



Civil Resolution Tribunal

Date Issued: November 20, 2024

File: SC-2023-006882

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 655 v. A-1 Window Mfg. Ltd.*, 2024 BCCRT
1174

BETWEEN:

The Owners, Strata Plan NW 655

APPLICANT

AND:

A-1 WINDOW MFG. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about window installation. The applicant, The Owners, Strata Plan NW 655 (strata), says the respondent, A-1 Window Mfg. Ltd (A-1), poorly installed windows and sliding glass doors. The strata says while A-1 has fixed some windows and doors, there are some that still need to be repaired. The strata asks A-1 to

complete the final repairs, and claims \$5,000 to have those repairs “professionally validated”.

2. A-1 says it completed the work for the strata in 2016-2018, and the units at issue in this dispute are no longer under warranty. It says if the strata wants the windows repaired, it will have to pay for repairs or an upgrade.
3. The strata is represented by a council member. A-1 is represented by an employee.

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.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing’s format, 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. I also find there are no significant credibility issues between the parties. 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 court.
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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. With certain limited exceptions that do not apply here, CRTA section 118 does not give the CRT jurisdiction to grant injunctive relief. Injunctive relief is an order to do something or stop doing something.
9. So, I find a primary issue in this dispute is whether the CRT has jurisdiction over this claim. I did not ask the parties for specific submissions on this issue because I find the nature of the strata's claim is clear and unambiguous in the circumstances. I find that asking the parties for further submissions would have delayed the resolution of this dispute without any benefit, and would be counter to the CRT's mandate that includes resolving disputes in a manner that is speedy and economical under CRTA section 2(2).

ISSUE

10. The issues in this dispute are:
 - a. Does the CRT have jurisdiction over this dispute?
 - b. If so, must A-1 fix the remaining windows and doors?
 - c. Is the strata entitled to further damages to have A-1's repairs "professionally validated"?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the strata must prove its 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.
12. The parties agree the strata has 106 townhouse-style units, which I infer were built in the 1970s. The strata hired A-1 windows to replace sliding patio doors and windows for certain units. This was done in phases, with some replacements done

in 2016, 2017 and finally in 2019. There is some disagreement about the applicable warranty period for each phase. I will return to this below.

13. The strata confirmed through the CRT process that the remaining units in this dispute requiring repair are 4131, 4159, and 9852. 4131 and 4159 were part of the 2016 phase, while 9852 was part of the 2017 phase.
14. 4131 has problems with the patio sliding door. 4159 has problems with the second- and third-floor balcony sliding doors. Finally, 9852 has problems with the second-floor balcony sliding door.
15. A-1 says the warranty on 4131 and 4159 expired in 2019, and the warranty for 9852 expired in 2020. It relies on the terms on the back of the quotes for those installations.

Does the CRT have jurisdiction over this dispute?

16. As I noted above, the CRT has very limited jurisdiction in small claims disputes to issue injunctive orders. CRTA section 118 says for small claims disputes, the CRT has jurisdiction over claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property. Apart from these specific provisions, CRT has no jurisdiction in small claims disputes to grant injunctive or declaratory relief.
17. The strata asks for an order that A-1 honour its warranty and fix the windows and patio doors that are failing. The strata also asks for costs to have A-1's repairs professionally validated.
18. I find asking for a party to repair patio windows and doors is injunctive relief. So, I must determine whether it falls within specific performance of an agreement for services.

Warranty

19. First, I consider the warranty and whether it constitutes an “agreement for services”.
20. The strata does not dispute that the issues with the windows and doors fall under the “labour warranty”, instead of the manufacturing defects warranty, which is longer. I find this is consistent with the strata relying on an engineering report that says the windows and doors were poorly installed. So, I must consider what the labour warranty was, because I find that is the one that applies here.
21. A-1 says the warranty was 3 years, the strata says it was 5 years. A-1 provided copies of the quotes and invoices for the 2016 and 2017 job, which on the back contain a term saying the labour warranty is 3 years.
22. The strata provided a copy of a sheet that says the warranty for labour is 5 years, which it says was attached to the 2019 contract. The strata provided no other evidence, such as communication with A-1 in 2016 or 2017, to show that the warranty for those earlier installations was 5 years.
23. So, I find the strata has not proven the labour warranty was 5 years for windows and doors A-1 installed on 4131, 4159 and 9852 which were installed before 2019. The strata does not dispute it brought the repairs to A-1’s attention after the 3 year warranty had expired.
24. Based on the above, I find whether the warranty was an “agreement for services” is not relevant, because I find the warranty was not valid when the issues arose.

