



Civil Resolution Tribunal

Date Issued: April 19, 2024

Files: SC-2023-005824 and
SC-CC-2023-010850

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *B Brody Holdings Ltd. v. Mulherin*, 2024 BCCRT 378

B E T W E E N :

B BRODY HOLDINGS LTD.

APPLICANT

A N D :

DANIEL STEPHEN MULHERIN

RESPONDENT

A N D :

B BRODY HOLDINGS LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. These two linked disputes are about property taxes and a property tax credit, and alleged deficiencies in a new-build home. They consist of claims and a counterclaim between the same parties, so I have issued one decision for both disputes.
2. In SC-2023-005824, B Brody Holdings Ltd. (Brody) says it paid the 2022 property taxes for all the strata lots in the development where Daniel Stephen Mulherin purchased his strata lot (SL2) in 2022. Brody claims reimbursement of \$1,567.07 for property taxes it says it paid for SL2. Brody also claims reimbursement of \$2,125.77 for a property tax credit it gave Mr. Mulherin during his property purchase, since it says it paid SL2's property taxes.
3. Mr. Mulherin denies Brody is entitled to reimbursement for the property tax credit. He also says if he owes anything for paid property taxes, he should not have to pay because Brody failed to repair deficiencies in SL2. In SC-CC-2023-010850, Mr. Mulherin claims \$4,289.85 for the cost of repairing those deficiencies. Brody says it fixed all the deficiencies noted by Mr. Mulherin or his agent on the walkthrough before completing SL2's purchase. It says it is not responsible for any deficiencies Mr. Mulherin now raises.
4. A director represents Brody. Mr. Mulherin is self-represented.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
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 I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.

7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Preliminary matter

8. In its submissions for SC-CC-2023-010850, Brody says it is “counter claiming” for \$2,246.31. Brody says this is the cost of a new dryer it had to install in Mr. Mulherin’s neighbour’s strata lot, after Mr. Mulherin would not return a dryer Brody had lent him while his own dryer was being repaired.
9. Brody did not raise this dryer claim in its Dispute Notice for SC-2023-005824, though I see no reason why it could not have done so. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other party of the claims against them. I find it would be procedurally unfair for me to consider a new claim at this late stage. Adjudicating an entirely new claim also undermines the CRT’s facilitation process. Finally, while CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice, rule 1.19(3) says the CRT will not allow amendments at the decision phase except in extraordinary circumstances. There are no extraordinary circumstances here that would justify amending the Dispute Notice now. So, I find Brody’s additional dryer claim is not properly before me, and I have not considered it in this dispute.

ISSUES

10. The issues in this dispute are:
 - a. Is Brody entitled to \$1,567.07 for property taxes?
 - b. Is Brody entitled to \$2,125.77 for a property tax credit?
 - c. Is Mr. Mulherin entitled to \$4,289.85 for deficiencies in SL2?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Brody must prove its claims on a balance of probabilities, meaning more likely than not. Mr. Mulherin must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence, but I only refer to information necessary to explain my decision. I note in SC-2023-005824, Brody did not provide final reply submissions and Mr. Mulherin did not provide documentary evidence, and in SC-CC-2023-010850, Mr. Mulherin did not provide final reply submissions. However, in coming to my decision, I have considered the information submitted by the parties collectively in both disputes.
12. The following background is undisputed. In March 2022, Mr. Mulherin purchased SL2 from Brody. In February 2023, Brody's lawyer wrote to Mr. Mulherin's lawyer seeking reimbursement of SL2's share of the 2022 property taxes Brody said it had paid for all the strata lots in the development. Mr. Mulherin agreed to reimburse Brody, provided that Brody repaired certain deficiencies Mr. Mulherin said remained unaddressed in SL2. Brody did not repair the deficiencies as requested, and Mr. Mulherin did not reimburse Brody for the requested property taxes.

Brody's claim

13. In the Dispute Notice for SC-2023-005824 issued at the outset of this dispute, Brody claimed \$1,567.07 for what it says is SL2's share of the 2022 property taxes it paid. In submissions, Brody reduces this claim to \$1,215.02, because it acknowledges it was responsible for 82 days' worth of property taxes in 2022, before Mr. Mulherin bought SL2. I note this for completeness, but it does not matter given my decision below.
14. In submissions, Mr. Mulherin questions whether Brody paid SL2's 2022 property taxes at all. While Brody submitted a receipt it says is for payment of all the strata lots' 2022 property taxes, I find that is not the case. The property's legal description in the tax notice attached to the receipt clearly indicates it is for strata lot 1, and Mr. Mulherin undisputedly owns SL2. Also, the single parcel identifier in the tax notice

does not match the parcel identifier for SL2 in the statements of adjustments the parties each submitted. In short, the payment receipt and tax notice Brody submitted are not for all the development's strata lots, or for SL2. They are for strata lot 1. Brody provided no other evidence it paid SL2's 2022 property taxes, so I dismiss its claim for reimbursement for those taxes.

15. Next, the \$2,125.77 property tax credit. Both the seller statement of adjustments and the amended buyer statement of adjustments record a \$2,125.77 credit in favour of Mr. Mulherin (shown as a debit on the seller statement of adjustments). The credit is described as Brody's portion of the estimated 2022 property taxes to be paid by Mr. Mulherin. Brody says it is entitled to reimbursement of the credit on the basis that it paid SL2's 2022 property taxes, not Mr. Mulherin. I disagree. Given my finding above that Brody has not proven it paid SL2's 2022 property taxes, I find there is no basis to conclude it is entitled to reimbursement of the property tax credit. I dismiss Brody's \$2,125.77 claim for reimbursement of the property tax credit.

