



# Civil Resolution Tribunal

Date Issued: November 3, 2021

File: SC-2021-004105

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Tait Contracting & Design Ltd.*, 2021 BCCRT 1164

BETWEEN:

LI ZHANG

**APPLICANT**

AND:

TAIT CONTRACTING & DESIGN LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This small claims dispute is about strata lot repairs. The applicant, Li Zhang, says the respondent Tait Contracting & Design Ltd. (Tait) damaged his strata lot in December 2019. Mr. Zhang claims \$4,462.50 to repair the damage he says Tait

caused. Mr. Zhang also seeks an order that Tait repair the damage. The strata corporation (strata) is not a party to this dispute.

2. The strata hired Tait to repair extensive rot in common property areas adjacent to Mr. Zhang's strata lot. Tait's estimate to the strata included a clause that there would most likely be unavoidable collateral damage to the building's interior, together with another clause that the additional repair work would be billed on a time and materials basis. Mr. Zhang was not a party to Tait's contract with the strata. The strata asked Tait for an estimate to repair Mr. Zhang's interior drywall but the strata declined to proceed after Tait gave its \$1,575 estimate. None of this is disputed. Mr. Zhang says Tait ought to have warned him directly about the potential damage to his strata lot.
3. Mr. Zhang is self-represented. Tait is represented by its owner, Lynn Tait.

## **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). 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. I note a prior related CRT dispute filed by Mr. Zhang against the strata, which resulted in an April 9, 2021 decision dismissing Mr. Zhang's claims (see *Zhang v. The Owners, Strata Plan 375*, 2021 BCCRT 371). In that dispute filed under the *Strata Property Act* (SPA), Mr. Zhang's claim against the strata included payment of damages for the same strata lot damage at issue in this dispute against Tait. Findings of fact in prior CRT decisions are not binding on me (although the conclusion the strata was not negligent is binding and is also not before me in this small claims dispute). In any event, neither Mr. Zhang nor Tait dispute the facts summarized in that earlier April 2021 decision. Further, that decision did not decide Tait's liability in tort for damage to Mr. Zhang's strata lot. Below, I set out my relevant findings of fact for the dispute before me.

## **ISSUES**

9. The issues are a) whether Tait was negligent in its repair work to the strata's common property, which undisputedly resulted in interior damage to Mr. Zhang's strata lot, and b) if yes, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicant Mr. Zhang has the burden of proving his claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.

11. It is undisputed that in December 2019 Tait was doing common property repairs in a crawlspace, as there was extensive rot. I find the evidence shows there was resulting damage to Mr. Zhang's interior strata lot as the building shifted and settled after Tait's work: cracks and screw pops in the drywall, floor baseboard, and windowsill.
12. The April 2021 CRT decision noted the strata's earlier 2019 agreement with Mr. Zhang that the strata would complete crawlspace repairs, which led to Tait's repair work at issue in this dispute. That April 2021 CRT decision also noted the strata's bylaws held Mr. Zhang responsible for repairing and maintaining his own strata lot, unless the strata was proven negligent. In the April 2021 decision, the CRT member concluded Mr. Zhang had not proved the strata was negligent.
13. As referenced above, following the strata's request for an estimate to repair the drywall and trim damage, on December 16, 2019 Tait gave the strata a \$1,575 estimate. That estimate was consistent with Tait's original quote to the strata that made it clear such repairs would be extra, done on a time and materials basis. However, the strata then decided not to hire Tait to fix Mr. Zhang's strata lot. According to the strata's property manager's statement in evidence, this was because Mr. Zhang declined the strata's offer to split the cost 50/50, which offer was based on an earlier 2019 CRT decision (2019 BCCRT 1146) that found Mr. Zhang responsible for certain pre-existing damage. Given my conclusion below, I find I do not need to parse out which damage may have been pre-existing as opposed to caused by Tait.
14. In short, I find Mr. Zhang knew the strata was going to have the crawlspace repairs completed, because he pursued the strata to have that work done and he agreed to it being done.
15. It is undisputed Mr. Zhang did not have a contract or agreement with Tait. As noted, Tait was hired by the strata. Mr. Zhang's claim against Tait is therefore a tort claim

based in negligence. To prove negligence against Tait, Mr. Zhang must prove the following:

- a. Tait owed Mr. Zhang a duty of care.
- b. Tait breached the applicable standard of care, causing damage.
- c. The damage was a reasonably foreseeable consequence of Tait's negligent act.

16. It is undisputed Tait owed Mr. Zhang a general duty of care, while it worked in common property adjacent to Mr. Zhang's strata lot. However, as discussed below, I find this duty was limited by Tait's contract with the strata.
17. On balance, I find the evidence shows that Tait's work likely caused at least some of the claimed strata lot damage, which Tait did not particularly dispute in its later submissions. So, the question is whether in the circumstances Tait breached the applicable standard of care. I find Tait did not and my reasons follow.
18. First, Mr. Zhang says Tait never warned him that his strata lot could be damaged by Tait's common property repairs. He says it should have. I disagree, and find Tait reasonably warned only the strata, which authorized Tait to proceed. In any event, I find nothing turns on the fact Tait did not warn individual strata lot owners, including Mr. Zhang. I say this because under the SPA section 3, the strata was authorized to direct Tait to do the common property work (even if there would be consequential damage to strata lots).
19. Second, Mr. Zhang argues that Tait failed to prove that its repair methods were done according to industry standard. Yet, in this dispute, as the applicant Mr. Zhang has the burden of proving Tait's work was substandard. I find he has not done so. Proving whether Tait could have reasonably avoided the damage to Mr. Zhang's strata lot when completing the common property repairs requires expert evidence, as I find it falls outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is no expert opinion in evidence.

20. So, I find Mr. Zhang has not proven Tait breached the applicable standard of care. Even though the damage to Mr. Zhang's strata lot was foreseeable, it was not caused by negligence on Tait's part and so I find Tait is not liable for that damage. So, I dismiss Mr. Zhang's negligence claim against Tait.
21. Given the above, I do not need to address Mr. Zhang's claimed damages in any detail. However, I would add that the CRT does not have authority in its small claims jurisdiction to order Tait to complete repairs, as this is injunctive relief that falls outside CRTA section 118.
22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Tait was successful but did not pay fees or claim expenses. As Mr. Zhang was unsuccessful, I dismiss his claim for reimbursement of CRT fees.

## **ORDER**

23. I dismiss Mr. Zhang's claims and this dispute.

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Shelley Lopez, Vice Chair