



Civil Resolution Tribunal

Date Issued: August 16, 2024

Files: SC-2023-007171
and SC-CC-2023-008471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zelman v. Pars Luxury Homes Ltd.*, 2024 BCCRT 788

BETWEEN:

DMYTRO ZELMAN

APPLICANT

AND:

PARS LUXURY HOMES LTD.

RESPONDENT

AND:

DMYTRO ZELMAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about allegedly poor plumbing. The applicant and respondent by counterclaim, Dmytro Zelman, purchased a home built by the respondent and applicant by counterclaim, Pars Luxury Homes Ltd. Mr. Zelman says Pars negligently installed plumbing that was not compliant with the applicable Building Code. Mr. Zelman seeks reimbursement of \$5,947.64, for amounts he paid for plumbing inspection and repairs. Mr. Zelman limits his claim to \$5,000, which is the small claims monetary limit at the Civil Resolution Tribunal (CRT). Pars denies the plumbing was negligently installed.
2. In its counterclaim, Pars claims \$5,000 because it says Mr. Zelman failed to abide by a settlement agreement in a previous CRT dispute. Mr. Zelman denies breaching any agreement.
3. Mr. Zelman represents himself. Pars is represented by its owner, Amir Khajavi.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.
5. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing. Here, there are no issues of credibility. 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, nor was one requested.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information

would be admissible in court. 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.

Named respondent

8. In dispute SC-2023-007171, Mr. Zelman initially named only Amir Khajavi personally. Mr. Khajavi notified the CRT and Mr. Zelman that he was improperly named, and Mr. Zelman's agreement was with Pars. By email, Mr. Zelman asked to name Pars, as Mr. Khajavi explained. However, the Dispute Notice was never amended to reflect this change. Given the parties' agreement about the proper respondent, I have exercised my discretion under CRTA section 61 and have amended the respondent's name in the style of cause above.

ISSUES

9. The issues in this decision are:
 - a. Is Mr. Zelman's claim out of time under the *Limitation Act*, and
 - b. Did Mr. Zelman breach the parties' settlement agreement such that Pars is entitled to its claimed damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Zelman and Pars must each prove their respective claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.

Background

11. Mr. Zelman and his spouse bought a home from Pars in 2016 or 2017. They moved in in December 2017. Mr. Zelman says that beginning in 2019, they began experiencing problems with their kitchen drainage system. After some investigation and discussion between the parties, on August 13, 2020, Mr. Zelman's spouse reached out to Pars and requested compensation for the kitchen drainage issues. It does not appear Pars ever responded to this specific email.
12. Mr. Zelman and his spouse continued to follow up with various plumbing companies and Pars, and the drainage issue was eventually fixed in February 2023 by a third party plumber. As noted, Mr. Zelman says Pars negligently installed the kitchen drainage system and claims damages of \$5,000 as reimbursement for amounts he paid to various plumbers for investigating and fixing the drainage issue.
13. Pars denies it was negligent and argues Mr. Zelman's plumbing issues are self-created. It also says Mr. Zelman's new home warranty had expired by the time the plumbing issues arose, so it is not responsible for them.
14. For background, while the plumbing issues were ongoing, the parties were also involved in other proceedings related to Mr. Zelman's heating and air conditioning system. More on this later.

Limitation Act

15. The *Limitation Act* applies to disputes at the CRT. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed, even if the claim would have otherwise been successful.
16. The parties did not specifically address the *Limitation Act* in their submissions, so I requested additional submissions from them about the applicability of the *Limitation Act*, which they both provided.

17. Section 6 of the *Limitation Act* says that the basic limitation period to file a claim is 2 years after the claim is “discovered”. Section 8 says a claim is “discovered” on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
18. Mr. Zelman says he started having problems with his kitchen drainage system in 2019. The parties agree Mr. Zelman first brought the plumbing issue to Pars’ attention in May 2020. In *Peixeiro v. Haberman*, [1997] 3 SCR 549, the Supreme Court of Canada held that a plaintiff (or in this case, an applicant) does not need to know the exact extent of the damage, or the type of damage, before their claim is discoverable. Instead, they must know that some damage has occurred, and who caused that damage. So, while Mr. Zelman did not know the full extent of the plumbing issues or the cost to repair until 2023, I find he knew he had suffered a loss by having a potentially faulty kitchen drainage system by May 2020, and knew that it was caused or contributed to by Pars.
19. On August 13, 2020, Mr. Zelman and his spouse sought compensation from Pars for the plumbing issues. Mr. Zelman says Pars did not respond to that request. By that date, I find Mr. Zelman knew there was an issue with the plumbing, that it was caused by Pars, and that he may need to start a tribunal or court proceeding to remedy the damage. I find Mr. Zelman’s claim was “discovered” by August 13, 2020, given his request for compensation. Given this, Mr. Zelman’s limitation period expired 2 years later, on August 13, 2022, 11 months before he filed his application for dispute resolution at the CRT.
20. Mr. Zelman argues there are extenuating circumstances here, and that I should exercise my discretion to not apply the 2-year limitation period. He argues it took time to get a plumber, he was already fighting with Pars about the heating and air conditioning, and that COVID-19 delayed things. Pars says Mr. Zelman’s claim should be dismissed as out of time.