Mr. Mulherin's counterclaim

16. Mr. Mulherin claims \$4,289.85 for alleged deficiencies in SL2 he says Brody failed to repair. Specifically, Mr. Mulherin claims:
- a. \$1,475 to paint two walls and fix scrapes along the bottoms of doors,
 - b. \$75 to repair a malfunctioning dining room light,
 - c. \$584.85 to repair a garage door (reduced to \$272 in submissions),
 - d. \$315 to fix gutters,
 - e. \$500 to fix a backplate behind an ensuite toilet,
 - f. \$100 to fix countertop scratches,
 - g. \$1,000 to fix scratches on the washer and dryer doors,
 - h. \$40 to caulk a dining room light fixture, and

- i. \$200 to repair window returns.
17. Mr. Mulherin says Brody was responsible for addressing all deficiencies he identified in SL2 during the walkthrough before completion of the sale, as well as further deficiencies arising or discovered within two years of the sale. From this, I infer Mr. Mulherin alleges Brody breached the contract of purchase and sale (CPS) or the new home warranty. However, neither party provided a copy of the CPS or the new home warranty, though parties are told during the CRT process to submit all relevant evidence. I note Brody does not dispute it was required to remedy deficiencies Mr. Mulherin identified during the walkthrough, so I find it was responsible to do that. It says it did so in the week prior to the sale completing, that Mr. Mulherin's agent returned for a final inspection, and "all was perfect before the buyer moved in."
 18. Without a copy of the CPS, I cannot tell what Brody's contractual obligations were to remedy deficiencies other than those identified during the walkthrough, if any. Similarly, without a copy of the new home warranty, I cannot tell what Brody's obligations were under that. To the extent Mr. Mulherin says the deficiencies listed above were those identified on the walkthrough, or were caused by Brody's agent attempting to repair deficiencies identified on the walkthrough, I consider whether he has proven that below.
 19. Mr. Mulherin did not submit evidence showing damaged wall paint, scrapes along the bottoms of doors, a malfunctioning dining room light, the garage door, the gutters, a loose dining room light fixture, or damaged window returns. He also did not submit documentary evidence of having fixed the door scrapes, loose light fixture, or window returns, such as estimates or invoices. Mr. Mulherin submitted a painting estimate, but it did not describe any damage. So, I find the alleged deficiencies for wall paint, doors, dining room light fixture, and window returns unproven, and I dismiss this part of Mr. Mulherin's counterclaim.
 20. Mr. Mulherin submitted an invoice for the malfunctioning dining room light describing the repair as "troubleshoot conflicting light switches". However, Brody disputes this deficiency was raised on the walkthrough. In the absence of documentary evidence

of the items Mr. Mulherin raised on the walkthrough, like a dated email or text, I find it unproven the malfunctioning dining room light was Brody's responsibility to repair. I say the same for Mr. Mulherin's claim for the installation of garage door weatherstripping. There is no evidence this issue was raised during the walkthrough. I dismiss this part of Mr. Mulherin's counterclaim.

21. There is a paid invoice for gutter repairs in evidence. Mr. Mulherin says he is entitled to reimbursement for that based on the fact that Brody repaired his neighbour's gutters. Brody says it added gutters to Mr. Mulherin's neighbour's property as a favour. It denies Mr. Mulherin raised the gutters on the walkthrough, and again, there is no documentary evidence he did. So, I find it unproven that Brody had any obligation to fix the gutters. I dismiss this part of Mr. Mulherin's counterclaim.
22. Mr. Mulherin submitted photos entitled "ensuite deficiency", which I infer are in support of his claim for the allegedly poorly installed backplate behind the toilet. I find only one photo is likely of the backplate. Brody does not dispute the backplate (which it refers to as a plumbing cleanout cover) was something raised on the walkthrough, so I accept it was. The question is whether the backplate's installation fell below a reasonable standard.
23. Generally, an allegation that a professional's work was below a reasonable standard must be proven with expert evidence. The two exceptions to this rule 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). Mr. Mulherin did not provide expert evidence, so I infer he argues the defect was obvious or non-technical.
24. I find the photo does not show the backplate installation was obviously defective. While the pipe protruding from the backplate appears to have some chipped paint on it, there is nothing to indicate the backplate did not work as required. I note Brody says it passed final inspection, which Mr. Mulherin does not deny. So, I dismiss this part of Mr. Mulherin's claim.

25. Finally, I turn to photos Mr. Mulherin submitted of scratches on the countertops and on the washer and dryer doors. The photos show three very small, light scratches on the countertops, and three to four scratches on the washer and dryer doors that Mr. Mulherin says Brody's agent caused when they came to repair deficiencies. Mr. Mulherin submitted an undated \$500 estimate to fix the countertop scratches, and two undated estimates for \$714.99 and \$617.23 to replace the washer and dryer doors. I note these do not match the amounts specified in Mr. Mulherin's Dispute Notice. In any event, this does not matter since I find Mr. Mulherin has not proven Brody's agent caused the scratches. I say this because when Mr. Mulherin texted Brody to offer to pay the requested property taxes in return for fixing deficiencies, he specifically mentioned deficiencies he wanted fixed. He did not include countertop, or washer and dryer door scratches in this list. I find that if Brody's agent had caused the scratches, Mr. Mulherin would likely have mentioned it in his text. So, I dismiss Mr. Mulherin's claim for the cost of repairing the countertop scratches and the washer and dryer door scratches.

26. 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 neither party was successful, I find each should bear its own CRT fees. Neither party claimed dispute-related expenses.

ORDER

27. I dismiss Brody's claims, Mr. Mulherin's counterclaim, and this dispute.

Megan Stewart, Tribunal Member