



# Civil Resolution Tribunal

Date Issued: March 19, 2024

File: SC-2022-010024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marno v. Homelife Benchmark Realty Corp.*, 2024 BCCRT 282

BETWEEN:

DEBORAH MARNO

**APPLICANT**

AND:

HOMELIFE BENCHMARK REALTY CORP., CINDY WALKER, DAVE WALKER, and CONALL BARR HOME INSPECTIONS LTD.

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about alleged deficiencies in a house sale. The applicant, Deborah Marno, purchased the house and used the respondent realty company, Homelife Benchmark Realty Corp. (Homelife). The respondents Cindy Walker and Dave

Walker are both realtors at Homelife. Ms. Marno also hired the respondent Conall Barr Home Inspections Ltd. (Conall) to inspect the house pre-purchase.

2. Ms. Marno says the respondents failed to disclose the existence of a gas valve leak and missing exhaust fan ducting. She also says that Mr. Walker breached a promise to pay for repairing these issues. She claims \$1,135.78 for the gas valve repairs and \$1,730 for the duct repairs and replacement. She also says the respondents, and Mrs. Walker in particular, dissuaded Mr. Marno's family member, GJ, from helping her with home maintenance work. She claims \$1,500 for the estimated cost of replacing his labour. Finally, she claims \$400 for "dealing with this situation". In total, Ms. Marno's claims total \$4,365.78.
3. The respondents deny liability. In particular, the Walkers say that they did not guarantee any part of the house. Mr. Walker denies promising to pay for the repairs. Homelife denies any contractual relationship with Ms. Marno or being involved in the dispute generally. Conall says it performed its inspection services to a reasonable standard and the house deficiencies were outside the scope of the parties' contract. I discuss the respondents' other arguments in detail below.
4. Ms. Marno represents herself. Mrs. Walker represents the Walkers. Directors represent Homelife and Conall.
5. For the reasons that follow, I dismiss Ms. Marno's claims.

## **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. In resolving disputes, the CRT must apply principles of law and fairness.
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. 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.

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 court.
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.

### ***Allegations about Breach of Privacy***

10. Ms. Marno says Mrs. Walker breached Ms. Marno’s privacy by speaking to Fortis BC and asking about her account. However, she claims no specific remedy for this. So, I make no findings about this issue.

## **ISSUES**

11. The issues in this dispute are as follows:
  - a. Are the respondents liable for any of the gas leak or exhaust fan repairs?
  - b. Are the respondents liable for the cost of Ms. Marno hiring extra help?
  - c. Must the respondents pay Ms. Marno \$400 for “dealing with this situation”?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant Ms. Marno must prove her claims on a balance of probabilities. 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.
13. Ms. Marno purchased a stratified duplex property under a June 15, 2022 contract. Documents show the sale completed on July 12, 2022, and Ms. Marno gained possession the next day. The contract and addendum documents show the Walkers acted as Ms. Marno's agents, and that the Walkers were licensed with Homelife.
14. The contract included a standard form property disclosure statement (PDS) dated April 2, 2022. Ms. Marno signed the PDS to show she obtained a copy on June 15, 2022. Under item N, the seller represented that they were unaware of any problems with the gas system. Under items H and I, the seller also represented that the house had undergone alteration within the last 60 days, but not without any required permits or final inspections.
15. Prior to the sale, Ms. Marno hired Conall to provide a June 20, 2023 inspection report. Under item 616, the report said that the 6 kitchen cooktop burners worked when tested. Under item 618, the report also said the exhaust hood fan was serviceable and the duct size appeared adequate and vented to the exterior.
16. It is undisputed that on July 13, 2022, Mrs. Walker went to the house to leave welcoming gifts. She discovered an undated and unaddressed Fortis BC gas notice about a problem affecting the front right burner of the gas stove. Some months later, in November 2022, Mrs. Walker called Fortis BC about the notice. She learned that an unidentified person called Fortis BC's emergency line to report an issue. Fortis BC sent someone to investigate the gas stove, presumably at around this time.
17. On July 18, 2022, Mrs. Marno hired Liberty Appliance Repairs (Liberty) to investigate the burners. Liberty confirmed that there was a gas leak. In September 2022, Ms.

Marno obtained parts and Liberty installed new burner valves in October 2022. It is undisputed that the gas valves were deficient and required repairs.

