Date Issued: August 17, 2022

File: SC-2022-001371

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mia v. Best Built-In Centre Ltd.*, 2022 BCCRT 927

B E T W E E N :

RAZIYA MIA

APPLICANT

A N D :

BEST BUILT-IN CENTRE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:	Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about water damage. The applicant, Raziya Mia, says the respondent, Best Built-In Centre Ltd. (Best), improperly installed an alarm sensor in her bedroom

window, in 2009 or 2010. Ms. Mia says the hole Best drilled for the sensor's wire led to water ingress in both 2015 and again in October 2021, damaging her baseboard under the window. Ms. Mia says she only discovered Best's drill-hole as the leak's cause after the October 2021 incident. Ms. Mia further says that the window's removal and reinstallation was required to identify the leak's source. Ms. Mia claims $2,873.81 in damages related to the window's removal and reinstallation.

2. Ms. Mia had her windows pressure-washed in 2015. Ms. Mia undisputedly did not contact Best in 2015 or in August 2016 when she replaced the baseboard. This is because prior to October 2021 Ms. Mia admittedly assumed the leak's cause was the pressure-washing. Best denies negligence but it also says Ms. Mia's claim is out of time, given that Ms. Mia knew about the water ingress in 2015 and 2016.

3. Ms. Mia is self-represented. Best 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). 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.

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. 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.

6. 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.

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.

ISSUES

8. The issues are:

   a. Whether Ms. Mia's claim is out of time,

   b. If not, whether Best's 2009 or 2010 installation of the alarm wire was negligent, and if so

   c. To what extent, if any, is Ms. Mia entitled to the claimed $2,873.81.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Mia must prove her 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.

10. In 2009 or 2010, Best installed the alarm system in Ms. Mia's newly constructed home. Nothing turns on the precise year. In October 2021, Ms. Mia identified baseboard damage below her bedroom window. This led her spouse to investigate and Ms. Mia says the damage resulted from Best's allegedly faulty installation of an alarm sensor. In particular, Ms. Mia says Best's drill-hole was too low in the sill, which in turns she says caused water ingress and resulting damage to the baseboard below.

11. Earlier, in 2015, Ms. Mia admittedly had all her windows pressure-washed. She says she found water on all her interior windowsills around that time, which she says required a lot of drying time. In August 2016, Ms. Mia replaced the baseboard under the same bedroom window at issue in this dispute. Ms. Mia asserts that that baseboard damage was also caused by water ingress through the "alarm hole", just as she asserts about the baseboard damage she identified in October 2021. However, Ms. Mia says she had originally incorrectly assumed the earlier baseboard damage was due to the pressure-washing. She says it was only after October 2021 when her spouse investigated that she determined the leak's source was Best's drill-hole.

12. Ms. Mia paid $2,984.06 for supply and installation of a new Starline vinyl window and related envelope repairs. Around $600 of this was for the envelope and exterior repair, and the rest was for the window replacement. Ms. Mia deducted $110.25 in her CRT claim, because she admits that this cost for exterior trim board replacement is not Best's responsibility as it was caused by a nail head that was not sealed.

13. I turn then to whether Ms. Mia's claim was filed out of time. Under section 13 of the CRTA, the *Limitation Act* (LA) applies to the CRT. Under section 6 of the LA, I find Ms. Mia had a 2-year window to file her claim against Best. Ms. Mia filed her application to the CRT on February 22, 2022 and this stopped the limitation period, as set out under CRTA section 13.1. So, if Ms. Mia's claim arose before February 22, 2020, it was filed out of time.

14. While she does not use these words, Ms. Mia essentially says that the running of time started when in late 2021 she discovered new baseboard damage and then learned that the leak's cause was from the alarm sensor hole being drilled too low. So, Ms. Mia says her claim was filed in time.

15. Under section 8 of the LA, the limitation period starts running when a party discovers their claim. A party discovers a claim when they know or reasonably should know that another person or entity has caused them a loss and that a legal proceeding would be an appropriate way to remedy the loss.

16. Ms. Mia discovered her claim when she had “actual or constructive knowledge of the material facts upon which a plausible inference of liability” on Best’s part could be drawn: see *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31. Discoverability of a claim is not dependent on knowledge of the exact extent of the loss. It is sufficient to know that some loss has occurred: see *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC). In other words, Ms. Mia’s discoverability of her claim against Best is not dependent on when she knew the exact extent of her loss, which here is the alleged window replacement requirement. It is sufficient to know that some loss has occurred.

