



# Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2022-001407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Madunic v. Beaucage*, 2022 BCCRT 1047

B E T W E E N :

JOSIE MARY MADUNIC

**APPLICANT**

A N D :

JEAN-SEBASTIEN BEAUCAGE and JULIE GAETAN

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about water damage. The applicant, Josie Mary Madunic, and the respondents, Jean-Sebastien Beaucage and Julie Gaetan, own residential strata lots in a strata corporation, The Owners, Strata Plan LMS 869 (strata). Ms. Madunic's strata lot (unit 404) is located directly below the respondents' strata lot (unit 504). Ms. Madunic says water from unit 504 entered unit 404, causing damage. She claims

\$1,428 as reimbursement for repairs done. Ms. Madunic says the respondents are liable under the strata's bylaws.

2. The respondents deny liability. They say the evidence, including an inspector's report, supports the conclusion that water did not enter unit 404 from unit 504.
3. Ms. Madunic represents herself. Julie Gaeten represents the respondents.
4. For the reasons that follow, I find Ms. Madunic has proven her claims.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
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 in this dispute are as follows:
  - a. What caused the water ingress into unit 404?
  - b. Are the respondents liable for the claimed damages?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Ms. Madunic as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I begin with the undisputed background. On October 18, 2021, Ms. Madunic emailed the strata manager to report a water stain on her living room ceiling. She asked the strata manager, SB, to investigate.
12. SB inspected unit 404 on November 1, 2021. A technician from a plumbing company, Trotter & Morton Facility Services Inc. (Trotter), accompanied SB. SB summarized their observations in an incident report form and Trotter's technician similarly described what happened in a November 1, 2021 service work order form and November 9, 2021 invoice. I summarize their evidence below. I find their evidence is not expert evidence under the CRT rules as SB and Trotter's technician did not

provide their qualifications. I have nonetheless decided to rely on their evidence for the reasons that follow.

13. SB and the technician saw a water stain on the ceiling of unit 404. They both entered unit 504. The technician used measurements to determine the area directly above unit 404's water stain and found potted houseplants there on the floor resting on plates, next to a wall and baseboard. SB moved the plants and saw that the floor was wet, and a plate holding one of the pots showed signs of overflowing water. The technician similarly found faint stains on the flooring that they felt originated from the plate overflowing with water. Both noticed a gap between the baseboard and the floor. The technician concluded that overflowing water had run from unit 504 under the baseboard, then came into unit 404 through a slight crack in the concrete floor separating units 404 and 504.
14. The technician also opened the drywall below the stain in unit 404 to see if there was plumbing inside. The technician found only a horizontal sprinkler pipe and did not find any water damage.
15. A December 10, 2021 invoice shows that Ms. Madunic had a contractor repair the drywall and repaint the ceiling for the claimed \$1,428. A photo of the payment cheque shows Ms. Madunic paid for these repairs and not the strata. The strata paid Trotter's invoice for investigating the leak and Ms. Madunic does not claim for it.

***Issue #1. What caused the water ingress in unit 404?***

16. On balance, I find it likely that water entered unit 404 because the respondents overwatered their houseplants in unit 504. Both SB and the technician's written observations support this conclusion. They provided evidence that was consistent with each other. Further, the evidence shows that the houseplants and water stain were in the same areas, above and below each other.
17. Ms. Madunic did not provide expert evidence about the leak's cause. However, I find it unnecessary here because the alleged breach relates to something non-technical and within the experience of an ordinary person. See *Schellenberg v. Wawanesa*

*Mutual Insurance Company*, 2019 BCSC 196. Here, there is a readily understandable explanation for the water damage Mas. Madunic claims for.

18. The respondents say SB's and the technician's evidence should be given less weight because it did not include photos. I find the written observations were sufficiently detailed to not require photos. The respondents also say the technician said to them that they did not find any leaks originating from unit 504. However, I find the respondents' submission about what the technician said to be unproven and contradicted by the written evidence, which I weigh more heavily.
19. The respondents do not deny ever having houseplants on the floor in the area in question. They do not deny watering them. They provided photos of the area with the houseplants removed. They submit that there is no indication of water damage in the photos, so the damage could not have originated from unit 504. However, the photos show the gap between the baseboard and floor described by SB and the technician. So, I find the photos tend to support the technician's conclusion.
20. The respondents also rely on an inspection report dated December 13, 2021, from Elemental Construction. The inspector wrote that the respondents asked them for an opinion on possible water damage or leakage coming from unit 504 into 404. I find that the opinion is expert evidence under the CRT rules, though nothing turns on this. This is because the inspector only wrote that they did not observe any water damage or water stains on the walls, baseboard, or flooring in unit 504. They did not provide any opinion on whether the water damage observed on November 1, 2021, was caused by overwatering houseplants. So, I find the report has little relevance to the issue at hand.
21. For those reasons, I find the respondents caused water to enter unit 404 and stain its ceiling by overwatering their houseplants.

***Issue #2. Are the respondents liable for the claimed damages?***

22. Ms. Madunic must show a legal basis to claim compensation for the water damage. As discussed in the non-binding decision of *Zale et al v. Hodgins*, 2019 BCCRT 466 at paragraph 21, owners may be surprised to learn that they are responsible for repairs to their unit even though the source of the damage (here a water leak) originated from someone else's unit. However, in the absence of negligence, nuisance, or a specific bylaw making an owner liable to their neighbor for the damage, an owner is responsible for the cost to repair their own unit even though they did nothing to cause the damage.
23. Ms. Madunic says the respondents are liable under bylaws 4.4 and 4.5 of the strata's bylaws. I find the strata's bylaws offer no assistance to Ms. Madunic. Bylaw 4.4 says that an owner must indemnify the strata for certain maintenance and repairs. Bylaw 4.5 similarly says an owner is strictly liable to the strata for damage to certain property. These bylaws are inapplicable because Ms. Madunic is not the strata. There are no other bylaws in evidence that say that an owner is liable to another owner for damage to their strata lot.
24. Although not specifically alleged, I have considered whether the respondents are liable under the law of nuisance. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. However, if the person is not aware of the problem that causes the interference, and has no reason to know about it, they will not be liable because they did not act unreasonably. See *Theberge v. Zittlau*, 2000 BCPC 225.
25. I find the leaking water was an unreasonable interference as it caused damage to Ms. Madunic's ceiling. On balance, I also find that the respondents would have known about the nuisance if they had exercised reasonable care. This is because SB saw that the floor in the area of the potted plants was wet, and the technician similarly found stains that they thought were caused by overwatering. So, I find that evidence of escaping water would have been readily apparent to the respondents as well. I find that the respondents, acting reasonably, should have ensured that water from

watering the houseplants did not run onto the floor, and through the nearby gap in the baseboard.

26. Given the above, I find the respondents are liable in nuisance. I find they are liable for Ms. Madunic's loss, which is proven by the December 2021 repair invoice that Ms. Madunic paid. I order the respondents to pay Ms. Madunic \$1,428. Given this, I find it unnecessary to consider whether they would be liable in negligence as well. Ms. Madunic expressly waived claims for pre-judgment interest, so I award none.
27. 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 Ms. Madunic is entitled to reimbursement of \$125 in CRT fees. The parties did not claim for any specific dispute-related expenses.

## **ORDERS**

28. Within 30 days of the date of this order, I order the respondents to pay Ms. Madunic a total of \$1,553, broken down as follows:
  - a. \$1,428 in damages, and
  - b. \$125 in CRT fees.
29. Ms. Madunic is entitled to post-judgment interest, as applicable.
30. 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.

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David Jiang, Tribunal Member