



# Civil Resolution Tribunal

Date Issued: June 24, 2021

File: SC-2021-001119

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Pisiak*, 2021 BCCRT 695

**B E T W E E N :**

SUE CHEN and 1018267 B.C. LTD.

**APPLICANTS**

**A N D :**

KELLY PISIAK

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute arose out of a strata lot or condominium sale. The applicant, Sue Chen, is a director of the applicant corporation, 1018267 B.C. Ltd. (101), which purchased a condominium from the respondent, Kelly Pisiak. The applicants say that, when 101

took possession of the property, a wall-mounted coffee machine was not in good working order. The applicants say that Mrs. Pisiak declined to address the problem, and that they hired a technician to repair the coffee machine. The applicants ask for an order that Mrs. Pisiak reimburse them for \$282.45 in repair costs. Mrs. Pisiak says the coffee machine was in the same condition as when the applicants viewed the condominium. She denies that she is responsible for these costs.

2. Ms. Chen represents 101 and herself. Mrs. Pisiak is self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.

6. 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.

## **ISSUE**

7. The issue in this dispute is whether the malfunctioning coffee machine was a breach of the parties' contract and, if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

8. In a civil proceeding like this one, applicants must prove their claims on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. I have read all of this information, but refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.
9. Mrs. Pisiak and 101 entered into a May 18, 2020 Contract of Purchase and Sale (agreement) for a condominium Mrs. Pisiak owned. The agreement says that it incorporated a Property Disclosure Statement, but the parties did not submit it in evidence.
10. In clause 3 of the agreement, Mrs. Pisiak warranted that all "included items" would be in proper working order on the possession date. Under the definition clause 7, "included items" included all fixtures. Clause 8 stated that the property and included items would be in substantially the same condition on the possession date as when 101 viewed it on May 15, 2020.
11. The parties' agreement gave 101 an opportunity to inspect the condominium. According to an August 13, 2020 email from Mrs. Pisiak's real estate agent, the coffee machine had power at the time of the inspection. The real estate agent says she explained to the inspector and Ms. Chen that, because the machine had never been used, it would be necessary to "prime" it as set out in the instruction manual.

12. After 101 took possession of the condominium on August 1, 2020, Ms. Chen says that the coffee machine did not function properly. The parties, their real estate agents and the applicants' lawyer exchanged messages about the malfunctioning coffee machine, and Mrs. Pisiak suggested that the applicants contact a technician or the building's concierge for assistance. Ms. Chen arranged for the coffee machine to be repaired for \$282.45. According to the August 24, 2020 service invoice, there was an "air lock" in the water pump and the machine functioned properly once the technician cleared it.
13. Although the applicants suggested that Mrs. Pisiak did not comply with clause 8, they submitted that Mrs. Pisiak breached only clause 3 of their agreement. The applicants say that Mrs. Pisiak warranted that the coffee machine would be in proper working order and, because it was not, she is responsible for the repair costs. Mrs. Pisiak says she had never used the coffee machine and that it is not her responsibility to pay for something she never used.
14. Under the parties' agreement, Mrs. Pisiak had an obligation to ensure that all included items were in proper working order and that the property and included items were in substantially the same condition as they were on May 15. The parties' agreement included fixtures, but did not specifically say that the coffee maker was included or excluded in the purchase. Therefore, whether the coffee machine meets the definition of a fixture is an important consideration.
15. *Black's Law Dictionary*, 7<sup>th</sup> edition at page 652, defines a fixture as "personal property that is attached to land or a building and that is regarded as an irremovable part of the real property". The applicants say the coffee machine is a fixture as it is "installed in the kitchen wall". Mrs. Pisiak did not make any submissions on this point.
16. In *Scott v. Filipovic*, 2015 BCCA 409 at paragraph 18, the Court cited the test in *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335 (Div. Ct.), which says that something attached to the land by its own weight is usually not considered to be part of the land, while something that is fixed to the land "even slightly" is considered to be part of the land.

17. While coffee machines typically are free-standing devices, this is not the case here. Images of the coffee machine in evidence show that it is embedded in a cabinet or wall. Although it is not clear whether the machine is fixed in place with screws or other fasteners, it has attached plumbing infrastructure. I find that the coffee maker is attached to the building as contemplated in *Stack*, and that it is therefore a fixture that was included in the purchase. While it may be true that Mrs. Pisiak never used the coffee machine, she had an obligation under the parties' agreement to ensure that it was in proper working order when 101 took possession of the condominium.
18. That said, the applicants bear the burden of proof. They cited *Kwieton v. Lindberg*, 2021 BCCRT 78, in which another tribunal member ordered the reimbursement of repair costs for a malfunctioning furnace, in support of their submission that they are entitled to reimbursement of repair costs. This decision is not binding on me, and I will consider whether the evidence establishes that the coffee maker was not left in proper working order as required.
19. I accept that Ms. Chen was unable to brew coffee with the machine after 101 took possession of the condominium. However, this fact, by itself, does not establish that the coffee machine was not in proper working order at the time of possession.
20. The applicants do not dispute Mrs. Pisiak's submission that her real estate agent advised them to prime the coffee machine as set out in the instruction manual. In August 13, 2020 emails, Ms. Chen stated that she had "tried everything with this machine" including cleaning it and attempting a fix based on a YouTube video. She did not mention priming the machine or following instructions from the user manual, either in the emails or in the applicants' submissions. In my view, this omission is significant, and I find that it is more likely than not that Ms. Chen did not prime the coffee machine before attempting to use it.
21. I disagree with the applicants' suggestion that the fact that the machine needed to be primed supports the conclusion that it was not in proper working order. As noted, the invoice from the repair technician identified the problem as an air lock in the coffee machine. I find that the question of what caused the air lock is outside ordinary

knowledge, and must be answered with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).

22. Ms. Chen says that the technician told her that the problem with the coffee machine was due to “a lack of use and maintenance”. This comment is not reflected on the invoice. In addition, there is no statement in evidence from the technician about the source of the air lock, whether priming the machine was necessary to ensure proper operation, or whether the steps Ms. Chen took to try to get the machine working could have caused the air lock.
23. I find that without evidence to establish the air lock’s cause, I cannot conclude whether there was a breach of the parties’ agreement or whether the problem with the coffee machine arose after 101 took possession of the condominium. Keeping in mind that the applicants bear the burden of proof, I find that the applicants have not established that the coffee machine was not in proper working order such that Mrs. Pisiak breached the parties’ agreement. So, I dismiss the applicants’ claim for damages.
24. 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. As the applicants were not successful, I dismiss their claim for reimbursement of CRT fees.

## **ORDER**

25. I dismiss the applicants’ claims and this dispute.

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Lynn Scrivener, Tribunal Member