



Civil Resolution Tribunal

Date Issued: August 31, 2022

File: SC-2021-008430

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Premium Restoration Ltd. v. Feng*, 2022 BCCRT 975

B E T W E E N :

PREMIUM RESTORATION LTD.

APPLICANT

A N D :

GARY HUI XIN FENG and LISA HSIEN HUI LIU

RESPONDENTS

A N D :

GORE MUTUAL INSURANCE COMPANY

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a dispute about payment for restoration services. The applicant, Premium Restoration Ltd. (Premium), says it provided emergency services to the respondents, Gary Hui Xin Feng and Lisa Hsien Hui Liu (collectively, the owners), to deal with water damage in their strata lot. Premium says the owners have failed to pay for its services and claims \$2,029.42.
2. The owners say that they did not hire Premium. Rather, they say their insurer, Gore Mutual Insurance Company (Gore), hired it and is liable for the amount Premium claims. Mr. Feng filed a third party claim against Gore. If I determine that the owners are liable to Premium, Mr. Feng asks that I order Gore to pay Premium for its services. Gore did not file a Dispute Response and is in default, as discussed below.
3. Premium is represented by an employee. The owners are self-represented.

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. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager (also known as a CRT facilitator).
7. The Dispute Notice noted Ms. Liu's name as "Lisa Hsien-Hui Liu". However, during the CRT's case management stage, the parties agreed to change the spelling of Ms. Liu's name to "Lisa Hsien Hui Liu". As such, I have exercised my discretion under CRTA section 61 to direct the use of Ms. Liu's correct name in this dispute. Accordingly, I have amended the style of cause above.
8. 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.
9. 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

10. The issue in Premium's claim is what amount, if any, the owners must pay it for the restoration services it provided?
11. The issue in Mr. Feng's third party claim is if Mr. Feng owes Premium for its services, is Gore responsible for reimbursing Mr. Feng?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Premium must prove its claims on a balance of probabilities (meaning "more likely than not"). Mr. Feng must prove his third party claim against Gore to the same standard. I have read all the parties'

submitted evidence and argument but refer only to what I find relevant to provide context for my decision. Premium did not make final reply submissions, despite having the opportunity to do so. Gore did not provide evidence or submissions because it did not participate in this dispute.

Premium’s claim for the emergency services

13. The following facts are undisputed. On or about December 24, 2019, the owners experienced a water leak in their strata lot. The owners contacted Gore about the water leak and Gore asked Premium to attend at the owners’ home to investigate and remediate the water damage. Premium’s employee attended at the owners’ home on January 31, 2020, conducted an asbestos test and installed dehumidifiers. For reasons not before me, Gore ultimately denied the owners’ insurance claim for the water loss incident and did not pay Premium for its services.
14. Premium relies on a Work Authorization and Contract Form (Authorization) Ms. Liu undisputedly signed on January 31, 2020. Premium says given the Authorization, the owners are liable for services it provided.
15. The owners say, in essence, that Ms. Liu signed the Authorization under duress. Duress is a defence to the enforceability of a contract. To establish the defence of duress, Ms. Liu must show Premium exerted pressure to such a degree that her true consent did not exist. In order to amount to duress, there must be an improper element to the pressure that can be described as “unfair, excessive or coercive” (*Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442 at paragraphs 52 to 54).The factors that I must weigh include:
 - a. Did the person object,
 - b. Did the person have an alternative course available, such as an adequate legal remedy,
 - c. Did the person receive independent advice, and
 - d. Did the person take steps to avoid the contract?

16. In a March 18, 2020 email from Mr. Feng to Premium, Mr. Feng said that when Premium's employee attended at their strata lot on January 31, 2020, Ms. Liu asked if she could wait until Mr. Feng came home to sign the Authorization. In this email, Mr. Feng said that the employee induced Ms. Liu to sign the Authorization without explaining the document's contents.
17. In his submissions, which Ms. Liu adopts, Mr. Feng says that after Ms. Liu asked if she could wait until Mr. Feng came home to sign the Authorization, she said that she was "still not comfortable to sign the form." The owners submit that Premium's employee induced Ms. Liu by asking that she sign so that they could start the work. The owners also say that the employee told Ms. Liu that they would explain everything to Mr. Feng when he returned.
18. Though the owners say Ms. Liu was induced into signing the document, I find the evidence falls short of establishing duress. First, it is unclear why Ms. Liu did not want to sign the Authorization without Mr. Feng. Second, there is no evidence before me that after Mr. Feng came home, Ms. Liu raised concerns with him about the Authorization. Further, Premium submits, and the owners do not dispute, that its employee returned to the owner's strata lot after January 31, 2020 to continue the restoration work. There is no evidence before me that the owners objected or took steps to avoid the contract on these later visits. Based on the evidence, I find that although Ms. Liu may not have been comfortable signing the Authorization in Mr. Feng's absence, the owners did not object to the contract or take steps to avoid it until after Premium sent Mr. Feng its invoice in March 2020. Since I have found that there was no duress, I find the Authorization is a valid contract. I now consider whether the Authorization makes the owners liable for the \$2,029.42 Premium claims.
19. The Authorization names Mr. Feng and Ms. Liu as customers. It says that "I/we (OWNER) or their appointed representative(s)" authorize Premium to perform all necessary work or services which may or may not be covered by their insurance policy as a result of water damage on or about January 31, 2020. The Authorization goes on to say that if the emergency services are not covered by the insurer, the

owner will be responsible for payment. Above Ms. Liu's signature on the Authorization, she wrote her name next to "NAME of Owner/Agent/Appointed Representative".

