



Civil Resolution Tribunal

Date Issued: February 16, 2021

File: SC-2020-005462

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Trujillo v. Fraser Property Management Realty Services Ltd.*,
2021 BCCRT 177

B E T W E E N :

ANA CRISTINA CELIS TRUJILLO and ANA MARIA BECERRA CELIS

APPLICANTS

A N D :

FRASER PROPERTY MANAGEMENT REALTY SERVICES LTD.,
DANUTA TOKARCZUK, 0834836 B.C. LTD. doing business as
CIRCLE RESTORATION, and KEITH STACEY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about responsibility for strata lot repairs.

2. The applicants, Ana Cristina Celis Trujillo and Ana Maria Becerra Celis, co-own a strata lot in a strata corporation (strata). The respondent, Danuta Tokarczuk, is the strata's property manager, and she works for the respondent property management company, Fraser Property Management Realty Services Ltd. (FPM). The strata is not a party to this dispute.
3. A water leak was discovered in the strata's building, and FPM hired the respondent, 0834836 B.C. Ltd. doing business as Circle Restoration (Circle Restoration), to perform emergency remediation. The respondent Keith Stacey is Circle Restoration's project manager.
4. The applicants say Ms. Tokarczuk authorized Circle Restoration to demolish their kitchen without their consent, and that nobody returned to complete the repairs. The applicants say Circle Restoration later provided an estimate of over \$10,000 for the repairs. The applicants seek \$5,000 in damages for their demolished kitchen. The applicants have abandoned their claim for the amount in excess of \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT).
5. FPM says it acted as an agent of the strata's council in authorizing the applicants' kitchen demolition, so FPM cannot be held responsible. FPM also says the applicants are responsible for the repairs to their own kitchen under the strata's bylaws and the *Strata Property Act* (SPA). Ms. Tokarczuk did not file a Dispute Response in her personal capacity, as discussed further below.
6. Mr. Stacey says that Circle Restoration completed the demolition it was hired for, which was to remove mould in the applicants' walls caused by the water leak. He says the applicants, not Circle Restoration, were responsible for completing their strata lot repairs after the demolition. Mr. Stacey also says he should not have been named as a respondent in his personal capacity.
7. Circle Restoration also did not file a Dispute Response. However, I find Mr. Stacey represents both himself and Circle Restoration in this dispute, as discussed further below.

8. The applicants are represented by Ms. Trujillo. FPM is represented by its director, Chris Brown.

JURISDICTION AND PROCEDURE

9. These are the CRT's formal written reasons. 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.
10. 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.
11. 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.
12. 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.
13. In its submissions, FPM commented on the contents of its contract with the strata and the strata's bylaws, but said it was unable to upload copies of those documents as evidence because the time to do so had expired. The applicants requested in their

submissions that the CRT ask FPM to provide copies of these documents. In my initial review of this dispute, I determined that these documents may be relevant. So, through CRT staff, I requested that FPM provide a copy of its contract with the strata and the strata's bylaws, and gave them to the applicants for further submissions, which they provided.

ISSUES

14. The issues in this dispute are:

- a. Whether FPM or Ms. Tokarczuk or both improperly authorized the demolition of the applicants' kitchen without consent, and if so, what is the appropriate remedy?
- b. Whether Circle Restoration or Mr. Stacey or both were obligated to complete repairs of the applicants' kitchen after the initial demolition, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

16. As noted above, Ms. Tokarczuk did not file a Dispute Response in her personal capacity, as required by the CRT rules. However, FPM's Dispute Response addresses the applicants' allegations against Ms. Tokarczuk and I accept that Mr. Brown intended to represent both FPM and Ms. Tokarczuk with the one Dispute Response filed on behalf of FPM. So, I accept FPM's filed Dispute Response applies to both FPM and Ms. Tokarczuk personally, and I find Ms. Tokarczuk is not in default for failing to file a Dispute Response.

17. Similarly, while Circle Restoration did not file a Dispute Response, Mr. Stacey's filed Dispute Response addressed the applicants' allegations against Circle Restoration. I accept that Mr. Stacey intended to represent both himself and Circle Restoration with the one Dispute Response he filed, and I find Circle Restoration is not in default for failing to file a Dispute Response.
18. Turning to the facts, it is undisputed that the applicants' strata lot is located in a high-rise residential tower. In March 2020, the applicants had water leaking from their kitchen ceiling. Ms. Tokarczuk contacted Circle Restoration to investigate the leak, which was tracked to a unit 3 floors above the applicants' strata lot. Circle Restoration initially entered the applicants' strata lot on March 21 to install drying equipment.
19. The applicants say that on April 13, 2020 a Circle Restoration employee removed a section of their kitchen drywall and advised them that there was mould in the walls behind the cabinets. The applicants say they understood the employee would be preparing a report for Ms. Tokarczuk about the mould.
20. The applicants say Circle Restoration returned to their strata lot on April 16, 2020, which they understood was so it could "repair the kitchen". Instead, they say Circle Restoration destroyed their kitchen. The photographs in evidence show that large sections of the kitchen drywall were removed, leaving pipes, cables, and metal framing exposed. The photographs also show the countertops and kitchen cabinets were removed, and the applicants say they were demolished. The kitchen sink and dishwasher were disconnected from the plumbing and left in the living room. The applicants say they expected Circle Restoration to return and redo their kitchen, but nobody ever came back and it was left in a demolished state. FPM advised the applicants by letter dated May 14, 2020 that each owner was responsible for the repairs to their own strata lot.
21. Circle Restoration says it took direction from FPM on the strata's behalf to do only emergency demolition work in the units affected by the water leak, to make the units safe from mould growth. The evidence shows that the applicants' cabinets were water damaged, and I infer they could not be reused. Further, the applicants' countertop

