



Civil Resolution Tribunal

Date Issued: November 25, 2022

File: SC-2022-003159

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bogle v. Rather Be Plumbing Ltd.*, 2022 BCCRT 1274

BETWEEN:

TIMOTHY BOGLE

APPLICANT

AND:

RATHER BE PLUMBING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about residential drainage work. The applicant, Timothy Bogle, hired the respondent, Rather Be Plumbing Ltd. (RBP), to fix his drain. Mr. Bogle says RBP's work was deficient. He claims a full refund of \$4,614.81.

2. RPB denies liability. It says Mr. Bogle's complaint concerns an area RBP did not work on and was not responsible for.
3. Mr. Bogle represents himself. RBP's principal or employee represents it.
4. For the reasons that follow, I dismiss Mr. Bogle's claims.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

Are Mr. Bogle's claims out of time?

9. In its Dispute Response, RBP said Mr. Bogle's claims were out of time. However, it did not elaborate or refer to this allegation again in submissions. Mr. Bogle disagrees that his claims are out of time.
10. Under section 13, the *Limitation Act* (LA) applies to disputes before the CRT. A limitation period is a time period within which a person may bring a claim. The current LA came into force on June 1, 2013, before Mr. Bogle's claim arose.
11. Section 6 of the LA says the basic limitation period is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. Section 8 says that a person discovered a claim when they knew or reasonably ought to have known that they had a claim against the respondent and that a court or CRT proceeding was an appropriate means to seek a remedy.
12. Invoices show that RBP worked on Mr. Bogle's drainage system from February to near the end of July 2020. So, I find that Mr. Bogle could not have discovered his claim before July 2020. I find he had until July 2022 to start a claim. Mr. Bogle applied for dispute resolution with the CRT within this timeframe, on May 7, 2022. I therefore find Mr. Bogle's claims are in time.

ISSUE

13. The issue in this dispute is whether RBP breached the parties' contract, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mr. Bogle as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

15. I begin with the background facts. In February 2020 Mr. Bogle's front drain clogged. Photos show the drain is located near the front-facing garage. Mr. Bogle hired RBP to fix the issue. RBP's work spanned from February to near the end of July 2020, as shown in RBP's invoices dated February 3, 4, 17, and June 25, 2020. They total the claim of \$4,614.81.
16. The parties did not sign a formal written contract, so I find they documented their agreement in the invoices. They contained basic information about the work done, a breakdown of the price charged, and payment terms, including the rate of late interest. Notably, the February 3 and 4, 2020 invoices both said, "NO GUARANTEE ON PLUGGED DRAINS."
17. However, the parties agree that RBP's website provided a guarantee. An undated screenshot of the website states, "100% SATISFACTION GUARANTEED. Satisfaction Guaranteed Or your money back!" (capitalization reproduced as in original). The parties dispute whether RBP breached the guarantee and I discuss this below.
18. RBP's invoices show it augured the perimeter drains and replaced California drains and catch basins. This work included cutting and jackhammering the garage driveway to install a trench through it, using an excavator, supplying and installing PVC pipes and other parts in the trench and elsewhere, and backfilling the trench. Documents show Mr. Bogle paid RBP's invoices in full.
19. Mr. Bogle says, and I accept, that his basement subsequently flooded because another drain near the back basement door worked improperly. Mr. Bogle hired Larix Landscape Ltd. (Larix) to diagnose the issue. In its August 31, 2021 report, Larix reported the results of its drain scoping. It said that the PVC section that connected the perimeter drain system to the storm drain was improperly connected to the clay tile system. The parties' submissions indicate that the perimeter drains receive water from the drains in Mr. Bogle's backyard.

20. Continuing, Larix said the improper connection caused water to flow improperly and would lead to more flooding in heavy rain. Photos from Larix's scope show that a T-shaped connector was plugged with debris. It is undisputed that the connector was about 2 feet away from the work RBP did. I will discuss this in more detail below.
21. Larix corrected the issue and invoiced Mr. Bogle on October 15, 2021 for \$3,710.94. Photos show Larix cut through concrete to install more PVC piping underground and unearthed the plugged T-shaped connector. Much of Larix's work was in the same area as RBP's work. Mr. Bogle exchanged correspondence with RBP about the matter in November 2021. RBP's representative said it did not check anywhere past the work it did, so it did not check the perimeter drain system. Mr. Bogle later sent a letter to RBP on April 18, 2022, asking for a refund.

Did RBP breach the parties' contract?