Further agreements about repairs

25. I now consider whether the parties had any other agreements about the repairs to 4131, 4159 or 9852.
26. Both parties provided copies of the emails between them trying to resolve the issues. The strata dealt with several individuals at A-1, including RE and MK, A-1 employees and SK, an owner.

27. The strata also provided a written timeline that sets out the parties' interactions and communications. A-1 does not dispute its accuracy, and I find it provides a useful summary of the parties' communications.
28. From these emails, I find RE inspected 4131 and 4159 in November and December 2020. RE told the strata they had passed on the strata's concerns to A-1's service department. After this point, the strata continued to follow up about when these repairs would be completed.
29. In March 2021, RE asked for a final list of repairs to bring to SK. The strata sent this list, which included repairs to 4131 and 4159. In July 2021, SK took over and began contacting owners. An A-1 employee, J, eventually inspected several units, including 4131 and 4159, in September 2021.
30. J did repairs at 3 units, but 4131 and 4159 needed replacement windows or doors. This later work was put off as the owners of 4131 and 4159 did not want repair work done in the winter close to the holidays. A-1 returned in April 2022, but both locations still needed new doors and windows ordered, which I infer A-1 had not done.
31. Based on RE and MK's emails and J's verbal comments, I find that A-1 agreed to make repairs to units 4131 and 4159. This included ordering new doors and windows. I place weight on MK's August 2021 email that they would send a service tech and "get these deficiencies done". It is undisputed that A-1 has not done so.
32. However, I come to a different conclusion about 9852. The strata says in June 2022 it added concerns about 9852. After SK attended and inspected, they confirmed in an August 2022 email to the strata that they considered the repairs to these units outside the warranty. However, SK said A-1 would make some repairs, as a goodwill gesture.
33. For 9852, SK offered to adjust the lower patio door and add beading and caulking to the upstairs patio door. SK noted the 9852 office window was not properly

maintained and the water on the sitting room sliding track was normal after wind-driven rain and it would drain through engineered holes.

34. A-1 provided photos showing it finished the work on 9852 it agreed to do, which I accept were in line with SK's offer. So, I find there was no outstanding agreement for services with respect to unit 9852 and I refuse to resolve the strata's claim for repairs to that unit.

Must A-1 fix the remaining windows and doors?

35. I have found that the strata and A-1 had an agreement for services about units 4131 and 4159. This agreement included ordering new doors and windows, which A-1 has not done. So, I order A-1 to make the necessary repairs to the windows and sliding doors in units 4131 and 4159, as agreed, including any replacements necessary and appropriate waterproofing.

Is the strata entitled to further damages to have A-1's repairs "professionally validated"?

36. The strata claims for the "cost to have the installation issues professionally validated". The strata does not give a specific amount for this claim, but includes it in the \$5,000 it claims.
37. While I accept that the strata is frustrated with A-1's previous installations, I do not find the parties' agreement included having A-1's work verified. I find there is no other basis for me to make this order. Further, the strata has not provided evidence of what a "professional validation" might cost. To the extent the strata relies on the \$5,600 quote for the engineering report it ordered, I find the strata has not proven it is proportionate to the value of the repairs to units 4131 and 4159.
38. In any event, I find ordering A-1 to pay for a report could lead to further conflict between the parties, which is contrary to the CRT's mandate to bring finality to issues between the parties. So, I dismiss the strata's claim for the cost of a professional validation.

FEES AND EXPENSES

39. 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 the strata was partially successful, I find it is entitled to reimbursement of \$87.50, or half of its paid CRT fees.
40. The strata claims \$5,600 in reimbursement for an engineering report it obtained, and provides a quote for that amount and a draft report. A-1 says the strata ordered the report for unrelated reasons.
41. Having reviewed the strata's July 2023 minutes, I find the strata ordered this report for the purposes of assessing A-1's installations and this dispute. This is also clear from the report itself. While I did not rely significantly on this report in coming to my decision, I accept it was reasonable to have one prepared. However, based on the claims' value and the strata's partial success, on a judgment basis, I find it is only entitled to \$4,000 in reimbursement for the report.
42. A-1 did not claim any dispute-related expenses.

ORDERS

43. Within 90 days of this decision, I order A-1 to:
 - a. At a date and time agreed upon in writing by the parties, complete necessary repairs to units 4131 and 4195's windows and patio doors, as agreed, including any replacements necessary and appropriate waterproofing.
 - b. Reimburse the strata \$87.50 in CRT fees and \$4,000 in dispute-related expenses.
44. Under CRTA section 10(1), I refuse to resolve the strata's claims about unit 9258.
45. I dismiss the strata's remaining claims.

46. The strata is entitled to post-judgment interest, as applicable.

Amanda Binnie, Tribunal Member