Civil Resolution Tribunal

Date Issued: June 5, 2024

File: SC-2023-006657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Evans v. Twincon Enterprises Ltd.*, 2024 BCCRT 509

B E T W E E N :

WILLIAM CLIFFORD EVANS

APPLICANT

A N D :

TWINCON ENTERPRISES LTD. and TETRA TECH CANADA INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. In 2022, the Farleigh Lake dam in British Columbia was upgraded to meet current safety requirements. Tetra Tech Canada Inc. (Tetra) designed the upgrades and managed construction. Twincon Enterprises Ltd. (Twincon) upgraded the dam. To do

so, Twincon had to lower the lake's water level. I refer to Twincon and Tetra together as the respondents.

2. The applicant, William Clifford Evans, owns a home on Farleigh Lake. Mr. Evans had a small barge on the lake, anchored to shore, when the respondents lowered the lake's water level. At some point, the barge was damaged. Mr. Evans says the respondents breached their duty of care to inform him that they were lowering the water level and to ensure that his property was not damaged. He claims $3,737.38, which includes the costs of hiring a crane to pull the barge out of the water and then repairing the barge.

3. The respondents say they are not responsible for the damage for various reasons. Primarily, they say they told Mr. Evans that they were lowering the lake level.

4. Mr. Evans represents himself. The respondents are each represented by authorized employees. As I explain below, I find the respondents were not negligent, so I dismiss Mr. Evans's claim.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

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. 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 court.

ISSUE

8. The issue in this dispute is whether either respondent was negligent, and if so, what are Mr. Evans's damages.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Evans must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. As outlined above, in 2022, the respondents were hired to repair the Farleigh Lake Dam, which involved temporarily lowering the lake's water level.

11. The Farleigh Lake community is a 25-lot subdivision near Penticton, BC. Mr. Evans owns a property with lake access but does not live there year-round. Mr. Evans owns what he calls a "water craft" and what the respondents call a "dock". It is about eight feet by 22 feet, with a flat top, floating on pontoons. As nothing turns on the term, in this decision I call it a barge. The barge floated on the lake and was anchored to shore by 2 ropes.

12. Mr. Evans says he was unable to visit his Farleigh Lake home in spring and summer 2022 for personal reasons. He says when he visited in fall 2022, he found the water level had dropped close to six metres. As shown in photos from the time, the barge was largely stranded on the shore with one end submerged in the water. Mr. Evans says as the water level fell, wind and wave action caused the barge to twist and turn. In spring 2023, when the water level rose, he says he found the barge partially submerged with a punctured pontoon. Due to the water in the pontoon, he could not pull the barge ashore and had to hire a crane. He also hired a fiberglass contractor

to repair the pontoon. As noted, he claims $3,737.38 for these expenses, which he supports with invoices and receipts.

13. Although Mr. Evans does not use the term “negligence”, I find he relies on the law of negligence because he says the respondents breached their duty of care. To succeed in negligence, Mr. Evans must show that one or more respondents owed him a duty of care, that they breached the applicable standard of care, and that he experienced a loss caused by their breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

14. I accept that the respondents owed lake residents a duty of care to inform them before lowering the water level. The respondents do not argue otherwise. It may be that the duty owed by each respondent was different, but for the purposes of this decision it does not matter.

15. Mr. Evans says before the project started, the respondents did not give him any information about lowering the water level. However, the evidence does not support this assertion.

16. The evidence shows that the respondents had Mr. Evans’s email address from a community water users group. On June 13 and June 20, 2022, the respondents invited the group members by email to a pre-construction community meeting on June 20. On June 21, they emailed the group members the minutes of that meeting. The minutes said that at the end of August 2022, the respondents would lower the lake level to complete the dam repairs. Mr. Evans does not specifically deny receiving these emails, and his name is among the recipients. Also, the address that these emails were sent to matches the address on an email that Mr. Evans acknowledges receiving from a neighbour about the water levels. On balance, I find Mr. Evans received the respondents’ three emails.

17. Mr. Evans argues that emails are not a “legal means of service” unless agreed to. The respondents were not required to serve Mr. Evans with legal documents, but I take his point to be that unless a person responds, there is generally no way to know

that an email has been received. However, that does not necessarily mean email cannot be part of a strategy of notifying lake residents about water level changes. The negligence analysis asks what a reasonable person in the respondent's position would do to provide lake residents with notice of changes to the water level.

18. The respondents also say they delivered a letter to each home on the lake. The August 31 letter said it was "delivered by hand". It said that TwinCon would lower the lake and there should be no irrigation usage starting September 6. Mr. Evans denies receiving this letter. He says he has a local person who periodically checks the property when he is away. However, he provided no evidence in support, such as a statement from this person. On balance, I accept the respondents' evidence that they hand-delivered the letters to each home. Considered together, I find the letters, emails and community meetings show that the respondents took reasonable steps to inform residents, including Mr. Evans, about lake level changes.

19. Next, Mr. Evans argues that the respondents did not explain the extent to which they would lower the lake. He says he moved his barge "out" in anticipation of the lake being lowered by 5 feet, based on the email he received from a neighbour, but the respondents lowered the lake by over 25 feet (7.6 metres). The respondents say the lake was only lowered 2.5 metres from its maximum level and 1.5 metres from normal end-of-summer levels. They provided logs in support, which are not entirely clear. However, I find nothing turns on how much the respondents lowered the lake. I find that by advising that they were lowering the lake, the respondents acted reasonably and met the standard of care. It was Mr. Evans who acted unreasonably by planning for a five-foot drop in water levels based on what a neighbour told him without making inquiries. I find a reasonable person in Mr. Evans's position would have either taken his barge out of the water entirely, or enquired with the respondents about how far they might lower the lake and made appropriate arrangements.

20. I also note that it is not clear when the damage happened. Mr. Evans' photos from October 2022 do not show a puncture, and the barge does not appear submerged until photos taken in April 2023. Mr. Evans did not explain why he did not take

precautions to avoid damage in October when he saw that the barge was partially beached.

21. Mr. Evans twice mentions that the respondents' workers could see his barge from the dam. I find this does not mean they acted unreasonably by proceeding to lower the water level to complete the repair, having given appropriate notice to residents. It is also not clear to me that it would have been apparent to the respondents that the barge was likely to suffer damage.

22. I find the respondents did not breach their duty of care because they took reasonable steps to notify Mr. Evans that they were lowering the lake. Mr. Evans has not established that anything more was required in the circumstances.

23. Given my conclusion, it is not necessary to consider the possible impact on the duty of care arising from the respondents' argument that Mr. Evans did not have authority to place a barge in Farleigh Lake, which they say was permitted only for irrigation and domestic water use.

24. 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. The respondents were successful but did not pay CRT fees. I dismiss Mr. Evans's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

25. I dismiss Mr. Evans's claims and this dispute.

Micah Carmody, Tribunal Member