



Civil Resolution Tribunal

Date Issued: June 7, 2021

File: SC-2020-007143

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gao v. Concord Arc Limited Partnership*, 2021 BCCRT 623

BETWEEN:

YUHANG GAO

APPLICANT

AND:

CONCORD ARC LIMITED PARTNERSHIP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about deficiencies in a residential strata lot. The applicant, Yuhang Gao, purchased a strata lot built by the respondent, Concord Arc Limited Partnership (Concord), from a previous homeowner. Mr. Gao's application for dispute resolution

claims that the sliding door is not properly sealed or level, a wall needs to be repainted, a transition strip needs to be re-glued and a laundry room water drain line is missing a part. Since the dispute started, the parties have resolved all claims except for Mr. Gao's claim that a laundry room is missing a drain line guide. Mr. Gao claims \$20 for the allegedly missing part.

2. Concord denies Mr. Gao's remaining claim relating to the drain line guide. Concord says the drain line was properly installed and does not need repair or additional parts.
3. Mr. Gao is self-represented. Concord is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. 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.
6. 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.

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. As discussed above, the parties reached an agreement on all claims before this adjudication, except Mr. Gao's claim relating to the drain line, and those issues are not before me in this decision.

Late evidence

9. I note that Mr. Gao submitted evidence late, consisting of 4 photographs of the laundry drain line. I find that this evidence is relevant and Concord was not prejudiced by this late evidence because it had an opportunity to respond. So, I have allowed Mr. Gao's late evidence and I have considered that evidence in my decision.

Evidence resubmission

10. Mr. Gao submitted 2 spreadsheet files summarizing his warranty claim history which I was unable to view. At my request, Mr. Gao resubmitted these spreadsheet files. I find that Concord was not prejudiced by the resubmission of this evidence because it was given an opportunity to respond to the documents. So, I have considered Mr. Gao's spreadsheet files in this decision.

ISSUE

11. The issue in this dispute is whether Concord must pay Mr. Gao \$20 for failing to install a drain line guide in his laundry room.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant, Mr. Gao must prove his claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

13. Concord says it sold the strata lot to the initial homeowner on September 24, 2019 and Mr. Gao purchased the strata lot as the second owner on approximately March 20, 2020.
14. Mr. Gao was covered by a third-party home warranty from Travelers Insurance Company of Canada (Travelers) that covered defects in materials and labour in the strata lot. A third-party warranty is a warranty contract provided by a different business than the builder. Travelers is not a party to this dispute.
15. Mr. Gao claims that Concord is responsible for deficiencies under the warranty policy. However, the warranty certificate says that Travelers is the insurer, not Concord. There is no evidence before me showing a direct contractual relationship between Gao and Concord. However, based on my findings below that the warranty policy was not breached, I find it unnecessary to seek further submissions from the parties about whether Concord was bound by the warranty.
16. The warranty policy started on September 25, 2019 and covered defects in materials and labour for 1 year. It is undisputed that Mr. Gao filed his warranty claim within the 1-year deadline.
17. The warranty policy defines defects as any design or construction contrary to building codes or that requires repair or replacement due to Concord's negligence. So, Mr. Gao must prove that the building codes required the installation of a drain line guide or that Concord was negligent by failing to install it.

Building codes

18. Mr. Gao provided a home inspection report from November 27, 2020. Since the report was prepared by a licensed inspector, I find the inspector had sufficient education and training to submit the expert report as required under CRT rule 8.3. The inspection report says that the laundry hoses are not secured to the drain tub and it recommends installing a holder to secure the hoses because a flood could occur if the hoses fell.

19. Concord provided emails an engineer sent on January 12 and February 3, 2021. Since the emails were sent by a licensed engineer, I find the engineer had sufficient education and training to provide expert opinions as required under CRT rule 8.3. The engineer's emails say that the drain line was installed properly and there is no building code requiring the installation of a drain line guide.
20. Although Mr. Gao's home inspector recommended the installation of a drain guide, Mr. Gao did not refer to any building codes requiring this device or provide any evidence disputing Concord's engineer's opinion that the applicable building codes do not require it. Based on Concord's engineer's undisputed opinion, I find that a drain line guide is not required under building codes.

Negligence

21. To prove negligence, Mr. Gao must show that Concord owed him a duty of care, Concord breached the standard of care, Mr. Gao sustained damage, and the damage was caused by Concord's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
22. I accept that Concord owed property owners a duty to properly install the drain line while building the strata lot. However, even if Concord could be held liable in negligence to Mr. Gao for failing to instal the drain pipe guide, I find Mr. Gao has not proved that Concord breached the standard of care, for the following reasons.
23. To establish negligence, Mr. Gao must prove that Concord failed to exercise the type of care expected of a reasonably careful and prudent builder in the circumstances. Further, where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence (see, *Bergen v. Guliker*, 2015 BCCA 283). I find that the standard of care required for the installation of laundry drain lines is outside the scope of common understanding. So, I find expert evidence is necessary.
24. However, Mr. Gao has not provided any expert evidence showing that Concord breached this standard of care. Although his inspector recommends the installation

of a drain line guide, the inspector does not say that this device is required by the standard of care. Further, Concord's engineer says that drain line guides are not required and generally flexible drain lines are used. I find that Mr. Gao has not proved that Concord breached the standard of care by not installing a drain line guide.

25. Based on my findings above that the drain line guide was not required by building codes and that Concord was not negligent, I find that the allegedly missing drain line guide is not a warranty covered defect. So, I find that Mr. Gao is not entitled to compensation relating to this device and I dismiss this claim.

26. 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 see no reason in this case not to follow that general rule. Since Mr. Gao was not successful in this dispute, I find that he is not entitled to reimbursement of his CRT fees. Concord did not pay fees or request reimbursement of dispute-related expenses.

ORDER

27. I dismiss Mr. Gao's claims and this dispute.

Richard McAndrew, Tribunal Member