17. In her submissions, Ms. Mia says “in retrospect, the first evidence of water damage to the same baseboard” occurred in 2015, when a “professional window cleaner was hired”. Ms. Mia submits that she incorrectly assumed, due to her “personal lack of troubleshooting skill”, that the pressure-washing caused that baseboard damage.

18. Ms. Mia admits she took no steps to investigate the water issue in 2015 and none in 2016 apart from replacing the damaged baseboard. Ms. Mia had hired Best to install the alarm and to provide alarm monitoring. With that, I find the central question is whether Ms. Mia reasonably ought to have known she had a claim against Best by 2016 or at any point before February 22, 2020. Under *Grant Thornton*, an applicant will have constructive knowledge when the evidence shows that the applicant ought to have discovered the material facts by exercising reasonable diligence. So, was it reasonable for Ms. Mia to assume, without any investigation, that the 2015 water ingress was due to recent power washing? Or, did Ms. Mia fail to exercise reasonable diligence in investigating the leak’s cause in 2015 when the water appeared or in August 2016 when she replaced the damaged baseboard?

19. On balance, I find Ms. Mia reasonably ought to have investigated the source of water damage by the time she replaced the baseboard in 2016. Ms. Mia says that in 2015 it took “many hours to dry the affected areas”. Yet, the baseboard still required replacement in August 2016 due to water damage. Based on the evidence and submissions before me, I find Ms. Mia reasonably ought to have known by August 2016 there was an outstanding water ingress concern and she should have

investigated. Had she done so, I find she could have filed her claim against Best within 2 years of August 2016, if not before. Given the above, I find Ms. Mia's claim against Best is out of time.

20. Even if I am incorrect about the limitation issue above, I find Ms. Mia has not proved Best was negligent. My reasons follow.

21. Ms. Mia relies on the opinion of Kyle Power, owner/installer, with Powerhouse Installation. Ms. Mia did not provide his qualifications but I infer Mr. Power is a window installer. On December 12, 2021, Mr. Power emailed Ms. Mia that after removing her leaking window and investigating the water ingress, "it seems" the leak's source was caused by the hole for the alarm contact being drilled too low on the window frame.

22. Bearing in mind the CRT's flexible mandate, I accept Mr. Power is an expert in window installation and repair. That said, I find his opinion about the leak's cause somewhat equivocal, given he only says what the cause "seems" to be.

23. In any event, I do not accept Mr. Power is an expert in alarm installation, as there is no suggestion or evidence that he is. Further, Mr. Power's opinion does not speak to what ought to have been done with knowledge available in 2009 or 2010, which was over a decade before his opinion. Notably, Ms. Mia did not submit an expert opinion from an alarm system expert.

24. For the purposes of this decision, I accept Best owed the home's future occupants a duty of care. However, I find Ms. Mia has not proved Best failed to meet the required standard of care for an alarm installer. I say this because, as noted above, I find Mr. Power is not an expert in alarm installation. I find the subject matter is outside ordinary knowledge and so it requires expert opinion (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is no qualified expert critical of Best's work.

25. In any event, there is also no evidence that Mr. Power responded to Ms. Mia's request for his opinion about what percentage of the problem was Best's and what was the builder's choice in window for that particular area. Further, Mr. Power did not respond to Ms. Mia's query about whether it was totally necessary to replace the window,

although she wrote she was happy to have a better window. Finally, Mr. Power did not address the earlier 2015 leak or the 2016 baseboard repair at all. I find this does not assist Ms. Mia.

26. Next, Mr. Power also said the drilled holes were "never properly sealed", allowing any water that was able to flow through the hole in the window frame to bypass the building envelope and drain directly into the wall. Yet, Best denies failing to seal the windows and points to the fact Ms. Mia's spouse admittedly added a sealant to the windows after Mr. Power's initial fall 2021 visit and before his window replacement work. While Ms. Mia says her husband was qualified and applied the sealant correctly, she submitted no witness statement from him. Overall, I find it unproven the lack of proper sealing related to Best's work from 10 years prior.

27. Finally, while Ms. Mia submits it was "essential" to replace the window, as the old window and "Blueskin" membrane were allegedly compromised, she submitted no evidence of this. As noted, Mr. Power did not say whether it was essential. I find it unproven a new window was required. In summary, even if Ms. Mia's claim was filed in time, I find she has not proved Best was negligent. I dismiss her claim.

28. 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 Ms. Mia was unsuccessful, I dismiss her claim for reimbursement of paid CRT fees and dispute-related expenses. Best did not pay fees or claim expenses.

ORDER

29. I dismiss Ms. Mia's claim and this dispute.

Shelley Lopez, Vice Chair