



Civil Resolution Tribunal

Date Issued: October 26, 2023

File: SC-2022-008998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Al-Magedi v. Shah*, 2023 BCCRT 917

BETWEEN:

MARWAN AL-MAGEDI

APPLICANT

AND:

SHRENIK PANKAJB SHAH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about the sale of a strata lot in a strata corporation.
2. The applicant, Marwan Al-Magedi, purchased a strata lot from the respondent, Shrenik Pankajb Shah. The parties' contract of purchase and sale (CPS) included several conditions requiring Mr. Shah to repair a pre-existing water leak before the

sale's completion date. In a CPS addendum, the parties agreed to a \$3,000 holdback from the sale proceeds for the water leak repairs.

3. Mr. Al-Magedi says Mr. Shah told him a leaking water shut-off valve was the strata corporation's responsibility to repair, but the strata corporation later charged back the valve's repair costs to Mr. Al-Magedi. Mr. Al-Magedi says Mr. Shah breached the parties' contract by failing to repair the valve. Mr. Al-Magedi claims reimbursement of \$2,782.50 for the valve's repair costs.
4. Mr. Shah says he is not responsible to reimburse Mr. Al-Magedi for the valve's repair costs. He says Mr. Al-Magedi released the holdback on the completion date, and all the conditions of sale were final at that point.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
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.

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.

Window issue

10. In his submissions, Mr. Al-Magedi asked if he could add a window repair issue to this dispute, and provided some evidence about the window repairs. However, Mr. Al-Magedi did not raise this issue in the Dispute Notice, nor did he ask the CRT to amend the Dispute Notice. So, I find it would be procedurally unfair to consider this additional claim at this late stage, and I have not addressed it in this dispute.

ISSUES

11. The issues in this dispute are:
 - a. Did Mr. Shah breach the CPS by failing to repair the valve?
 - b. If yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, Mr. Al-Magedi, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
13. The parties undisputedly entered into the CPS on February 17, 2022, with an April 1, 2022 completion date. In his Dispute Notice, Mr. Al-Magedi said the completion date was May 25, 2022. In submissions, Mr. Al-Magedi says there was a typo, and both parties say the completion date was March 25, 2022. So, I find the sale likely completed on or around March 25, 2022.

14. The CPS included a condition requiring Mr. Shah to repair or replace all leaking faucets, pipes, and drainpipes, among various other repairs related to the pre-existing water leak. The CPS addendum said the \$3,000 holdback would be released when Mr. Shah completed the water leak repairs, no later than 10 days after the sale's completion date. Mr. Al-Magedi undisputedly released the holdback before the sale's completion, and before the leaking valve was repaired.
15. Mr. Shah does not dispute that he did not repair or replace the valve. He also did not argue that repairing the valve fell outside the scope of repairs he was contractually responsible for in CPS, and I find it did not. The strata corporation undisputedly repaired the valve and charged the valve repairs costs to Mr. Al-Magedi after the sale completed. Therefore, I find Mr. Shah breached the CPS by failing to repair the valve before the completion date.
16. Despite the above, Mr. Shah says he is not responsible to reimburse Mr. Al-Magedi for the valve repair costs. Mr. Shah essentially argues that Mr. Al-Magedi releasing the holdback shows that he was satisfied with the repairs. Mr. Al-Magedi does not dispute that he released the holdback, but says he only did so after Mr. Shah informed him the strata corporation would repair the valve. He says he would not have otherwise released the holdback. Mr. Shah does not dispute that he advised Mr. Al-Magedi that the strata corporation would repair the valve.
17. Mr. Shah emailed what I infer is the strata corporation's building manager before the completion date, and the building manager confirmed they would send someone to address the leaking valve. Mr. Shah then forwarded these emails to Mr. Al-Magedi. I find this evidence supports a finding that Mr. Shah told Mr. Al-Magedi that the strata corporation would repair the valve, and Mr. Al-Magedi released the holdback on that basis. I agree that in certain situations, Mr. Al-Magedi releasing the holdback could be evidence that Mr. Al-Magedi was satisfied with the repairs. However, here I find that Mr. Al-Magedi released the holdback because he was told the strata corporation would complete the valve repair. As noted, the strata corporation later charged Mr. Al-Magedi for the valve repair. In these circumstances, I find Mr. Al-Magedi's payment

of the holdback does not show that he was satisfied with the repairs, nor that he was otherwise releasing Mr. Shah from his contractual obligations under the CPS. The CPS did not only require Mr. Shah to arrange for the valve repair. Rather, Mr. Shah was contractually required to repair the valve, which necessarily includes the cost of any such repair. His failure to do so was in breach of the CPS.

18. So, what is the appropriate remedy? The intention of damages for a breach of contract is to put Mr. Al-Magedi in the position he would have been in if the contract (here, the CPS) had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. In this dispute, I find this means the appropriate amount of damages is the valve repair cost. The strata corporation charged Mr. Al-Magedi \$2,782.50 for the valve repairs on June 16, 2022, and Mr. Al-Magedi paid the strata corporation on July 4, 2022. So, I find Mr. Shah must pay Mr. Al-Magedi \$2,782.50 in damages for the valve repair costs.
19. I make no findings about who is responsible for the valve repair costs as between Mr. Shah and the strata corporation.

Interest, CRT fees and expenses

20. The *Court Order Interest Act* applies to the CRT. Mr. Al-Magedi is entitled to pre-judgment interest on the \$2,782.50 from July 4, 2022, the date he paid the strata corporation for the repairs, to the date of this decision. This equals \$129.39.
21. 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. As Mr. Al-Magedi was successful in this dispute, I find he is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

22. Within 30 days of the date of this order, I order Mr. Shah to pay Mr. Al-Magedi a total of \$3,036.89, broken down as follows:

- a. \$2,782.50 in damages,
- b. \$129.39 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

23. Mr. Al-Magedi is entitled to post-judgment interest, as applicable.

24. 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.

Leah Volkers, Tribunal Member