



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Suzuki v. Travelers Insurance Company of Canada La Compagnie D'Assurance Travelers Du Canada*, 2024 BCCRT 586

BETWEEN:

TOSHIO SUZUKI

APPLICANT

AND:

TRAVELERS INSURANCE COMPANY OF CANADA LA COMPAGNIE
D'ASSURANCE TRAVELERS DU CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about home warranty coverage. The applicant, Toshio Suzuki, co-owns a home that is covered by a home warranty certificate issued by the respondent, Travelers Insurance Company of Canada La Compagnie D'Assurance Travelers Du Canada. Travelers denied Mr. Suzuki's warranty claim for alleged defects in the

home. Mr. Suzuki disagrees with this denial, and says that Travelers did not properly consider his claim. He asks for an order that Travelers fix the alleged defects. Mr. Suzuki values his claim at \$5,000 in his Dispute Notice, but says that the actual repair costs will likely be lower.

2. Travelers denies that Mr. Suzuki's home has defects that are covered by the warranty, and says that it acted in good faith in considering Mr. Suzuki's warranty claim. Travelers asks me to dismiss this dispute.
3. Mr. Suzuki is self-represented. Travelers is represented by its claim counsel, Christopher Filipchuk.
4. For the following reasons, I dismiss Mr. Suzuki's 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. CRTA section 39 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 resolve the parties' factual disagreements on the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. CRTA section 42 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.

Preliminary issue – mootness

8. After the parties submitted their evidence and arguments but before this dispute was assigned for adjudication, Travelers contacted the CRT and asked to revise its submissions because it understood that Mr. Suzuki's home had been sold. So, I invited the parties to provide submissions about whether the home had in fact been sold, and if so, whether Mr. Suzuki's claims were moot, or of no legal consequence. Both parties provided submissions. Travelers said that if the home has been sold, Mr. Suzuki is no longer an insured under the home warranty certificate, because the warranty transfers to the new owner on a change of ownership. Mr. Suzuki acknowledged that the home's sale is pending, but said that the closing date has been delayed and so he is still registered as an owner of the home.
9. Mr. Suzuki says that it would be premature to dismiss his claim as moot before the sale is completed, though he did not provide evidence of the new closing date. I accept that Mr. Suzuki owned the home at the time he provided submissions, and so I find it is appropriate to resolve Mr. Suzuki's claims on their merits. However, ultimately nothing turns on this given my dismissal of Mr. Suzuki's claims below.

ISSUES

10. The issues in this dispute are:
 - a. Are the alleged defects in Mr. Suzuki's home covered by the warranty?
 - b. Did Travelers act in bad faith or contrary to the warranty terms in considering Mr. Suzuki's warranty claim?

BACKGROUND AND EVIDENCE

11. As the applicant in this civil proceeding, Mr. Suzuki must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. The background facts are undisputed. Travelers issued a warranty certificate for Mr. Suzuki's home under the *Homeowner Protection Act* (HPA) with a commencement date of August 20, 2021.
13. On August 15, 2022, Mr. Suzuki submitted a warranty claim to Travelers. The claim included the following 6 alleged defects:
 - a. The over-the-range microwave and hood fan was ineffective at managing cooking smoke and fumes, which resulted in the smoke alarm being frequently triggered,
 - b. The microwave was installed too high, making it unsafe for use,
 - c. The kitchen cabinets were installed too high, making them inaccessible without a stepladder,
 - d. The microwave was installed contrary to manufacturer's instructions, which in turn meant that the kitchen cabinets were installed incorrectly,
 - e. The microwave hood fan was not approved by the manufacturer to be paired with the gas cooktop in the home, and
 - f. The length of the exhaust vent system may exceed the maximum length permitted by the manufacturer.
14. Travelers acknowledged receipt of Mr. Suzuki's claim on August 17, 2022, and said that it would respond within 10 business days.
15. On August 28, 2022, Travelers emailed Mr. Suzuki attaching a cover letter, a record of claim, and a claimant information sheet. In the record of claim, Travelers indicated that its position was that Mr. Suzuki's claim was outside the warranty's scope. The claimant information sheet explained that this meant the items were not covered by the warranty. The record of claim also noted that appliances have their own manufacturer's warranty. Lastly, the information sheet set out Mr. Suzuki's options to dispute Travelers' position.

