



Civil Resolution Tribunal

Date Issued: November 29, 2022.

File: SC-2022-002893

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LTRBK Holdings Inc. v. Maiolo*, 2022 BCCRT 1283

BETWEEN:

LTRBK HOLDINGS INC.

APPLICANT

AND:

BRADLEY MAIOLO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about alleged damage to a hot tub cover. It is undisputed that the respondent, Bradley Maiolo, owns a strata lot 2 floors above a strata lot owned by the applicant, LTRBK Holdings Inc. (LHI). LHI says that water from a hot tub on Mr. Maiolo's balcony dripped onto LHI's hot tub cover below, causing an ice buildup and

breaking the cover. LHI claims \$894.88 for the cost of replacing the hot tub cover with a new one.

2. Mr. Maiolo says that any hot tub water overflowing from his balcony was minimal and could not have damaged the hot tub cover as alleged. Mr. Maiolo also says there is no proof of hot tub cover damage, so he owes nothing.
3. Mr. Maiolo is self-represented in this dispute. LHI is represented by an employee or principal, RK.

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. 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 its Dispute Notice, LHI requested that the CRT order Mr. Maiolo to stop breaking strata bylaws. However, LHI also said in the Dispute Notice that although Mr. Maiolo allegedly broke strata bylaws, it “just wanted” the claimed \$894.88 in damages plus interest, and “nothing else.” Based on the Dispute Notice and LHI’s other submissions, I find LHI has abandoned its request for an order that Mr. Maiolo stop breaking strata bylaws, so I need not consider that remedy in this dispute. I note that remedy is a form of injunctive relief, and would not be available under the CRT’s small claims jurisdiction in any event.

ISSUE

9. The issue in this dispute is whether LHI’s hot tub cover was damaged and whether Mr. Maiolo was responsible for that damage. If so, does Mr. Maiolo owe LHI \$894.88 for replacing the cover?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant LHI must prove its claims on a balance of probabilities, meaning “more likely than not.” I have read all the parties’ submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. LHI says that water from Mr. Maiolo’s balcony hot tub regularly spilled off the balcony and onto LHI’s patio below. LHI says that beginning in December 2021, this water spilled onto LHI’s newly installed patio hot tub. LHI’s strata lot is on the ground floor, and LHI’s patio and hot tub jut out slightly from the balconies above. A strata plan in evidence shows that the balconies and patio are limited common property for the exclusive use of the adjacent strata lot, and are not part of a strata lot. Given my reasons below, I find nothing turns on that.

12. LHI says that dripping water caused a 200 pound ice buildup on top of its hot tub cover in the winter months. The hot tub cover was undisputedly made from foam insulation covered by a waterproof vinyl-like material. LHI says that the buildup broke the cover, so it had to dispose of it and buy a new one.
13. Although LHI says a strata bylaw prohibits persons from discarding water over a balcony, there is no evidence before me of a strata bylaw that makes an owner responsible for damage caused by water escaping off their balcony. In essence, I find LHI alleges that Mr. Maiolo negligently allowed water to flow from his balcony and onto LHI's hot tub cover, damaging it.
14. To prove Mr. Maiolo is liable in negligence, among other things LHI must prove that the hot tub cover was damaged, resulting in LHI's claimed loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3). For the following reasons, I find LHI has not met its burden of proving hot tub cover damage or a related loss.
15. LHI submitted photos and several short video clips that undisputedly showed steady streams of water pouring off Mr. Maiolo's third-floor balcony, some of it hitting the second-floor balcony, and much of it landing on LHI's hot tub cover. LHI indicates that most of the video clips showed water dripping onto a new replacement hot tub cover, and not the old cover that he says was damaged.
16. I find many of the video clips showed no ice at all on the hot tub cover, and the water simply running off the waterproof cover without freezing. Some clips showed a very small amount of transparent ice on the cover which, given the low volume, I find likely weighed less than 1 pound. I find one video clip showed what appeared to be 1 to 2 inches of snow accumulation on the cover, which was melted where the dripping water contacted the hot tub cover. There was a small amount of ice in the drip zone, but again, most of the dripping water appeared to run off the cover without freezing.
17. Contrary to LHI's assertion, I find none of the submitted evidence shows any significant ice buildup on LHI's hot tub cover, much less 200 pounds of ice.

18. Further, other than LHI's unsupported submission, I find none of the evidence before me shows that its hot tub cover broke. I note that LHI took video of water escaping from Mr. Maiolo's balcony both before installing LHI's hot tub and after replacing the original cover with a new one. However, I find there are no photos, video, or other documentary evidence showing that the original cover broke. LHI does not adequately explain why it did not submit any documentary evidence showing that the cover broke.
19. Next, I find LHI provided no evidence showing that it, or its representative, RK, paid or owed anything for the new hot tub cover, for the following reasons. RK says that he owns a hot tub store, Tod Mountain Home Leisure (TMHL). RK admits that the replacement cover was one he, by which I infer he means TMHL, had in stock at the time, and which he took from a new hot tub that had not been sold. I find none of the evidence before me shows that LHI or RK purchased the replacement cover from TMHL or anyone else.
20. The evidence includes a \$894.88 TMHL invoice issued to Mr. Maiolo for a hot tub cover and for disposing of a damaged cover. That is the same amount claimed by LHI in this dispute. However, LHI does not explain what caused TMHL to issue that invoice to Mr. Maiolo, despite the undisputed fact that TMHL did not provide any goods or services directly to Mr. Maiolo, and there being no evidence that Mr. Maiolo agreed to pay for those things. Further, LHI does not explain why it did not provide any invoice, receipt, banking statement, or other evidence showing that LHI paid any amount for the replacement cover, or for disposing of the old cover.
21. For the above reasons, I find LHI has not met its burden of proving that its hot tub cover broke, or that it paid or owed anything for a new cover. Given that there is no proven damage or loss, I dismiss LHI's claim for \$894.88 in damages.

CRT Fees and Expenses

22. 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. I see no reason in this case not to follow that general rule.

23. Mr. Maiolo was successful in this dispute, but paid no CRT fees. He claims a CRT dispute-related expense of \$131.25 for the cost of an expert opinion by Kurtis Wyllie, president of Slopeside Property Management Ltd. dba Sun Peaks Aquatics. However, Mr. Maiolo provided no documentary evidence, such as invoices, receipts, banking statements, or others, showing that he paid or owed anything for that expert opinion. So, I decline to order the requested \$131.25 reimbursement, because that expense is unproven. Overall, I order no reimbursements.

ORDER

24. I dismiss LHI's claim, Mr. Maiolo's expense reimbursement request, and this dispute.

Chad McCarthy, Tribunal Member