



Civil Resolution Tribunal

Date Issued: October 19, 2022

File: SC-2022-002119

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Feng*, 2022 BCCRT 1141

BETWEEN:

SIWEI ZHANG

APPLICANT

AND:

YING QIN FENG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about water damage. The applicant, Siwei Zhang, owns an apartment in a strata corporation (strata). The respondent, Ying Qin Feng, owns the strata lot directly above Ms. Zhang's. Water leaked through the ceiling of Ms. Zhang's bathroom. Ms. Zhang says that the water came from a toilet leak in Ms. Feng's strata

lot. Ms. Zhang claims \$500 for the cost of repairing the bathroom ceiling water damage.

2. Ms. Feng says that the leak did not come from her toilet and was probably from pipes under her floor, so she owes nothing. The strata is not a party to this dispute.
3. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. These are the formal 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. 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.
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.

8. In her submissions, Ms. Zhang asks the CRT to “verify” under CRTA section 92 a plumbing report discussed below, and “proceed” with a \$10,000 fine for fraudulent and misleading evidence. Section 92 makes it an offence to provide the CRT with false or misleading information. I find that I do not have the authority to decide whether someone has committed an offence under CRTA section 92. Rather, under the *Provincial Court Act*, a BC Provincial Court judge has jurisdiction over CRTA section 92 offences because conviction carries the possibility of imprisonment. Further, I find that this issue was not raised in the Dispute Notice, and therefore is not properly before me in any event. So, I decline to address the CRTA section 92 issue. However, I did consider the reliability of the plumbing report in my decision below.

ISSUES

9. The issue in this dispute is whether the water leak originated in Ms. Feng’s strata lot, and if so, does she owe Ms. Zhang \$500 for ceiling repairs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Zhang must prove her claim on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.
11. The existence of a water leak is not disputed. However, Ms. Zhang must show a legal basis for her claim against Ms. Feng. As discussed in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466 at paragraphs 18 to 21, owners may be surprised to learn that they are responsible for repairs to their strata lot even though the source of the damage originated in another’s strata lot. Ms. Zhang must show that Ms. Feng is liable because of negligence, nuisance, or a specific strata bylaw making an owner liable to a neighbour for water damage. Otherwise, Ms. Feng is not responsible for the claimed water damage repairs.

12. First, although it is undisputed that Ms. Feng is responsible for maintaining and repairing her toilet, Ms. Zhang does not claim that Ms. Feng is responsible for the water damage under a specific strata bylaw. Neither party referred to any particular strata bylaws, nor submitted copies of bylaw amendments as filed in the Land Title Office. A submitted January 17, 2022 strata letter included what the strata said were consolidated strata bylaws. However, I find nothing turns on those purported bylaws, because none of them address responsibility for water damage. I find there is no evidence that any strata bylaw makes one owner liable to another for water leaks. So, I find Ms. Feng is not responsible for water damage under a specific strata bylaw.
13. Next, to prove her claim in negligence or nuisance, Ms. Zhang must prove that the water came from a leak in Ms. Feng's strata lot, for the following reasons.
14. Section 72(1) of the *Strata Property Act* (SPA) says that the strata must repair and maintain common property (CP) and common assets. Under the SPA, CP includes pipes and other facilities for the passage or provision of water, sewage, or drainage, located within a floor or ceiling that forms a boundary between 2 strata lots. It is undisputed that the strata has an obligation to repair and maintain the CP pipes between Ms. Zhang's and Ms. Feng's strata lots, which does not include Ms. Feng's toilet. I find Ms. Feng is not required to repair or maintain those CP pipes, and is not responsible for any leaks in them. In other words, I find Ms. Feng is not liable in negligence or nuisance for leaks originating in the CP pipes.
15. Ms. Zhang says she first detected moisture in her bathroom ceiling on January 14, 2022. Submitted correspondence shows she reported it to the strata shortly after that.
16. There are conflicting plumber opinions about whether the leak originated in Ms. Feng's toilet. A January 28, 2022 invoice from A-1 Drainage Plumbing & Heating Ltd. (A-1) said that on January 26, 2022, A-1 cut an inspection hole in Ms. Zhang's bathroom ceiling. The invoice said A-1 found water leaking "from the unit above" around a 3-inch cast pipe. The invoice said the water appeared to be leaking from the wax ring in the toilet above, but A-1 could not confirm that because it could not access the strata lot above. I find A-1 only speculated that the leak was from the wax

ring in Ms. Feng's strata lot, both because it says it could not confirm that, and because photos in evidence do not show that the wax ring was visible from below.

