



Civil Resolution Tribunal

Date Issued: April 24, 2024

File: SC-2023-000187

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ethos Career Management Group Ltd. v. Snow*, 2024 BCCRT 392

BETWEEN:

ETHOS CAREER MANAGEMENT GROUP LTD.

APPLICANT

AND:

GEOFFREY EDWARD SNOW and 1163722 B.C. LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about soundproofing in a new home build.
2. Ethos Career Management Group Ltd. (Ethos) bought a lot and new build home from Geoffrey Edward Snow, who is the president of 1163722 B.C. Ltd. (1163722). The

contract of purchase and sale required the seller to provide the home in accordance with attached plans and specifications. The two-story home design had both a main living area and a secondary suite on the lower floor.

3. After the parties signed the contract, Bruce Cheadle, a director for 1163722, asked if Ethos would like to upgrade the soundproofing in the walls. Ethos agreed. Later, one of 1163722's builders asked Ethos about installing soundproofing between the suite ceiling and the floor above for an additional charge. Ethos agreed. However, Ethos says that people living in the suite have consistently complained about the volume of noise from the upper floor.
4. Ethos alleges that either 1163722 did not install soundproofing between the suite and the floor above or that it did so poorly. It asks for a \$1,646.40 refund.
5. 1163722 says it installed the agreed-upon soundproofing material. It says it has complied with its obligations and is not responsible for the noise that penetrates the ceiling.
6. Geoffery Edward Snow did not file a response in their personal capacity, so they are technically in default. I address this below.
7. Ethos is represented by an employee. 1163722 is represented by a director, Mr. Cheadle.
8. For the reasons that follow, I dismiss the applicant's claim.

JURISDICTION AND PROCEDURE

9. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

10. CRTA section 39 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. 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.
11. 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.
12. Where permitted by CRTA section 118, 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.

Preliminary Issue – Default

13. Geoffrey Edward Snow did not submit a Dispute Response as required under CRT rule 3.1. So, I find they are technically in default. Generally, liability is assumed where a respondent is in default. However, the applicant must still prove they are entitled to requested remedies.
14. As I note above, Geoffrey Edward Snow is the president of 1163722, which provided detailed submissions on the merits of the dispute. The company's submissions squarely address the applicant's allegations and expose shortcomings in the applicant's evidence. While Geoffrey Edward Snow did not prepare the submissions themselves, it is reasonably common at the CRT for respondents to misunderstand their obligations to respond in their personal capacity when they are personally named along with a corporate entity.
15. Neither party explains what role Geoffrey Edward Snow had in this dispute, other than as seller/builder in the contract of purchase and sale. While the statement of adjustments, listing Geoffrey Edward Snow as the seller, showed Ethos paid the seller for soundproofing, there is no other evidence they participated in the transaction

at all. All communication related to the soundproofing was between Ethos representatives and Mr. Cheadle. There is no suggestion that Geoffrey Edward Snow installed the soundproofing themselves. Ethos does not argue in its submissions that Geoffrey Edward Snow is personally responsible.

16. At law, officers, directors, and employees of corporations are not personally responsible or legally liable unless they commit a wrongful act independent from that of the corporation.¹ There is no evidence that Geoffrey Edward Snow did so in these circumstances.

17. Considering the above, I find Ethos has not proven how Geoffrey Edward Snow is involved in this dispute. On that basis, I dismiss the claims against them personally.

ISSUE

18. The issue in this dispute is whether 1163722 must refund Ethos for the cost of soundproofing.

EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, Ethos, as applicant, 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. Despite having an opportunity to do so, Ethos did not provide any final reply submissions.

20. In November 2020, the applicant agreed to purchase a new build home and property from Geoffrey Edward Snow. The contract of purchase and sale includes the home's floor plan and other details about its construction. The parties agreed to build the home with both a main upper-level living area and a lower-level suite.

¹ See: *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121.

