



Civil Resolution Tribunal

Date Issued: April 16, 2021

File: SC-2020-007884

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Corenblum v Jackson Cabinets Ltd. dba Duke Architectural Millwork dba Duke Custom Kitchens, 2021 BCCRT 398*

B E T W E E N :

DAVID CORENBUM

APPLICANT

A N D :

JACKSON CABINETS LTD. dba DUKE ARCHITECTURAL MILLWORK
dba DUKE CUSTOM KITCHENS and SAM JACKSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a small claims dispute over damages resulting from an October 2019 water leak in the applicant David Corenblum's strata lot.
2. The respondent, Jackson Cabinets Ltd. dba Duke Architectural Millwork dba Duke Custom Kitchens (Jackson), admittedly caused water damage in Mr. Corenblum's strata lot by piercing a water pipe in the strata lot directly above his. The respondent Sam Jackson is Jackson Cabinets Ltd.'s director.
3. Mr. Corenblum says Jackson was grossly negligent and claims the following damages against both respondents:
 - a. \$500 for his own labour to uninstall, clean and reinstall flooring,
 - b. \$1,000 for wear and tear and flooring damage, and
 - c. \$1,499 in punitive damages, described as loss of home enjoyment, lost wages, and lost time.
4. The respondents admit Jackson was responsible for the water leak but deny that Jackson was grossly negligent. The respondents agree to pay for some of Mr. Corenblum's loss but say he has not proven its value with any supporting evidence. They dispute that he is entitled to the amount claimed in this dispute.
5. Mr. Corenblum is self-represented. The respondents are represented by their insurer's lawyer, Tariq Teja.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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.

7. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. 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.
9. 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.
10. As a preliminary issue, Tariq Teja filed a Dispute Response for Sam Jackson but no separate Dispute Response for the respondent company, Jackson. Based on their joint representation and submissions, I find the Dispute Response was intended to respond to the claims against both respondents. I find Jackson is not in default for failing to file a separate Dispute Response.

ISSUES

11. The issues in this dispute are:
 - a. Was Jackson grossly negligent in causing the water damage?
 - b. Is Mr. Corenblum entitled to punitive damages?
 - c. How much do the respondents owe Mr. Corenblum in damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Mr. Corenblum must prove his claims on a balance of probabilities.
13. The background facts are undisputed. Mr. Jackson owns the strata lot directly above Mr. Corenblum's strata lot. On October 7, 2019 a Jackson employee or contractor was installing a screw in Mr. Jackson's strata lot wall and pierced a water pipe causing a leak. On October 8, 2019 a restoration company inspected the water leak and found moisture in Mr. Corenblum's strata lot drywall and under a section of the laminate floor. The restoration company was unable to deal immediately with the flooring and Mr. Corenblum performed some work himself. Mr. Corenblum dismantled part of the flooring to expose the underlay and concrete floor, wiped everything with water and vinegar, left the flooring to dry out, and reinstalled the flooring.
14. The respondents or their insurer paid to fix the dry wall but did not compensate Mr. Corenblum for the floors or his flooring work, which is at issue here.

Was Jackson grossly negligent in causing the water damage?

15. Mr. Corenblum alleges that Jackson deliberately drilled into the strata lot wall without knowing what was behind it. He asserts Jackson did so with enough force to pierce a water pipe and cause the water damage to his home. The respondents say Jackson had no way of knowing the water pipe was there and would not have drilled into the wall had it known.
16. Mr. Corenblum asserts that Jackson's conduct was deliberate, grossly negligent and deserving of punishment. He seeks \$1,499 in punitive damages, plus unspecified wage loss that I discuss below.
17. To prove gross negligence, Mr. Corenblum must prove that Jackson's conduct, if not deliberate, was a significant departure from the ordinary standard of a reasonable and competent tradesperson in similar circumstances: *Aville Enterprises Ltd. v. Colliers Macaulay Nicolls Inc. (sub nom Ma, Aville & Champion v. Colliers)*, 2011

BCPC 334. I find he has not proven so here. There is no evidence that Jackson drilled the hole recklessly or deliberately knowing a water pipe was there. There is also no evidence on the applicable standard of care to find it was significantly breached. I find Mr. Corenblum has not proven that Jackson was grossly negligent.