16. Mr. Suzuki responded to Travelers on August 31. He said that the record of claim was incomplete because it did not list all 6 of his alleged defects. He also said that Travelers' comments about the appliance manufacturer's warranty were inapplicable because the microwave was installed incorrectly, which would void the manufacturer's warranty.
17. Travelers responded on September 1. It said that because all 6 items in Mr. Suzuki's notice of claim were about the same issue with the microwave, only one item was listed on the record of claim. It invited Mr. Suzuki to complete an additional notice of claim if he had additional issues to add to his claim file, and referred him to the dispute options available in the claimant information sheet if he was unhappy with its position.
18. Mr. Suzuki seeks orders that Travelers replace the microwave with an approved exhaust hood fan, and that this work comply with applicable building and fire codes and the manufacturer's installation instructions. In reply submissions, Mr. Suzuki withdrew his requested remedies about the height of the kitchen cabinets, other than those above the microwave. So, I have only addressed his claims about the microwave and the cabinets above it.

Are the alleged defects covered by the warranty?

19. The warranty covers defects in materials and labour supplied by the builder in the home's construction for up to two years. There is no dispute that Mr. Suzuki made his warranty claim within the applicable two-year period.
20. The warranty defines a "defect" as "any design or construction that is contrary to the Building Code or that requires repair or replacement due to the negligence of a builder or person for whom the builder is responsible at law."
21. Mr. Suzuki does not allege that the microwave's installation was contrary to the building code. Instead, he argues that it was contrary to the manufacturer's installation instructions. I infer that Mr. Suzuki argues that the builder negligently installed the microwave.

22. Generally, an allegation that a professional's work was negligent must be proven with expert evidence. There are exceptions where the work is obviously and egregiously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
23. Mr. Suzuki provided an invoice from the microwave's manufacturer, Whirlpool. He says this is a warranty inspection invoice, but the invoice describes the charges simply as "labour". The invoice's comments say, in part: "Found wrong installation – from top microwave to cooktop 41.5" (instead 33)". Plus microwave covered only rear burners."
24. Travelers says this invoice is not expert evidence, because it does not specify who performed the inspection, what they reviewed, or their credentials. I agree. The invoice also does not say that the microwave's warranty is void, as Mr. Suzuki argues. I find this invoice falls short of proving that the builder negligently installed the microwave.
25. Mr. Suzuki did not provide any other expert evidence in support of his claims. He says that a kitchen cooktop exhaust system is "not rocket science", and provided evidence of his own education and experience, which he says qualifies him to address the issues in this dispute. CRT Rule 8.3(7) says that a party generally cannot act as their own expert, because they are not neutral about the dispute's outcome. So, I do not accept Mr. Suzuki's own opinions about the microwave's installation as expert evidence.
26. While installation contrary to the manufacturer's instructions may support a finding that the work was obviously substandard, I also find Mr. Suzuki has not proven that the builder did not follow the manufacturer's instructions, for the following reasons.
27. Mr. Suzuki says, and I accept, that the top of the microwave is 77.5 inches above the floor and 41.5 inches above the cooktop. Mr. Suzuki provided a copy of the installation instructions in evidence. Under "Installation Dimensions", the instructions show a

minimum distance of 69 inches from the floor to the top of the microwave. The instructions do not include a maximum height. Similarly, the measurement from the cooktop to the top of the microwave says that a 33-inch distance is “typical” for 69-inch installation height, but that exact dimensions may vary depending on the type of range or cooktop below.

28. Based on this diagram, I cannot conclude that the builder’s installation was contrary to these instructions. The installation undisputedly complies with the minimum height and width requirements indicated, and as noted, the instructions do not specify a maximum height.
29. Mr. Suzuki also argues that the microwave is not approved for use over his gas cooktop. In support of this, he provided the manufacturer’s Ventilation Pairing Guide, which is a chart showing which ventilation options are approved or not approved for different cooktop models. The model number for Mr. Suzuki’s microwave hood fan does not appear in this chart. In other words, it is not listed as either “approved” or “not approved” as a ventilation device for Mr. Suzuki’s cooktop. There is no evidence that the list is exhaustive, and that any device not listed is incompatible with the cooktop. Further, as Travelers notes, the installation instructions for the microwave specifically state that it is suitable for use above gas cooking products. On the evidence before me, I am unable to conclude that the microwave is not approved for installation in Mr. Suzuki’s home.
30. Mr. Suzuki says that the microwave is unsafe to use at its current height. He provided photographs of a person standing in front of and reaching into the microwave, and says that a person who is 5 feet, 2 inches tall has to lift hot liquids or food above their head while unloading the microwave. While I accept that the microwave may be inconvenient to access at its current height without the use of a step stool, I find this does not establish that it was negligently installed.
31. In summary, I find Mr. Suzuki has not established that the builder negligently installed the microwave. So, I find he has not proven that the microwave’s installation is a “defect” under the warranty.

