



# Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2019-003067

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garbe et al v. Chatur et al*, 2019 BCCRT 1048

**BETWEEN:**

COLLEEN GARBE and GREGG GARBE

**APPLICANTS**

**AND:**

FEEZA CHATUR, KHABRA CONSTRUCTION LTD., and KHABRA  
GURINDER PAL SINGH

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a defective gas fireplace. The applicants, Colleen Garbe and Gregg Garbe, bought a new home in September 2015 that at the time was still

under construction, and in November 2015 they moved in. The applicants represent themselves.

2. At the end of October 2018, the applicants say they started having problems with the fireplace's pilot light and in November 2018 discovered the fireplace was uncertified and illegally installed. The applicants claim \$5,000, for the replacement fireplace they bought in February 2019. The applicants say the respondent Khabra Gurinder Pal Singh was their builder. Mr. Pal Singh is president of the respondent Khabra Construction Ltd. (KhabraCo).
3. The respondents Mr. Pal Singh and KhabraCo deny they had any contract with the applicants. KhabraCo is represented by Vaadwinder Singh, who I infer is a principal or employee. Mr. Pal Singh is self-represented.
4. The respondent Feeza Mohamedali Chatur was the owner/developer of the applicants' home. KhabraCo and Mr. Chatur say the applicants chose the fireplace and it passed a final inspection, which the applicants deny. Mr. Chatur is self-represented. I note in the Dispute Notice Mr. Chatur's first name was spelled "Freeza", but in his Dispute Response it is spelled Feeza. I have amended the style of cause above to reflect "Feeza", which I find is the correct spelling as understood by the parties and as shown on Land Title Office documentation in evidence.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “they said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the respondents installed a recalled fireplace in the applicants’ new home, and if so, whether they must reimburse the applicants \$5,000 for a replacement fireplace.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. Although I have reviewed all of the parties’

evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. As referenced above, this dispute is about whether the fireplace sold with the applicants' home was illegally installed. If so, the question is then whether any of the respondents must reimburse the applicants \$5,000 for a replacement fireplace that the applicants bought for \$5,250 on February 4, 2019. The tribunal's small claims monetary limit is \$5,000 and the applicants have abandoned their claim to anything over that limit.
12. The applicants say that in November 2018 they were having problems with the fireplace's pilot light and called a repair company, Acorn Service Group (Acorn). The applicants then say Acorn Service Group checked the serial number and advised the fireplace had been recalled. The applicants say Acorn contacted the BC Safety Authority and were told to immediately cap off the gas and "remove at once". I accept this evidence, which is not particularly disputed and is consistent with the documentation before me, including a November 21, 2018 Technical Safety BC report filed by Acorn.
13. The applicants' fireplace was a Riviera42 model. The Technical Safety BC "Safety Order" states that Riviera42 models outside the 20980 to 21484 range must be immediately removed. The applicants' fireplace model 21657 fell outside that range and so was subject to the removal requirement under the Safety Order. The Safety Order referred to a separate agency called LabTest Certification Inc. (LabTest) as having "suspended the listing" of the fireplace's manufacturer Canadian Fire Hearth Mfg. Inc. on April 23, 2015. I infer "suspended the listing" means LabTest was not issuing certification labels for that manufacturer. This is consistent with the applicants' description of the issue being the fireplace was installed with a counterfeit certification label.

14. I note the Safety Order was dated May 2, 2018, long after the applicants' fireplace was installed, but before the applicants had the fireplace serviced in November 2018. Notably, there is no evidence before me to show that in August 2015 the respondents should have independently known the fireplace was not certified or that the fireplace manufacturer's certification was suspended. However, that is not the end of the matter.
15. While the respondents say the original fireplace sold with the home passed a final inspection, I find the evidence shows it only passed a rough-in inspection. The final inspection that passed in 2019 was for the replacement fireplace the applicants bought in 2019. Contrary to the respondents' assertion, that final inspection in 2019 could not have been for the original fireplace, as Acorn had removed it in November 2018. Under sections 7 and 8 of the second page of the August 26, 2015 installation permit, it states that after the installation work authorized is done, the permit holder must immediately request an inspection and, once passed, a Notice of Completion must be filed. I find there is no evidence any inspection was done after the installation permit was issued for the fireplace in 2015. While the permit holder, TG, is not a party, I find the builder KhabraCo and the owner Mr. Chatur are ultimately responsible for that failure. Nothing in this decision addresses TG's liability to the respondents for the failure.
16. While it is true the Safety Order was not issued until May 2018, I find Technical Safety BC was aware of LabTest's suspension of the fireplace manufacturer's listing on April 23, 2015. I infer Technical Safety BC issued the Safety Order in May 2018 because it became aware the fireplace model was being sold with counterfeit certification labels. I find that if a final inspection of the fireplace had been sought, it would not have passed because Technical Safety BC would have likely identified the suspended listing.
17. In turn, I find the likely failed final inspection would have led the respondents to install an alternative legal fireplace in the home before the sale completed. It is undisputed the house was sold with a fireplace included.