had tiles glued to it, which Circle Restoration says broke during removal, so it also could not be reused. Circle Restoration denies that it told the applicants anyone would come back to repair their unit after the demolition was complete.

22. I find there is no evidence before me that Circle Restoration had a contract with the applicants about the demolition or repair of their strata lot. Rather, the undisputed evidence is that Circle Restoration was hired by FPM on the strata's behalf, and that it completed the work it was contracted for. Therefore, I find the applicants have not proven that Circle Restoration is responsible for completing their kitchen repairs. Further, I find the applicants have submitted no basis on which Circle Restoration's employee, Mr. Stacey, should be held personally liable for the demolition or repair of their kitchen. So, I dismiss the applicants' claims against both Circle Restoration and Mr. Stacey.

23. I turn to the claims against FPM and Ms. Tokarczuk.

24. The applicants focus their allegations on Ms. Tokarczuk and say she improperly authorized Circle Restoration to demolish their kitchen without their permission or consent. I find that Ms. Tokarczuk is FPM's employee. Under common law, an employer is generally liable for the actions of employees performed in the course of their employment. This is known as "vicarious liability" and it means that if Ms. Tokarczuk improperly authorized the applicants' kitchen destruction, FPM would be responsible for any resulting damages. Here, I find Ms. Tokarczuk was acting in the course of her employment with FPM at all relevant times. I see no legal basis to hold Ms. Tokarczuk personally responsible. Therefore, I dismiss the applicants' claims against Ms. Tokarczuk.

25. Further, FPM says it is the strata's agent, so it cannot be held liable for its or Ms. Tokarczuk's actions. I agree. FPM's contract with the strata clearly defines FPM as the strata's agent. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter into contracts with third parties on the principal's behalf. So long as the agent discloses that they are acting as an agent for

the principal, the agent will not generally be liable under a contract they make between the principal and third party.

26. Here, the strata explicitly gave FPM the authority to act on its behalf as the exclusive manager of the strata's property, to make contracts in the name of the strata, and to specifically deal with any emergency repairs FPM deems necessary. I find FPM was acting as the strata's agent when it engaged Circle Restoration to perform the emergency mould remediation in the applicants' strata lot. Further, I find that at all relevant times Circle Restoration and the applicants were aware that FPM was acting as the strata's agent. So, I find that FPM cannot be held liable for the contract it made on the strata's behalf for the applicants' kitchen demolition.
27. Further, FPM submits that the strata's bylaws make the applicants responsible for the repairs to their strata lot. Bylaw 12.1 states that each strata lot owner must repair and maintain their strata lot and keep it in a state of good repair. While the strata is required under section 149 of the SPA to insure the building (which includes walls, ceilings, floors, and certain fixtures within a strata lot), this does not mean it is required to repair those structures within a strata lot where the cost of repairs falls below the strata's insurance deductible: see *John Campbell Law Corp. v. The Owners, Strata Plan No. 1350*, 2001 BCSC 1342 and *Wawanesa Mutual Insurance Co. v. Keiran*, 2007 BCSC 727. I find that is the case here, as the evidence shows the strata's applicable water escape deductible is \$500,000, so it did not make a claim.
28. I acknowledge the applicants' submissions that they feel it is unfair that their kitchen was demolished without their consent. However, the fact is that the applicants' unit required repairs due to the mould growth. Sections 3 and 72 of the SPA say that the strata has a duty to manage, repair and maintain the strata's common property, and I find FPM (on the strata's behalf) properly took responsibility for emergency repairs in the applicants' strata lot to prevent further damage to the building and common property. I find there is no bylaw or SPA provision that requires the strata to complete additional repairs within the applicants' strata lot. Rather, I find bylaw 12.1 makes the

applicants responsible for completing their own kitchen repairs. Therefore, I dismiss the applicants' claims against FPM and I dismiss this dispute.

29. 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 applicants were unsuccessful and so I dismiss their claim for CRT fees. None of the respondents paid any fees or claimed any dispute-related expenses, so I make no order.

ORDER

30. I order the applicants' claims, and this dispute, dismissed.

Kristin Gardner, Tribunal Member