



Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2017-002978

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aviva Insurance Company v. Platinum Professional Claims Services Ltd.*
2018 BCCRT 441

B E T W E E N :

Aviva Insurance Company

APPLICANT

A N D :

Platinum Professional Claims Services Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about who is responsible for water damage that occurred when a sprinkler was set off.

2. The applicant Aviva Insurance Company (Aviva) says that, on July 6, 2015, the respondent Platinum Professional Claims Services Ltd. (Platinum) was completing drywall repair on Aviva's insured's property when a sprinkler went off. The property suffered water damage.
3. Aviva says Platinum initially accepted responsibility for the water damage, but later denied it.
4. Aviva filed an expert report authored by Baker Materials Engineering Ltd. (the Baker report) that attributes the sprinkler set-off to an impact.
5. Platinum's September 20, 2017 Dispute Response denies liability for the water damage.
6. Platinum says that the applicant has not proven negligence nor shown that Platinum's actions caused the sprinkler to go off. Platinum filed no evidence in this dispute.
7. Aviva paid out to its insured and now brings what is called a subrogated claim against Platinum, for damages of \$5,000.
8. The parties are represented by their respective insurance claims examiners.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.

10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
11. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
12. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to (a) do or stop doing something, (b) pay money, or (c) order any other terms or conditions the tribunal considers appropriate.

ISSUES

13. The issue in this dispute is whether the respondent Platinum, whose worker was repairing drywall in the room where the sprinkler went off, is responsible to pay the water damage repair costs.

EVIDENCE AND ANALYSIS

14. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. A claim in negligence requires the applicant to show that the respondent had a duty of care to it, failed in that duty, and that the failure caused the loss.
15. The parties agree, and I find, that:
 - (a) Platinum's workers were the only people in the room when the sprinkler head went off, and
 - (b) Platinum's workers were using ladders in that room, when the sprinkler went off.

16. In making the above findings, I reviewed one email filed in evidence suggesting that the sprinkler went off in a room that had been cordoned off from the area where drywall was being repaired. The email was second-hand, not authored by someone who was in the room at the time. However, Platinum's submissions acknowledged their worker being in the room when the sprinkler went off. I place more weight on their admission.
17. Platinum argued that the ladders could not have hit the sprinkler head because they remained stationary, and were at least 10 feet away from the sprinkler head at all times. No other evidence was filed to establish that the ladders were 10 feet from the sprinkler head. The nature of drywall repair requires ladders to be moved periodically. I find that it is more likely than not that the ladders were being moved around in the room during the drywall repairs.
18. I now turn to the question of what caused the sprinkler head to discharge. There was no evidence before me that the sprinkler malfunctioned, was poorly maintained or had a defect in the head, except for Platinum's assertions.
19. The Baker report was authored by an engineer who examined the sprinkler head. The Baker report comments on whether there was any evidence that the head discharged as a result of a defect. The Baker report concludes that the sprinkler head "...probably discharged as a result of having been impacted" and was then "reassembled prior to being provided for examination."
20. Because the solder in the sprinkler head had not melted, though it is designed to do so in temperatures over 160 degrees Fahrenheit, heat was excluded as a cause of discharge.
21. The uncontested evidence before me was that the worker who realized the sprinkler had discharged then tried to stop it, physically. I accept that as an explanation for the sprinkler head components being reordered before it was submitted for examination by the engineer, since the Baker report author comments "In addition, although the central portion of the head was within the

body when we received the head, one of the internal components was missing. This suggests that after the discharge event, someone pushed the central portion back into the body.”

22. Other than the central portion of the head being in a different part of the sprinkler body than expected, which I accept was caused by the worker trying to stop it, the Baker report found no defect in the sprinkler head.
23. I accept the Baker report as expert evidence that the sprinkler head probably discharged when it was hit by something. This is consistent with the July 6, 2015 email from Platinum Pro-Claim Restoration’s Operations Manager, which reads, in part “As you are aware....we set the sprinkler off...”
24. Platinum says that its worker was on a ladder, using a heat gun at the time that the sprinkler head went off. Initially, the worker was “prepared to accept liability” thinking that the heat gun had set off the sprinkler.
25. Platinum says that now that the expert report obtained by Aviva attributes the sprinkler head activation to an “impact” and not to the thermal energy from the heat gun, Aviva has changed its “story” to allege that the worker hit the sprinkler with their ladder. I do not agree that this is a problematic change in Aviva’s position. Rather, they suspected the sprinkler head may have discharged due to heat, had that proposition investigated by an engineering expert and, when it was disproved, appropriately aligned their position with the expert evidence.
26. Given the evidence that the worker was using a ladder during drywall repair, which I have found would have been moved around during the job, and the expert evidence that the sprinkler head was impacted by something which caused it to discharge, I find that it is more likely than not that one of the ladders being used during drywall repair in the room hit the sprinkler head, causing the discharge. I have the Baker report and no contrary expert evidence before me.

27. Platinum argued that Aviva had to show a “definitive” cause of loss to succeed in their claim. Certainty is not required; the cause of the sprinkler head discharge has been established, on a balance of probabilities.
28. Platinum could have obtained a witness statement from the worker who was in the room when the sprinkler discharged, but no such statement was filed in evidence. Particularly given the absence of that evidence, and given the Baker report, the conclusion about the cause of the sprinkler discharge is reasonable.
29. I find that Aviva has established that Platinum is responsible for the sprinkler discharge and the resulting water damage.
30. The applicant filed in evidence a residential tenancy lease for the suite where the damage occurred. The lease contains a clause about insurance and liability, but only addresses it as between the tenant and the landlord. The tenant is a non-party to this dispute. I was not asked to, and do not make, any findings arising out of the lease document.
31. Platinum argued that “Insurance companies can only recover from each other if they prove that a party was negligent and caused a loss.” While that may be an oversimplification of the law on subrogation, which is when an insurer stands in the shoes of an insured that it has already paid and claims against someone who caused or contributed to a loss, or insured the loss, it is not necessary for me to consider it further here. In this dispute, there was a duty on the part of Platinum not to cause damage to the property where the drywall repairs were being conducted. They failed in that duty, and their actions, on a balance of probabilities, caused the loss.
32. Turning to the amount claimed, Platinum made no submission and filed no evidence about it. They only defended the claim on liability. Photographs filed in evidence by the Aviva show extensive water damage. In the circumstances, I find that Platinum is responsible for the water damage repair of \$5,000, as claimed.

33. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Aviva specifically did not seek to recover tribunal fees or expenses, and so I make no order in this regard.

ORDERS

34. Within 30 days of the date of this order, I order the respondent Platinum to pay the applicant Aviva a total of \$5,120.61, broken down as follows:
- a. \$5,000 as reimbursement for the water damage
 - b. \$120.61 in pre-judgment interest under the *Court Order Interest Act*.
35. The applicant is entitled to post-judgment interest, as applicable.
36. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
37. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member