18. In July 2022, Ms. Marno also hired a contractor, Greg Remillard of Remmy's Contracting, for renovations. Greg Remillard provided a November 14, 2023 witness statement. It says the following. During the course of its work, Remmy's Contracting discovered that the kitchen hood fan was improperly vented and wired.
19. I find the witness statement is not expert evidence under CRT rule 8.1(3). This is because Greg Remillard did not explain their qualifications as required. However, I find nothing turns on this. It is undisputed that the kitchen exhaust was deficient. I also find this obvious, as photos in evidence show that beneath a cover the area above the hood fan lacked an exhaust chute or ducting. Instead, there was simply a hole in the ceiling.
20. From September to November 2022, Ms. Marno emailed Mrs. Walker about the gas leak and kitchen exhaust issues. Ms. Marno alleged that Mrs. Walker was responsible. Mrs. Walker denied liability. Ms. Marno also emailed Conall, and it denied liability as well. I will discuss their positions in greater detail below.
21. The November 2022 emails show that the Walkers asked the seller's realtor if the seller would compensate Ms. Marno. They refused. The emails also indicate the seller moved to another country. They are not a party to this dispute.

***Issue #1. Are the respondents liable for any of the gas leak or exhaust fan repairs?***

22. Ms. Marno says the Walkers and Homelife are responsible for the repair costs. She says they failed to meet their duty of care. She also says that Mr. Walker promised to pay for repairs. The Walkers and Homelife deny liability.
23. As Ms. Marno alleges the respondents breached their duty of care, I have considered the law of professional negligence. To prove negligence, an applicant must show the following: 1) the respondent owed the applicant a duty of care, 2) the respondent

breached the standard of care, 3) the applicant sustained a loss, and 4) the loss was reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33. I find that realtors are professionals. I find the applicable standard of care for a realtor is a reasonable and prudent realtor in the circumstances.

24. Expert evidence is usually required to prove the standard of care of professionals. The two exceptions to this are when the deficiency is not technical in nature, or where the work is obviously substandard. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112 and *Aulakh v. Nahal*, 2017 BCSC 1000, aff'd 2019 BCCA 57.
25. Ms. Marno also makes specific allegations and I discuss these in turn. Ms. Marno alleges that Mrs. Walker failed to disclose the gas leak. Mrs. Walker denies knowing about such a leak before the sale completed. I find it likely that Mrs. Walker did not know about the gas leak for 2 reasons. First, there is no evidence to say otherwise. Second, I find there is no indication that Mrs. Walker had any incentive to conceal this information. So, I find it unlikely she did so.
26. Ms. Marno says that Mrs. Walker should have recommended a different inspector. However, Mrs. Walker's October 16, 2022 email to Ms. Marno shows that Mrs. Walker recommended 4 different inspectors. There is no evidence that Mrs. Walker knew or should have known that Conall would not be an appropriate choice. So, I find this allegation unproven as well.
27. Ms. Marno says that the Walkers knew the sellers and were in a conflict of interest. A conflict of interest occurs when an individual's personal interests compromise their actions or judgment. Ms. Marno points out that the Walkers advised that the seller was not trustworthy in the emails. I find this warning actually supports the Walkers' claim that they did not breach their duty to Ms. Marno.
28. Finally, Ms. Marno generally alleges that the Walkers should have exercised more due diligence. However, she did not provide expert evidence. I have already

addressed her specific allegations above. So, I find her claims of professional negligence are unsupported.

29. I next consider whether Mr. Walker breached a verbal agreement to pay for the gas stove and exhaust ducting repairs. For a contract to exist, an applicant must prove that 1) there was a mutual intention to create legal relations, 2) consideration, or something of value, flowed in return for a promise, 3) the essential terms of the alleged contract are objectively clear, and 4) there was matching offer and acceptance of the terms of the contract.
30. Ms. Marno relies in part on Greg Remillard's witness statement. It says the following. On September 28, 2022, Ms. Marno, Greg Remillard, and Mr. Walker were in Ms. Marno's kitchen. Mr. Walker "told us to go ahead with the required [exhaust fan] repairs" and "send him the receipts" as "he would cover all the costs". Mr. Walker reiterated this to Greg Remillard on the phone at a later date.
31. Mr. Walker says that, as a gesture of goodwill, he offered to pay up to \$740 towards the estimated repair costs and labour to fix the hood fan. In subsequent discussions between Mrs. Walker and Ms. Marno and between Mr. Walker and Mr. Remillard, Ms. Marno made it clear that she wanted more money for the hood fan repairs.
32. Overall, I find it unproven that Mr. Walker agreed to pay for all of the repairs at issue. There are no text messages or other documents that show any clear agreement. I also find it highly unlikely that Mr. Walker would promise to pay for the repairs in full. It is unclear why he would want to do so. I find it much more likely Mr. Walker agreed to pay \$740 in an effort to settle the matter. I find Ms. Marno essentially rejected this settlement offer by asking for further money as shown in the October and November 2022 emails. As such, I find Mr. Walker is not bound by his earlier offer, or any other settlement agreement.
33. As I find it unproven that the Walkers breached any obligation to Ms. Marno, I also find it unproven that Homelife breached any obligation as well.