18. Even if Mr. Corenblum had proven gross negligence, it would not necessarily lead to a punitive damages award. The purpose of punitive damages is not to compensate the applicant but to punish extreme conduct worthy of condemnation: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130. Punitive damages are only awarded in exceptional cases to punish harsh, vindictive, reprehensible and malicious behaviour: *Vorvis v. ICBC*, [1989] 1 SCR 1085.
19. Mr. Corenblum provided no evidence to show that either respondent engaged in conduct deserving of punishment. Instead, the parties' emails show the respondents acted promptly and reasonably after learning about the water leak by immediately informing Mr. Corenblum, engaging a restoration company, and remediating the dry wall damage. I dismiss Mr. Corenblum \$1,499 claim for punitive damages.

How much do the respondents owe Mr. Corenblum in damages?

20. Again, the respondents admit they are responsible to pay for some of Mr. Corenblum's loss. The issue before me is to decide how much the respondents must pay.
21. First, Mr. Corenblum seeks \$500 for his labour to dismantle, clean, and reinstall the laminate flooring. Mr. Corenblum describes removing and replacing several flooring boards but the submitted photographs show only about 5 planks removed with exposed concrete. There is otherwise no clear evidence on the exact scope of the work and Mr. Corenblum does not say exactly how long it took him to do the floors. Mr. Corenblum provided a January 4, 2020 estimate from a restoration contractor related to a different leak. I find the January estimate's work scope is different than the flooring work here and not helpful in determining its value. However, I accept that Mr. Corenblum removed, cleaned, and reinstalled some planks and this work took

time to perform. Without evidence on the precise value, I allow \$250 on a judgment basis as reasonable compensation for Mr. Corenblum's own labour.

22. Next, Mr. Corenblum seeks \$1000 for alleged wear and tear and damage to the laminate floorboards. Mr. Corenblum says floorboard planks had to be forced apart, which damaged or compromised the planks. He asserts that the laminate tops got "chipped and cracked" in the process but the damage is not apparent in the photographs. He asks that I infer the flooring was damaged by the fact that the floor was dismantled.
23. To the extent the flooring was damaged by Mr. Corenblum's own work, I find Mr. Corenblum has not proven that the respondents are responsible. There is no information that Mr. Corenblum was a foorer or had the expertise to competently perform the work himself. Mr. Corenblum admittedly took on this work voluntarily, which I understand would have been performed by the respondents' remediation company.
24. In any event, I find Mr. Corenblum has not proven the alleged damage. If the laminate tops were chipped or cracked, I find Mr. Corenblum should have been able to capture this in a photograph. There are no photographs showing flooring damage nor is there an independent witness statement describing the damage in evidence. I find it is not appropriate here to infer the damage simply because the flooring was dismantled and reassembled. I find the impact, if any, of redoing the flooring is outside a person's ordinary knowledge and would require expertise: *Bergen v. Guliker*, 2015 BCCA 283. There is no statement from a flooring company or flooring expert stating that the flooring was compromised. I find Mr. Corenblum's assertions are insufficient to prove the damage. As Mr. Corenblum also did not pay to replace any of the flooring, I find he has not proven he suffered a loss. I dismiss Mr. Corenblum's \$1,000 flooring claim.
25. Mr. Corenblum also seeks an unquantified amount for wage loss. He submitted some job postings without explaining their relevance. I find the postings do not establish any wage loss. Mr. Corenblum provided no evidence showing that he had to take

unpaid days off work because of the water leak incident or at all. I dismiss his wage loss claim.

26. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Corenblum is entitled to pre-judgment interest under the COIA on the \$250 from October 7, 2019, the date of loss, to the date of this decision. This equals \$4.47.
27. 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. I find Mr. Corenblum was partially successful in bringing dispute and I will allow \$62.50, which is ½ his paid CRT fees.

ORDERS

28. Within 30 days of the date of this order, I order the respondents to pay Mr. Corenblum a total of \$316.97, broken down as follows:
 - a. \$250 as damages,
 - b. \$4.47 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
29. Mr. Corenblum is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
30. I dismiss Mr. Corenblum's remaining claims.
31. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to

be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

32. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member