21. Due to COVID-19, the government enacted the *COVID-19 Related Measures Act* (CRMA). Under the authority of the CRMA, the *COVID-19 (Limitation Periods in Court Proceedings) Regulation* (LPCP Regulation) suspended limitation periods for 1 year. This automatic suspension applied only to the British Columbia Provincial Court, British Columbia Supreme Court, and the British Columbia Court of Appeal. Administrative tribunals like the CRT were not included.
22. The CRMA gave administrative tribunals like the CRT discretion to waive, suspend, or extend any mandatory time limit, including limitation periods. That authority expired 90 days after the COVID-19 state of emergency ended in British Columbia. The state of emergency ended on June 30, 2021, so the CRT's power to waive, suspend, or extend a limitation period expired at the end of September 2021. As Mr. Zelman applied for dispute resolution on July 12, 2023, the CRT has no authority to waive, suspend, or extend the limitation period under the CRMA.
23. However, I also considered whether Mr. Zelman's claim was filed within the applicable limitation period to continue his claim as a court action rather than a CRT dispute, as explained below.
24. The government repealed the LPCP Regulation as of March 25, 2021. The result is that limitation periods for bringing court actions were suspended between March 26, 2020 and March 25, 2021. As I find Mr. Zelman discovered his claim during that period, by August 13, 2020, the applicable 2-year limitation period for any court action started to run on March 26, 2021. This means his limitation period to file a court action for damages related to the kitchen drainage system would have expired on March 26, 2023, unless the limitation period was further extended or suspended.
25. Section 13.1 of the CRTA says that the limitation period under the *Limitation Act* does not run after an applicant requests dispute resolution under section 4 of the CRTA. As Mr. Zelman filed his application for dispute resolution on July 12, 2023, that is when the limitation period stopped running. However, July 12 was already over 3 months after Mr. Zelman's limitation period to file a court action had expired. As a result, I find Mr. Zelman's claim was filed out of time, both at the CRT and the court.

26. While I acknowledge Mr. Zelman feels his claim deserves consideration in the interests of justice and fairness, I do not have discretion to not apply the *Limitation Act*. I also note that courts have found that almost all applications of limitations statutes will seem harsh, but they are necessary to uphold the important principles of finality and expeditious dispute resolution (see: *Novak v. Bond*, [1999] 1 SCR 808).
27. I dismiss Mr. Zelman's claims as out of time under the *Limitation Act*.

The counterclaim

28. In its counterclaim, Pars says Mr. Zelman's claim has caused it distress and years of harassment, slander, and recent trespassing. Pars also argues Mr. Zelman breached the parties' settlement agreement as reached in an earlier CRT proceeding. It claims \$5,000 in damages.
29. First, to the extent Pars claims damages for "distress", I find its claim must fail. Pars is a corporation. Because a corporation has no feelings, it cannot suffer an intangible injury like mental distress (see: *Northwest Organics, Limited Partnership v. Fandrich*, 2019 BCCA 309, at paragraphs 126 to 128). I dismiss this aspect of its counterclaim.
30. Second, for the same reasons above, I find Pars, a corporation, cannot be harassed. In any event, there is no recognized tort of harassment in British Columbia (see: *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, at paragraph 61). I dismiss this aspect of its counterclaim.
31. Third, under section 119 of the CRTA, the CRT has no jurisdiction over claims for libel or slander in its small claims jurisdiction. CRTA section 10(1) says the CRT must refuse to resolve a claim that is not within its jurisdiction. So, I refuse to resolve Pars' counterclaim for slander.
32. Fourth, Pars did not provide any evidence about Mr. Zelman's alleged trespassing, Pars only says that Mr. Zelman trespassed on 2 job sites, but does not describe how, where, or when. I find Pars' counterclaim for trespass is unproven.

33. I turn to the settlement agreement. The parties were involved in a previous CRT proceeding, SC-2019-000180. In that dispute, Pars and Mr. Khajavi's son sued Mr. Zelman and his spouse for failure to pay an invoice. The parties ultimately settled and Pars withdrew its claim.
34. Pars provided a copy of the draft settlement agreement terms. Although the final copy is not before me, Mr. Zelman does not deny agreeing to the terms as shown in the draft. The relevant terms are as summarized as follows:
- a. Pars would withdraw its claim and not require Mr. Zelman or his spouse to pay invoice 51,
 - b. Any further contact between the parties would relate only to the warranty claim that was the subject of the 2019 dispute, and the 2016 construction agreement,
 - c. The parties will not contact each other except as set out in the settlement agreement, and will only communicate in a professional manner.
35. Pars says invoice 51 is still outstanding. I find there is no basis to award Pars anything for invoice 51. The settlement agreement undisputedly says Pars would not seek repayment of it, and Pars withdrew its claim for payment. I find Pars is not entitled to payment of invoice 51, though I note Pars did not provide a copy of invoice 51 in any event. I dismiss this aspect of its counterclaim.
36. Finally, Pars says Mr. Zelman agreed not to contact Pars except in connection with the warrantable items (the heating and air conditioning system). Pars says Mr. Zelman's filing of dispute SC-2023-007171 is therefore a breach of the parties' settlement agreement. I disagree.
37. Although the parties did not provide a copy of the 2016 construction agreement, I find Mr. Zelman's claim about plumbing drainage issues reasonably relates to the parties' construction agreement. Therefore, under the parties' settlement agreement, I find Mr. Zelman was entitled to contact Pars about it, including by filing dispute SC-2023-

007171. While the parties are clearly unhappy and distrusting of one another, I see no evidence of unprofessional communication by either party.

38. In summary, I find Pars has not proven Mr. Zelman has breached the parties' settlement agreement. I refuse to resolve Pars' claim for slander, and dismiss the remainder of Pars' counterclaim.

FEES & EXPENSES

39. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Both parties were unsuccessful in their respective claims. So, I find neither are entitled to reimbursement of their paid tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

40. I dismiss Mr. Zelman's claims.

41. I refuse to resolve Pars' claim for slander under CRTA section 10(1).

42. I dismiss the remainder of Pars' counterclaim.

Andrea Ritchie, Vice Chair