17. Submitted photos showed a section of wet drywall cut from a bathroom ceiling, and a metal pipe in the space between the ceiling and the floor above. A hose from the floor above was attached to the pipe with hose clamps. I find the pipe and hose were CP. I find the area around the hose clamps and the pipe below appeared to be wet. However, I find the photos did not show whether there was any water present above the clamps, or whether the joint between the pipe and hose leaked.
18. A January 30, 2022 plumbing inspection report by Junfeng Lin, a plumbing maintenance technician hired by Ms. Feng, said that he initially suspected a leak due to the wax ring in Ms. Feng's toilet. Mr. Lin then inspected the toilet, including removing silicone around the base, testing for water leaks with paper towel while flushing, and removing the toilet completely. Mr. Lin said there were no water marks on the paper towel, around the base silicone, on the tiles around the wax ring, or below the wax ring. Mr. Lin concluded that the wax ring was not the reason for the leak into Ms. Zhang's unit.
19. Ms. Zhang takes issue with Mr. Lin's testing methods and conclusions. I find Mr. Lin's inspection and opinions are technical subjects outside of an ordinary person's knowledge and experience. So, I find expert evidence is required to prove any deficiencies in Mr. Lin's professional work (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). I find there is no expert evidence before me that identifies any deficiencies in Mr. Lin's inspections or opinion. There is nothing obviously wrong with Mr. Lin's opinion either. So, I find the A-1 invoice and Mr. Lin's report are equally reliable.
20. I find A-1's invoice shows it is a professional plumbing company, and Mr. Lin's report indicates that he is a plumbing maintenance technician. Under the CRT's rules, I find that both A-1 and Mr. Lin qualify as plumbing experts. I accept both A-1's invoice and Mr. Lin's report as expert evidence. However, as noted A-1's report only speculated

that the leak's cause was Ms. Feng's wax toilet ring, and could not confirm that from below. I prefer Mr. Lin's opinion about the wax ring because it was based on an actual inspection of Ms. Feng's toilet, and not speculation.

21. In a February 8, 2022 email, the strata manager said that Ms. Feng's plumber had replaced her toilet wax, although he did not say how he knew that. I find it is unclear on the submitted evidence whether Ms. Feng had the wax ring replaced or when. I find that even if the wax ring was replaced, it is not clear why, or whether it stopped the leak.
22. On balance, for the above reasons, I find the evidence does not prove that the water leak originated in Ms. Feng's strata lot. However, even if the water leak had originated in Ms. Feng's strata lot, I still would not have found her responsible for the claimed cost of Ms. Zhang's ceiling repairs, as follows.
23. Although Ms. Zhang alleges that Ms. Feng was generally "negligent," Ms. Zhang does not say how Ms. Feng failed to meet the applicable standard of care, which is required to prove negligence (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3). I find Ms. Feng owed Ms. Zhang a duty of care to reasonably maintain the toilet. However, I find there is no evidence that Ms. Feng failed to do so. I also find the evidence does not show that there were any visible signs of a toilet problem or a water leak in Ms. Feng's strata lot.
24. Further, although the evidence shows Ms. Zhang requested and was denied access to Ms. Feng's strata lot shortly after detecting ceiling moisture, Ms. Zhang admits that A-1 inspected the water leak 12 days after she first detected the moisture. I find Ms. Feng had Mr. Lin inspect her toilet only 2 days after A-1's inspection report suggested a possible problem with her toilet's wax ring. In the circumstances, I find the timing of Mr. Lin's inspection was reasonable. Overall, I find Ms. Feng did not breach the standard of care by failing to reasonably maintain her toilet, so was not negligent.
25. In addition, a nuisance occurs when someone unreasonably interferes with the use or enjoyment of another person's property. However, if that person is not aware of

the interfering problem and has no reason to know about it, then they did not act unreasonably and will not be liable (see for example *Zale* involving a toilet overflow, and *Theberge v. Zittlau*, 2000 BCPC 225). Given my above finding that there were no visible signs of a toilet problem or water leak in Ms. Feng's strata lot, I find she did not know or should have known there was an alleged toilet problem causing a leak. Further, I find Ms. Feng took reasonable steps to investigate her toilet after A-1 identified it as a possible leak source. So, I find Ms. Feng is not liable for the leak under the law of nuisance.

26. I dismiss Ms. Zhang's claim for \$500 in ceiling repair costs.

CRT Fees and Expenses

27. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Ms. Zhang was unsuccessful, but Ms. Feng paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

ORDER

28. I dismiss Ms. Zhang's claim, and this dispute.

Chad McCarthy, Tribunal Member