I find Buckner's was negligent and its negligence damaged the gas line.
13. Section 39 of the *Gas Safety Regulation* (Regulation) requires hand-digging to expose the gas line, before machinery is used. Section 39 also required Buckner's to make his request to Fortis at least 2 business days before digging and for him to receive confirmation from Fortis that he could proceed, within 10 days before beginning excavation. For clarity, the BC 1 Call fulfills the Regulation requirements.
14. I find that Kuljit Gill's alleged advice that there was no gas line and their removal of the gas meter did not relieve Buckner's of its obligation under the Regulation to make the BC 1 Call. Since Buckner's undisputedly did not call BC 1 Call as required to identify the gas line's location before it started digging, I find Buckner's breached the standard of care. It is undisputed that Buckner's digging caused the gas line damage. In short, I find Buckner's was negligent and its negligence damaged Fortis' gas line.
15. Fortis provided a May 12, 2021 invoice for the claimed \$3,179.82. It specifies \$432.09 for vehicle charges, \$2,644.71 for labour and fieldwork, and \$103.02 for "other".
16. In the absence of any argument to the contrary, I find the vehicle and labour charges reasonable, and I allow them. This totals \$3,076.80. Fortis did not explain what the \$103.02 "other" charge was for and so I do not allow that charge.
17. I find Buckner's must reimburse Fortis \$3,076.80 for repair costs.
18. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest under the COIA on the \$3,076.80 from May 12, 2021, the invoice date, to the date of this decision. This equals \$30.50.

19. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Fortis was largely successful, I allow its claim for \$175 in CRT fees. No party claimed dispute-related expenses.

Third party claim

20. As noted, Buckner's filed a third party claim against Kuljit Gill. I am satisfied on the evidence before me that Kuljit Gill received the Dispute Notice but did not respond by the deadline set out in the CRT's rules. So, I find Kuljit Gill is in default.

21. In the Dispute Notice, Buckner's said that Kuljit Gill is responsible for the damage and agreed to pay the repair costs, which I find is a claim for indemnity. Liability is generally assumed in default decisions. As Kuljit Gill has not participated in this dispute, I find that Kuljit Gill is responsible to indemnify Buckner's for the damages, interest, and CRT fees Buckner's is ordered to pay in this dispute. I also find Kuljit Gill must reimburse Buckner's \$125 for CRT fees Buckner's paid to file the third party claim.

ORDERS

22. Within 21 days of the date of this decision, I order Buckner's to pay Fortis a total of \$3,282.30, broken down as follows:

- a. \$3,076.80 in damages for gas line repairs,
- b. \$30.50 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

23. Within 30 days of the date of this decision, I order Kuljit Gill to pay Buckner's a total of \$3,407.30, broken down as follows:

- a. \$3,282.30 in indemnity for Buckner's obligations to Fortis, and
- b. \$125 in CRT fees.

24. Fortis and Buckner's are each entitled to post-judgment interest, as applicable.
25. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member