32. Lastly, Mr. Suzuki says that the warranty covers product failure that is caused by a failure to comply with warranty requirements of the appliance manufacturer. The microwave's manufacturer's warranty says that it does not cover repairs to correct installation that is not in accordance with installation instructions. I have found above that Mr. Suzuki has not proven that the microwave was installed incorrectly.
33. In any event, I find Mr. Suzuki has not established that the microwave failed. Mr. Suzuki says that it is unable to capture cooking smoke and fumes, which frequently trigger his smoke alarm. However, he provided no evidence of this, nor did he provide evidence that lowering the microwave's height would fix this issue. So, I find this warranty provision does not assist Mr. Suzuki.

Travelers' handling of Mr. Suzuki's claim

34. I turn to Mr. Suzuki's allegations about Travelers' handling of his claim. Mr. Suzuki argues that Travelers acted in bad faith and breached the terms of its warranty as well as applicable legislation, guidelines, and procedures in dealing with his claim.
35. First, Mr. Suzuki argues that Travelers failed to properly evaluate his claim. He says that Travelers did not inspect the alleged defects in person. While Travelers acknowledges that the warranty certificate requires it to make reasonable attempts to contact the owner to arrange an evaluation of the claim, it says this does not require an in-person inspection. I agree. I find the warranty certificate does not specify that Travelers must perform a physical inspection of the warranty claim, and I accept Travelers' submission one was not required in these circumstances, as Mr. Suzuki's claim included detailed measurements.
36. Second, Mr. Suzuki disagrees with Travelers' decision to group his 6 alleged defects into 1 warranty claim, which it labelled "Kitchen" on its record of claim. Mr. Suzuki says that he did not make a claim labelled "Kitchen", and that Travelers "made up" the Kitchen claim. The warranty certificate undisputedly requires Travelers to notify the owner in writing of its decision to deny coverage, and its reasons for doing so. Mr. Suzuki says that this means that Travelers should have issued 6 different decisions

on coverage for each of his complaints. He says this is also a breach of Travelers' claims handling process, which says that all defects listed on the notice of claim will be itemized on the record of claim.

37. Travelers says that it combined the 6 alleged defects into 1 claim on the record of claim for simplicity, because they all related to the same issue. It says there is nothing in the warranty certificate preventing it from grouping claims in this way, and that it would have denied Mr. Suzuki's claim even if the record of claim listed the alleged defects separately. Travelers also says that the word "Kitchen" on the record of claim is only a description of the claim's location. I agree. The word "Kitchen" appears under the heading "Location Room/Area". I find nothing unreasonable about this, or about Travelers' decision to group the alleged defects into 1 claim.
38. Third, Mr. Suzuki says that Travelers did not forward a copy of the claim to the builder, as required by its claims handling process. He says that the builder would have confirmed that the microwave installation did not comply with the manufacturer's instructions. Traveler provided an email in evidence showing that it forwarded a copy of Mr. Suzuki's claim to the builder, so I accept that it did so.
39. Fourth, Mr. Suzuki says that Travelers incorrectly assumed that his complaint was about a manufacturing defect with the microwave itself. I note that the description of Mr. Suzuki's claim in the record of claim focuses on his complaints about the microwave's inability to manage cooking smoke and fumes, rather than his complaints about its installation. However, I find that the record of claim is a brief description of the claim, rather than a comprehensive recitation. The record of claim refers to Mr. Suzuki's August 15 email as the "Reference Doc", so I find that the record of claim is intended to be read with reference to the original claim, as well as the claimant information sheet.
40. Although the investigation results and Travelers' position as noted in the record of claim are brief, I find Travelers reasonably evaluated the claim and communicated its decision to Mr. Suzuki. Overall, I find Mr. Suzuki has not established that Travelers

breached its claim handling obligations under the warranty, or that it acted in bad faith in considering his claim.

41. Lastly, Mr. Suzuki says that Travelers did not follow a June 16, 2022 BC Financial Services Authority (BCFSA) guideline about managing home warranty claims. The guideline says that it provides regulatory expectations to home warranty insurers, and a failure to respond to BCFSA's expectations may result in regulatory action under the *Financial Institutions Act* (FIA). I find this type of action is within the jurisdiction of the Superintendent of Financial Institutions under the FIA. The CRT does not have jurisdiction to consider Travelers' compliance with the BCFSA guideline.
42. In summary, I find Mr. Suzuki has not proven that Travelers breached its warranty agreement. So, I dismiss his claims. Given this, I find I do not need to address Travelers' alternative arguments about whether the CRT has jurisdiction to order Mr. Suzuki's requested remedies.

CRT FEES AND EXPENSES

43. Under CRTA section 49 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. Mr. Suzuki was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Travelers was the successful party but did not pay CRT fees or claim dispute-related expenses, so I make no order for them.

ORDER

44. I dismiss Mr. Suzuki's claims and this dispute.

Alison Wake, Tribunal Member