



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grinhute v. The Owners, Strata Plan BCS 4209*, 2022 BCCRT 897

BETWEEN:

SHMUEL GRINHUTE and GM GARAGE DOORS INC.

APPLICANTS

AND:

The Owners, Strata Plan BCS4209 and TRIBE MANAGEMENT INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about payment for garage door repairs. The applicant GM Garage Doors Inc. (GM) repaired a garage door gate for the respondent strata corporation,

The Owners, Strata Plan BCS4209 (strata). The strata's property manager, the respondent Tribe Management Inc. (Tribe), requested the work on the strata's behalf. The applicant Shmuel Grinhute is GM's principal.

2. The applicants originally claimed \$4,189 for the work but reduced their claim to \$2,160 after receiving a \$2,029 payment after this Civil Resolution Tribunal (CRT) dispute began.
3. The strata says GM failed to properly investigate and test a power issue, and so it says it owes nothing further. Tribe says as the strata's property manager it is not responsible.
4. Mr. Grinhute represents himself and GM. The strata is represented by a strata council member, AW. Tribe is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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)*. CRTA section 2 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.
6. 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. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

7. CRTA section 42 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.
8. 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.

ISSUES

9. The issues are:
 - a. Who were the parties to the garage door repair contract?
 - b. Did GM fail to reasonably investigate the garage gate's power?
 - c. Are the applicants entitled to the claimed \$2,160, and if so, from who?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note the applicants chose not to submit any documentary evidence despite having the opportunity to do so.

The contract parties

11. There is no formal written agreement in evidence. All of the invoices in evidence were issued by GM. As a corporation, GM is distinct legal entity, separate from its owners, shareholders, officers, and employees. Mr. Grinhute does not specifically argue he is entitled to payment in his personal capacity. Given the evidence before me, I find no basis for Mr. Grinhute's claim in his personal capacity and I dismiss it.

12. Next, as referenced above, Tribe is the strata's current property manager. The strata's property manager was formerly Gateway Property Management Corporation (Gateway). In August 2021, Gateway amalgamated with Tribe. All of the invoices in evidence (all pre-dating August 2021) are issued to the strata "c/o" Gateway.
13. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its 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. It is undisputed the applicants knew Gateway (or later Tribe) were acting as the strata's agent at all material times.
14. The applicants' only argument against Tribe is that when it took over the strata's management it also adopted Gateway's commitments. Yet, apart from the invoices naming the strata "c/o" Gateway, there is no evidence of any agreement between GM and Gateway or GM and Tribe. I find this insufficient to hold Tribe responsible for the strata's agreements, just because Gateway or Tribe acted as an agent. For the reasons above, I dismiss the claim against Tribe. So, my decision below addresses the strata's liability to GM for the claimed \$2,160.

The job

15. At issue is the strata's west garage door, which is a sliding gate. GM claims for the supply, installation and testing of a logic board, timer, and loop detector.
16. Based on the evidence and submissions, I find there are 3 GM invoices at issue, which total \$2,749:
 - a. *Invoice #53 dated March 4, 2021, for \$664.* This is for "supply and install Timer for sliding gate". The invoice is for \$480 (4 hours x \$120) and \$160 for "timer". No tax was added. The date(s) worked is not indicated.

- b. *Invoice #76 dated April 8, 2021, for \$1,365.* This is for “supply – logic board for sliding gate” (\$820) and \$480 (4 x \$120) for “repair sliding gate including install and program logic board”. The date(s) worked is not indicated.
 - c. *Invoice #94 dated April 30, 2021, for \$720.* This is for “supply and install loop detector – and tested the system labour”. The invoice is for \$480 (4 hours x \$120) and \$240 is for “parts”. No tax was added. The date(s) worked is not indicated.
17. The strata says GM failed to do “basic troubleshooting” at the job’s outset. In particular, the strata says GM failed to check that power was coming into the charging system. The strata says that the power issue was the entire problem: the solar panel was not generating enough power to charge the battery by itself, so when the power was interrupted, the battery did not get enough energy in it to open and close the gate. So, the gate defaulted to an open state.
18. The strata says that its electrician solved the problem and since then the gate has worked fine. In support, there is a June 2021 email exchange in evidence between AW and Lex Toews of Multi Phase Solutions Inc. The exchange identifies Mr. Toews is an electrician, though his full credentials are not in evidence. Bearing in mind the CRT’s flexible mandate, under the CRT’s rules I accept Mr. Toews is an expert to comment on the garage gate’s power issue. I further accept the power was disrupted as described, which is not particularly disputed.
19. The strata says that as a result of failing to diagnose the problem at the outset, GM purchased and installed parts that were not actually required. However, as discussed further below, the strata did later pay invoices #53 and #76, which is why GM’s claim was reduced after this CRT dispute began. I note the applicants do not explain how they arrived at the originally claimed figure of \$4,189 for the strata’s west gate repair job at issue.
20. The applicants’ position is that the electrical power was cut on Sundays and so the garage gate worked fine when it assessed it on other days because the battery had

had a chance to charge. However, on Sundays the battery was weak and lacked charge, and that is why the gate did not work. The applicants say they reasonably did not know the battery power was the issue.

21. I find the strata has the onus of proving GM failed to reasonably diagnose the problem in a timely way, since it is the party asserting that position (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). I find GM's approach is not obviously substandard and so I find this issue is outside ordinary knowledge and requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is none on the issue of what GM ought to have done. While I have accepted Mr. Toews as an electrical expert, he is not a garage door mechanic. He also did not comment on whether GM should have been able to diagnose the problem more quickly.
22. So, I find it unproven that GM unreasonably or inadequately addressed the strata's west gate repair. However, that is not the end of the matter.
23. In May 2021, a month before this CRT dispute was started, GM wrote AW that there were 3 unpaid invoices totalling \$2,749. GM did not mention the claimed \$4,189 or any unbilled labour charges. As noted, on the strata's behalf Tribe paid 2 of GM's invoices, which is consistent with the claim reduction from \$4,189 to \$2,160.
24. The difficulty for GM is that it has not explained what the \$2,160 is for, although on the evidence I find \$720 of it is for invoice #94 summarized above. GM says it spent 26 hours of additional labour but it also submits this labour was not billed. There are no time records, invoices, employee statements, or any explanation for that 26 hours of labour and nothing to explain the \$2,160 beyond the \$720 invoice. So, I allow only \$720 for invoice #94, given the absence of expert evidence showing that GM unreasonably replaced the loop detector that is the subject of that invoice.

Interest, fees, & expenses

25. GM claims 2% monthly interest. Contrary to GM's assertion, contractual interest cannot be unilaterally imposed in an invoice (see *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775). So, I find there was no agreement about interest and dismiss the contractual interest claim.
26. In the absence of an agreement about interest, the *Court Order Interest Act* (COIA) applies to the CRT. I find the strata must pay GM pre-judgment interest under the COIA on the \$720. Calculated from the April 30, 2021 invoice date to the date of this decision, this interest equals \$5.12.
27. 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. As GM was partially successful, I find the strata must reimburse GM half of GM's paid CRT fees, which equals \$87.50. The respondents did not pay CRT fees and no dispute-related expenses were claimed.

ORDERS

28. Within 21 days, I order the strata to pay GM a total of \$812.62, broken down as follows:
 - a. \$720 in debt,
 - b. \$5.12 in pre-judgment interest under the COIA, and
 - c. \$87.50 in CRT fees.
29. GM is entitled to post-judgment interest, as applicable. I dismiss Mr. Grinhute's claims and all claims against Tribe.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Acting Chair and Vice Chair