



Civil Resolution Tribunal

Date Issued: March 29, 2018

File: SC-2017-002212

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Veroni v. Carlsen*, 2018 BCCRT 103

B E T W E E N :

Craig Veroni

APPLICANT

A N D :

Lawrence Carlsen

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Craig Veroni, seeks payment of \$5,000 for replacement flooring in his recently purchased home. He says the home's seller, the respondent Lawrence Carlsen, misrepresented the home's laminate flooring as engineered hardwood.
2. Both parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. Did the respondent misrepresent the type of flooring in the home, and if so what is the appropriate remedy?

POSITIONS OF THE PARTIES

8. The applicant says the respondent negligently misrepresented the home's flooring. He says that while he did not have a conversation with the respondent about the flooring, the respondent's realtor put incorrect information in the Multiple Listings Service (MLS) feature sheet, and the information was provided to that realtor by the respondent. The applicant also says that during his second visit to the home he questioned the respondent's realtor about whether the flooring was true hardwood, and she said the seller had informed her it was engineered hardwood.
9. The parties agree that the home's flooring is actually laminate, and not engineered hardwood. The respondent says that the home was not advertised as having hardwood flooring. He says the MLS feature sheet described the flooring as "Hardwood, Vinyl/Linoleum, Wall/Wall Mixed", and did not specify which room had which flooring. He also says the MLS feature sheet says on the bottom that the enclosed information, while deemed to be correct, is not guaranteed. The respondent says the "buyer beware" principle applies, and that if the applicant had hired a professional inspector prior to completing the purchase the flooring material would have been verified. The respondent also says that any claim relating to the property purchase or MLS listing lies against his realtor, and not against him.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Fraudulent Misrepresentation

11. Except for matters that must be disclosed on a Property Disclosure Statement, which do not apply apply, the principle of “buyer beware” generally applies to real estate purchases, and the onus is on the purchaser to determine the state and quality of the property. However, buyer beware does not apply when a vendor makes a fraudulent misrepresentation about the property: *Cardwell v. Perthen* 2006 BCSC 333 (CanLII).
12. In this case the applicant says the respondent fraudulently misrepresented the flooring material as hardwood by knowingly giving incorrect information to his realtor. The respondent’s realtor then passed on that misinformation to the applicant verbally and through the MLS feature sheet.
13. The MLS feature sheet says the home had “new hardwood flooring in the main living areas”. This statement is incorrect. However, I place significant weight on the fact that it says on the bottom of the feature sheet that the enclosed information, while deemed to be correct, is not guaranteed.
14. In *Ban v. Keleher*, 2017 BCSC 1132 (CanLII), a BC Supreme Court judge reviewed the law of fraudulent misrepresentation in the context of the purchase and sale of a residential property. The judge set out what a claimant must prove to succeed in a claim for fraudulent misrepresentation:
 - a. the defendant made a representation of fact to the claimant;
 - b. the representation was false in fact;
 - c. the defendant knew that the representation was false when it was made, or made the false representation recklessly, not knowing if it was true or false;
 - d. the defendant intended for the claimant to act on the representation; and
 - e. the claimant was induced to enter into the contract in reliance upon the false representation and thereby suffered a detriment.

15. In *Shaughnessy v. Sidhu*, 2016 BCPC 308 (CanLII), the judge said a fraudulent misrepresentation is a representation of fact made without any belief in its truth, with the intent that the person to whom it is made will act on it, and actually causing that person to act on it.
16. I find that the applicant has not established fraudulent misrepresentation by the respondent in this case. There is no direct evidence about what the respondent told the realtor, and I find he did not control what the realtor said or wrote. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (CanLII), the judge said that because fraud is a very serious allegation which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element. There is no such evidence before me establishing the respondent's intention to commit fraud in this case.
17. Any claim the respondent may have against the realtor is not before me in this dispute, as she has not been named as a party. Nothing in this decision prevents the applicant from pursuing a claim against the respondent's realtor.

Negligent Misrepresentation

18. There is no right of recovery for an innocent misrepresentation made in the context of a real estate transaction. For a remedy to apply, the misrepresentation must be fraudulent or negligent: *McCluskie v. Reynolds*, 1998 CanLII 5384 (BCSC).
19. The parties have cited cases setting out the law on negligent misrepresentation, such as *Queen v Cognos Inc.* 1993 CanLII 146 (SCC). In a real estate transaction a "special relationship" between a buyer and seller is presumed, and the seller owes the purchaser a duty of care: *Hanslo v. Barry*, 2011 BCSC 1624.
20. However, a claim in negligent misrepresentation in a real estate transaction cannot succeed without evidence that the respondent paid more for the property than its value at the time of the purchase: *Ban v. Keleher*, at para. 69; *Matthias v. Garibaldi Springs Development et al*, 2007 BCPC 138 (CanLII), at para. 28. The applicant

has not provided such evidence. Accordingly, I find that he is not entitled to a remedy for negligent misrepresentation.

CONCLUSION

21. For these reasons, I find that the applicant is not entitled to a remedy in regard to the laminate flooring in his home.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful, so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees and did not claim dispute-related expenses.

ORDERS

23. I dismiss the applicant's dispute.

Kate Campbell, Tribunal Member