18. As noted above, I reject the respondents' submission the fireplace sold with the home passed final inspection. So, I find the applicants' claim rests on the fact that the fireplace sold with the home had not passed a final inspection. The question is whether that fact caused the applicants' claimed loss and damages. Given my conclusions above, I find the answer is yes. My further reasons follow.
19. In essence, the applicants' claim for damages is a negligence claim. In order to succeed in a claim of negligence against each respondent, the applicants must establish each of the following elements on a balance of probabilities:
- a. the respondent owed the applicants a duty of care,
  - b. the respondent breached the standard of care,
  - c. the applicants sustained damages, and
  - d. the respondent's breach of the standard of care caused the applicants' damages, in fact and in law.

*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para 3

20. KhabraCo was the builder of the applicants' home. It is undisputed Mr. Chatur was the owner/developer who sold the home to the applicants. In those capacities, I find it is clear each owed the applicant buyers a duty of care.
21. I find both KhabraCo and Mr. Chatur breached the standard of care and I have found that their breach caused the applicants' damages. The failure to have the fireplace undergo a final inspection caused the illegal fireplace to remain installed. The Safety Order required its removal and so the applicants had to replace the fireplace. KhabraCo and Mr. Chatur were negligent in failing to ensure the house construction completed with all of the applicable permits and inspections. I do not agree the contract of purchase and sale put that onus on the applicants. I find nothing turns on the expiry of the 2-year warranty issued by KhabraCo, given the breach of the standard of care. The applicants' damages are the reasonable cost of

the replacement fireplace, which I find totals \$5,000, the tribunal's small claims monetary limit, based on the replacement fireplace's invoice for \$5,250.

22. I find Mr. Chatur also liable under his contract with the applicants, which I find had an implied term that construction was completed according to the legislated standards. The final inspection was required and was not done. I note the respondents say the applicants chose the fireplace, which the applicants deny. Even if the applicants chose the gas fireplace, a regulated product, I find that would not relieve the respondents from having it pass a final inspection as required.
23. As noted above, Mr. Pal Singh is KhabraCo's president. Apart from that fact, there is no evidence or any submission that Mr. Pal Singh should be held personally liable, in contract or negligence. I dismiss the claims against Mr. Pal Singh.
24. I note the respondents' specific arguments. These were mainly focused on the parties' contract of purchase and sale with Mr. Chatur, which included a "subject to inspection" clause. However, those clauses were for the applicant buyers' sole benefit. I find the respondents cannot rely on them to defend their negligent failure to have the fireplace pass a final inspection as required by Technical Safety BC. In any event, given the nature of the defect, a counterfeit certification label, I find the issue was a latent (hidden) defect that would unlikely turn up on home inspection for the purpose of buying a residence. The respondents should have known about the defect and should have disclosed it, because the final inspection required by Technical Safety BC would likely have identified it. Mr. Chatur and KhabraCo are jointly and severally responsible for the \$5,000, and so this means the applicants can collect from either party.
25. Under the CRTA, the applicants are entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$5,000 award, from February 4, 2019, the date of the replacement fireplace invoice. This equals \$56.90.

26. Under the CRTA and the tribunal's rules, a successful party is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. As the applicants were successful, I find KhabraCo and Mr. Chatur are responsible for reimbursing them their \$175 in paid tribunal fees. The applicants also claim \$40 for registered mail to serve the Dispute Notice on the respondents, which I allow as it is reasonable and supported by the \$44.31 in receipts. The applicants also claim \$200 for reimbursement of legal fees. I dismiss this claim because under the tribunal's rules legal fees are only reimbursed in extraordinary cases, consistent with section 20 of the CRTA that states parties are generally self-represented. This is not an extraordinary case.

## **ORDERS**

27. Within 14 days of this decision, I order the respondents KhabraCo and Mr. Chatur to pay the applicants a total of \$5,271.90, broken down as follows:

- a. \$5,000 in damages,
- b. \$56.90 in pre-judgment interest under the COIA, and
- c. \$215, for \$175 in tribunal fees and \$40 for dispute-related expenses.

28. The applicants' remaining claims, including all claims against Mr. Pal Singh, are dismissed. The applicants are entitled to post-judgment interest, as applicable.

29. Under section 48 of the CRTA, 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.



30. Under section 58.1 of the CRTA, 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.

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Shelley Lopez, Vice Chair