21. Although the contract of purchase and sale listed Geoffrey Edward Snow as the seller/builder, the parties' submissions make it clear that 1163722 was responsible for building the new home.
22. Among the contract's terms was that the parties would agree to any "extras" in writing. Keeping with that, in December 2020, Mr. Cheadle gave Ethos' realtors information about the cost to add "Green Glue" soundproofing to the suite's walls.
23. On April 13, 2021, SB, apparently one of 1163722's builders, asked Ethos whether or not it wished to add Green Glue to the suite's ceiling. A representative for Ethos agreed. SB quoted an additional cost of \$1,568.
24. The parties provided manufacturer's information about Green Glue. It is a soundproofing material installed by layering it between two sheets of drywall that are at least ½" thick. 1163722 says it added Green Glue and two sheets of 5/8" drywall to the suite's ceiling, as agreed.
25. 1163722 finished construction and the home sale completed. The statement of adjustments shows Ethos paid \$6,348.07 for various upgrades, including soundproofing, plus GST. Presuming the April 13 quote was accurate, Ethos paid \$1,568 plus GST, which is \$1,646.40.
26. However, Ethos says the soundproofing has been ineffective. In support, it provided emails from tenants who lived in the suite. The tenants complained about being able to clearly hear conversations from upstairs, as well as footsteps, dishes, doors opening and closing, and so forth.
27. 1163722 says it did not promise any specific level of soundproofing. It only promised to install the product as required. It also says Ethos chose to install vinyl plank floors on the upper level instead of carpet, which would increase the amount of noise audible in the lower suite.

Did 1163722 install the soundproofing material?

28. Ethos alleges that 1163722 did not install any soundproofing. 1163722 says it did.

29. On March 9, 2023, after this dispute began, Mr. Cheadle, SB, and a representative from Ethos attended the suite. They removed a pot light from the ceiling and confirmed there were two layers of 5/8" drywall.
30. While Mr. Cheadle does not explicitly say the group saw the installed Green Glue, Ethos did not respond to say they did not. Since Ethos is the applicant, it has the burden of proof. If there was evidence that 1163722 had not installed Green Glue as it said it did, I would have expected Ethos to provide evidence in support. It did not. So, I find Ethos has not proven its allegation that 1163722 failed to install soundproofing.

Did 1163722 install the soundproofing material deficiently?

31. While Ethos does not use the phrase "deficient work" explicitly, it argues that the soundproofing 1163722 was poorly done. I find it means that 1163722 did not meet an implied term of the parties' agreement that it would install soundproofing to a professional standard. As the party alleging the other's work is deficient, Ethos bears the burden of proving the deficiency.²
32. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency.³ The exceptions to this general rule are where the work is obviously substandard, or the deficiency relates to something non-technical.⁴ Whether or not soundproofing material has been installed correctly is a matter outside of ordinary knowledge. I find neither exception applies here.
33. While Ethos provided decibel readings from a phone app they downloaded, I find that noise levels alone do not prove 1163722 installed the soundproofing deficiently. Ethos says Green Glue should dampen sound by 70%-80% and provided a link to a website in support. However, I find such evidence unreliable because website content

² See: *Absolute Industries v. Harris*, 2014 BCSC 287, at paragraph 61.

³ See: *Bergen v. Guliker*, 2015 BCCA 283.

⁴ See: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

can change over time. Parties are told during the CRT process not to submit website links. So, I did not attempt to access the embedded link.

34. Ethos did not provide any expert evidence to explain what decibels it should expect in the suite as result of the home's acoustics, especially considering the upper-level vinyl plank flooring and the soundproofing measures in the suite below.
35. Ethos did provide evidence from its property manager, but they only said the sound barriers were not what one would expect in a home with additional soundproofing. The property manager did not provide any evidence to support their opinion or to explain their credentials. I do not accept their statement as expert evidence.
36. Ethos also did not provide any evidence from another builder who reviewed 1163722's work and found it lacking. It was open to Ethos to have another builder attend and review the ceiling for any deficiencies, but it did not do so.
37. 1163722 specifically says in its submissions that it completed the work as hired, but that it did not provide any guarantee it would achieve a specific result or perform as Ethos hoped. I find that is consistent with the parties' written communication.
38. So, I find Ethos has not proved 1163722's work was deficient. I dismiss Ethos' claim against 1163722.
39. 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. I see no reason in this case not to follow that general rule. I dismiss Ethos' claim for CRT fees. 1163722 did not pay any CRT fees or claim any dispute-related expenses.

ORDER

40. I dismiss Ethos' claims and this dispute.

Christopher C. Rivers, Tribunal Member