22. Mr. Bogle says RBP breached the contract by 1) providing deficient work and 2) by failing to honour its 100% satisfaction guarantee. I will first consider when RBP's work was deficient.
23. Where a party asserts deficient work, that party has the burden of proving the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Normally, assessing the quality of a professional's work requires expert evidence, unless I find it is within an ordinary person's knowledge and experience. See *Bergen v. Guliker*, 2015 BCCA 283.
24. I turn to the facts. As noted above, Larix reported that the PVC section that connected the perimeter drain system to the storm drain was improperly connected to the clay tile system. I infer this caused the T-shaped connector, mentioned earlier, to become clogged. RBP's undisputed submission is that the connection was "at least 2 feet away" from the area RBP excavated and worked on. Mr. Bogle says RBP "should have been conscious of ensuring that their work within 2 feet of a downspout did not disrupt the connection point for the downspout".

25. Here, I find that expert evidence is necessary. I find the standards of a drainage professional are not within ordinary knowledge and experience. More specifically, I do not find it obvious that RBP should have checked the nearby area that it did not directly work on, or that RBP's work could have disrupted the connection point.
26. Larix's report was written by BK, a drainage technician. BK did not elaborate on their title. I find this report is expert evidence under CRT rule 8.3(2) as BK stated their qualifications, albeit in a very minimalist manner. However, BK did not comment on the applicable standard of care or whether RBP breached it. It did not comment on the cause of the improper connection. So, I find it unproven that RBP's work was deficient or that it was otherwise professionally negligent.
27. I also note that the parties' May and July 2020 emails show that RBP advised Mr. Bogle to clean out the perimeter drain because it was clogged. Mr. Bogle asked RBP to respond to schedule the work, otherwise he would find someone else to do it. RBP never replied. Although I find replying would have been better customer service, I find RBP's notification about the perimeter drain consistent with a finding that it was not professionally negligent.
28. This leaves the issue of the RBP's website guarantee. Mr. Bogle says RBP breached the guarantee because he is not satisfied with RBP's work. RBP disagrees and says that to claim under the guarantee, a person's dissatisfaction must be reasonable in the circumstances. It says Mr. Bogle is being unreasonable.
29. I turn to the applicable law. Interpreting a contract involves a determination of the objective meaning of the written text of the contract, as informed by the surrounding circumstances. A party's subjective beliefs about the intent and meaning of the terms are generally not useful in interpreting the contract. See *Tai An Holding Company Ltd. v. Boyal*, 2022 BCSC 821 at paragraphs 53 and 54.
30. RBP relies on *Pearson v. Chung*, 961 A 2d 1067 (DC App Ct 2008). I do not find *Pearson* applicable or binding. Though it considers the meaning of the term

“satisfaction guaranteed”, it is an American case about a person suing dry cleaners for more than \$67,000,000 for losing his pants.

31. Here, I find that, from an objective perspective, the guarantee only applies to work that RBP did or was obligated to complete. I find that holding otherwise would make RBP an insurer of Mr. Bogle’s entire drainage system. I find this would have been an objectively unreasonable expectation that the parties could not have intended. As noted above, there is no expert evidence on whether RBP caused or should have identified and fixed the improper connection. So, I find it unproven that RBP breached the guarantee.
32. Although not argued by RBP, I would have alternatively held that the guarantee did not apply. This is because the February 3 and 4, 2020 invoices explicitly excluded any guarantees “on plugged drains”. RBP was hired to fix a plugged drain, and Mr. Bogle later experienced a plugged drain in another area. So, I find RBP provided no guarantees about such work. I note that the invoices of February 17, and June 25, 2020 lacked such a warning, but I find the parties’ agreement consisted of all the invoices in evidence.
33. For all those reasons, I dismiss Mr. Bogle’s claim for a refund.
34. 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. I see no reason in this case not to follow that general rule. I dismiss Mr. Bogle’s claim for reimbursement of CRT fees.
35. In submissions, RBP sought \$4,276 as “restitution”. I find this is for a combination of \$3,983 for time spent on the dispute by 3 employees, \$126.88 for gas and travel expenses, \$93 for additional office supplies and lunch, and \$73.92 for renewing accounting software.
36. CRT rule 9.5(5) says that the CRT will not award compensation for time spent dealing with a CRT proceeding except in extraordinary cases. I find this was not an extraordinary case. For example, it did not involve issues of unusual complexity or

an unusually large volume of evidence. I also find that RBP failed to adequately explain why the other requested items were dispute-related expenses. The CRT is an online tribunal. So, I find RBP's claims for reimbursement of gas, travelling, office, and lunch expenses are unreasonable. I also find RBP failed to demonstrate why it had to renew its accounting software because of this dispute.

37. In summary, I dismiss RBP's request for reimbursement of its claimed expenses.

ORDER

38. I dismiss Mr. Bogle's claims, RBP's request for reimbursement of dispute-related expenses, and this dispute.

David Jiang, Tribunal Member