



Civil Resolution Tribunal

Date Issued: August 27, 2020

File: SC-2020-002867

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Economical Insurance v. Pedre Contractors Ltd.*, 2020 BCCRT 961

B E T W E E N :

ECONOMICAL INSURANCE

APPLICANT

A N D :

PEDRE CONTRACTORS LTD. and PORT COQUITLAM (CITY)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about water damage to a home allegedly insured by the applicant, Economical Insurance (Economical). The allegedly insured homeowners are not named parties to this Civil Resolution Tribunal (CRT) dispute. Economical says the home's basement drains overflowed, and suggests that it paid to repair the resulting damage. Economical says the water damage was caused by the respondent, Pedre

Contractors Ltd. (Pedre), who was performing nearby water line work for the respondent, Port Coquitlam (City), when the water damage occurred. Economical says the repairs and the homeowners' deductible cost over \$12,000, but it claims the maximum CRT small claim amount of \$5,000 and has abandoned its claim to any additional amount. The respondents deny causing any water damage, and say they owe nothing.

2. For the below reasons, I find Economical does not have standing to bring these claims against the respondents in Economical's own name, as Economical has done here. So, I dismiss the claims and this dispute.
3. Economical is represented by an employee. Economical did not object to the respondents' chosen representative, Kepler Rotheisler, who is a lawyer.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the CRT, which has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT 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.
6. 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.
8. The City says Economical filed its CRT dispute application after the limitation period for actions against the City expired, so the claim cannot be pursued against the City. The City cites section 735 of the *Local Government Act*, which says actions against a municipality for unlawful actions must be commenced within 6 months after the cause of action first arose. I find the dispute claims allege negligence by the City, but no unlawful actions, so the section 735 limitation does not apply here. I note that section 736(1) says that a municipality is not liable for damages unless written notice of the particulars of the damage is delivered to the municipality within 2 months of its occurrence. The evidence does not show that Economical provided such notice, but I find nothing turns on this, given my finding that Economical does not have standing to bring the claims in this CRT dispute.

ISSUES

9. The issues in this dispute are:
 - a. Does Economical have standing to bring the claims in this CRT dispute?
 - b. If so, are either of the respondents liable to Economical for the water damage, and if so, how much does each respondent owe, if anything?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Economical, as the applicant, must prove its claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.

Does Economical have standing to bring its claims in this CRT dispute?

11. Economical says it insured the water-damaged home for the homeowners. Economical suggests that it paid amounts under the homeowners' insurance policy for repairing the water damage, and it now seeks to take the place of the homeowners and claim those amounts from the respondents. However, there is no insurance contract and no proof of home ownership in evidence, and Economical's submissions do not directly confirm the homeowners' identities.
12. Further, there is no evidence that the allegedly insured homeowners assigned to Economical any of their rights of recovery against the respondents. So, I infer that Economical's claim is based on subrogation (see *Canadian Indemnity Co. v. Canadian Northern Shield Insurance Co.*, 1990 CanLII 721 (BCCA)). Subrogation is the substitution of one person for another on a claim or a legal right (see *McRae v. Canada (Attorney General)*, 1997 CanLII 4121 (BCCA) at paragraph 25). In the context of this dispute, subrogation 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 the insured loss.
13. However, the claimants, in this case the homeowners, remain the rightful dispute applicants in a subrogated claim, even though a third-party insurer, Economical, allegedly has a right of recovery under the claim. This principle is embodied by section 36 of the *Insurance Act*. That section says that an insurer, on making a payment or assuming liability under a contract of insurance, is subrogated to the insured's rights of recovery against any person, and may bring an action **in the name of the insured** to enforce those rights (my bold emphasis). As a result, I find Economical's subrogated claims must be brought in the names of the allegedly insured homeowners, meaning they must be named applicants to the CRT dispute.
14. The allegedly insured homeowners, who are the rightful dispute applicants, are not named as parties to this CRT dispute. Overall, I find that Economical's subrogated claims were not brought in the names of the allegedly insured homeowners as

required under the *Insurance Act*. Therefore, I find that Economical does not have standing to make its claims in this dispute. I dismiss Economical's claims.

CRT FEES AND EXPENSES

15. 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. The respondents were successful, but neither of them paid any CRT fees. No CRT dispute-related expenses were claimed. So, I order no reimbursement of CRT fees or expenses.

ORDER

16. I dismiss Economical's claims and this dispute.

Chad McCarthy, Tribunal Member