20. As mentioned above, the Authorization listed both Ms. Liu and Mr. Feng as "customers". Mr. Feng does not argue that Ms. Liu lacked the authority to enter into the Authorization on his behalf and, as mentioned above, Ms. Liu expressly adopts Mr. Feng's submissions in this dispute. So, I find that by signing the Authorization, Ms. Liu agreed to its terms on her behalf and as agent for Mr. Feng.
21. The owners say they never directed Premium to do the work it claims for. They also say that Premium never informed them what work it was doing and how much it would cost. However, I find that by signing the Authorization, Ms. Liu authorized Premium to perform "all necessary work or services", regardless of whether they would be covered by insurance. Further, the Authorization's terms included that by signing, the "owner" understands that in the case of emergency services, it is not always possible to provide an estimate or cost of the work. So, I find that Premium was not required to advise the owners in advance what work it was going to do, or how much the work would cost. In short, I find that the Authorization makes the owners liable to pay Premium for its services. I now consider what amount the owners must pay Premium.
22. Premium's invoice for \$2,029.42 is not in evidence. The evidence includes a March 12, 2020 email from Premium to Mr. Feng where Premium said it attached a copy of its invoice. The owners do not dispute receiving an invoice from Premium, but the amount of that invoice is not established by the evidence before me. However, as mentioned above, it is undisputed that Premium conducted an asbestos test and installed dehumidifiers at the owners' strata lot. The evidence shows that 2 dehumidifiers were installed but does not address for how long. The owners say that they informed Premium that the dehumidifiers were not needed but Premium installed them anyway. The owners did not provide evidence in support of their allegation that the dehumidifiers were not needed.

23. Premium's evidence includes its undated initial site report where Premium noted it believed the water leak's source was a line coming from the boiler for the in-floor heating. The report said that Premium inspected the moisture, took "psych" readings and mapped out the affected areas. The report noted the affected areas included the walls and floors in the laundry room and in the basement suite kitchen. The report also included photographs of the affected areas. Based on this evidence, I am satisfied that there was water damage to the laundry room and basement suite kitchen that required restoration. So, I find the dehumidifiers were reasonably necessary.
24. Though I have found above that based on the Authorization's terms, Premium was not required to advise the owners of the work it was going to do and how much that work would cost, I find the amount Premium claims for the work must still be reasonable. This means that in order for me to award Premium its claimed \$2,029.42 in damages, it must prove on a balance of probabilities that this amount is reasonable.
25. Parties are told to provide all relevant evidence as part of the CRT's process and for reasons that are unexplained, Premium failed to provide its invoice or any other evidence such as timesheets to prove its entitlement to the \$2,029.42 it claims. So, given this lack of evidence, I find Premium has failed to prove that the \$2,029.42 it claims is reasonable.
26. However, since it is undisputed that Premium conducted asbestos testing and since I have also found above that the dehumidifiers were necessary, I find Premium is entitled to compensation for that work. Based on the site report, I also find Premium is entitled to compensation for inspecting the moisture, taking psych readings, and mapping out the affected areas. On a judgment basis, I find \$500 is a reasonable amount for this work, and I order the owners to pay Premium that amount.
27. The *Court Order Interest Act* (COIA) applies to the CRT. Premium is entitled to pre-judgment interest on the \$500 from March 12, 2020, the date it asked for payment from the owners, to the date of this decision. This equals \$8.91.

28. 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. I find Premium is entitled to reimbursement of \$125 in CRT fees. Premium did not claim any dispute-related expenses, so I order none.

Mr. Feng's third party claim

29. As for Mr. Feng's third party claim against Gore, I am satisfied on the evidence that Gore received the Dispute Notice but did not respond by the deadline set out in the CRT's rules. So, I find Gore is in default.

30. As mentioned above, in the Dispute Notice, Mr. Feng said that Gore is responsible for the \$2,029.42 claimed by Premium. I find Mr. Feng essentially seeks indemnity from Gore if he is found liable for Premium's claim. Liability is generally assumed in default decisions. As Gore has not participated in this dispute, and since I have found that Mr. Feng and Ms. Liu owe Premium for the restoration services, I find that Gore is liable to reimburse Mr. Feng for damages, interest and CRT fees that Mr. Feng is ordered to pay in this dispute. I also find Gore must reimburse Mr. Feng \$125 for CRT fees Mr. Feng paid to file the third party claim. Mr. Feng did not claim any dispute-related expenses, so I order none.

ORDERS

31. Within 21 days of the date of this decision, I order Mr. Feng and Ms. Liu to pay Premium a total of \$633.91, broken down as follows:

- a. \$500 in damages,
- b. \$8.91 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

32. Within 21 days of the date of this decision, I order Gore to pay Mr. Feng a total of \$758.91, broken down as follows:
- a. \$633.91 in indemnity for Mr. Feng's obligations to Premium, and
 - b. \$125 in CRT fees.
33. Premium and Mr. Feng are entitled to post-judgment interest under the COIA, as applicable.
34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member