34. This leaves the issue of Conall's liability, if any, under negligence. I find the standard of care for a property inspector is a reasonable visual inspection done in accordance with the Home Inspectors Association of BC. See the non-binding decisions of *Copp v. Gustavson*, 2021 BCCRT 868 and *Boyd v. R 340 Enterprises Ltd. dba Pillar to Post Home Inspectors*, 2022 BCCRT 265.
35. As stated in *Boyd* citing *Brownjohn v. Pillar to Post*, 2003 BCPC 2 at paragraph 16, the BC Provincial Court has said that there are common-sense limits on what one can reasonably expect from a relatively brief and inexpensive visual inspection undertaken by someone who has no right to interfere with the property. This is because the property is not owned by the person requesting the inspection. The purpose of a home inspection is to provide expert advice about substantial deficiencies of a magnitude that can reasonably be expected to have some bearing on the buyer's decision-making about buying the property or negotiating a lower purchase price.
36. Conall provided a copy of the Home Inspectors Association of BC's "scope of inspection" and "code of ethics" document. As noted in the document, a home inspection is meant to be a limited, non-invasive, visual examination of the current condition of a residential building. Item 6 under scope of inspection says an inspector is not required to identify the condition of systems or components that are inaccessible, obstructed, hidden, or contain latent defects.
37. Ms. Marno says that Conall should have identified the exhaust chute issue. Conall disagrees. It is undisputed that the exhaust duct repairs affect an area that was under a cover at the time. Given this, and the standard outlined above, I find that Conall had no obligation to remove the cover or identify any flaws obscured by it. Ms. Marno did not provide any expert evidence or other evidence that would change my conclusion. So, I find that Conall did not breach the standard of care. I dismiss this claim.
38. As for the gas leak, Ms. Marno says that the gas leak was apparent on the date of the inspection. In an October 16, 2022 email to Mrs. Walker, Ms. Marno says she



attended the inspection. She says the house smelled of gas. She says the inspector said this was because they had “just turned on the stove to check the burners”.

39. Conall denies that its representative smelled gas during the inspection.
40. Overall, I find it unproven that the house smelled of gas to the point that a leak would be obvious or apparent. In an October 13, 2022 email, Mrs. Walker said that she had visited the house right up until the possession date and never smelled any gas. I find this corroborates Conall’s version of events. Further, the Home Inspectors Association of BC document says that inspectors are not required to inspect seals or gaskets under item 8.2(3) or appliances under item 6.2(5). The report also said that if an inspector tests an appliance, it would be limited to reporting that they activate with common controls only.
41. Given the above, I find it unproven that Conall breached any obligation to Ms. Marno in connection with the gas leak or valve repairs. I dismiss Ms. Marno’s remaining claim against Conall for the repairs.

***Issue #2. Are the respondents liable for the cost of Ms. Marno hiring extra help?***

42. Ms. Marno alleges the following. GJ was helping her out with home maintenance. At the time, he briefly looked at the stove and gas leak, and said it required repairs from a professional. Mrs. Walker subsequently contacted GJ without permission. She told GJ confidential information about the home purchase and inspection. She also said that Ms. Marno would sue GJ because he had examined the stove. GJ withdrew his help. Ms. Marno claims \$1,500 as damages.
43. Ms. Marno says the other respondents responsible as well. However, she did not explain why, or allege that anyone aside from Mrs. Walker spoke to GJ.
44. The Walkers both deny ever contacting GJ without Ms. Marno’s consent. They say Ms. Marno gave both of them permission to discuss the details of her purchase with

GJ on September 24, 2022, and her concerns about the gas leak and kitchen exhaust repairs. The Walkers both deny ever telling GJ that Ms. Marno would sue GJ.

45. Crucially, there is no evidence from GJ in this dispute. For example, there are no emails or correspondence from GJ stating that he refused to work for Ms. Marno because of the Walkers' actions. So, I find Ms. Marno's allegations are essentially unsupported by evidence. There is also no evidence of loss, such as receipts or invoices, for extra costs Ms. Marno had to pay to replace GJ's labour.
46. Given the lack of evidence, I find Ms. Marno has not proven her claim. I dismiss it.

***Issue #3. Must the respondents pay Ms. Marno \$400 for “dealing with this situation”?***

47. Ms. Marno claims \$400 for time spent dealing with this situation. The CRT generally does not award compensation for a party's inconvenience and time spent on issues in a dispute. I see no reason to depart from the general rule.
48. To the extent Ms. Marno claims for time spent as a dispute-related expense, I would dismiss this claim as well. CRT Rule 9.5(5) says the CRT will not order one party to pay another for time spent dealing with the dispute unless there are extraordinary circumstances. I find those circumstances absent here, and in any event, Ms. Marno did not succeed in any of her other claims.
49. 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 dismiss Ms. Marno's claims for reimbursement of CRT fees. I have also already dismissed Ms. Marno's claim for time spent as a dispute-related expense. The respondents were successful but did not pay CRT fees or claim any dispute-related expenses.

## **ORDER**

50. I dismiss Ms. Marno's claims and this dispute.

---

David Jiang, Tribunal Member