



Civil Resolution Tribunal

Date Issued: April 10, 2018

File: SC-2017-004992

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ching v. Linedo Holdings Ltd*, 2018 BCCRT 123

B E T W E E N :

DANNY KAI BONG CHING

APPLICANT

A N D :

LINEDO HOLDINGS LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

1. This is a dispute about an air conditioner in a property the applicant Danny Kai Bong Ching bought from the respondent Linedo Holdings Ltd. The applicant says the respondent is responsible for reimbursing them for air conditioner repairs. They also say the air conditioner was a latent or hidden defect, of the property.

2. The applicant claims \$840.00 for the air conditioner repairs, \$806.40 for legal consultation fees, lost wages of \$140.00, and \$175.00 for the dispute filing fees.
3. The respondent says they were unaware of any issues with the air conditioner. They say they are not responsible for the repair of it.
4. The parties are self-represented. The parties referred to several third parties involved with the transaction. Those parties were not named in this dispute, and the reasons below apply only to the applicant and respondent.
5. For the reasons that follow, I dismiss the applicant's claim and find that they are not entitled to a remedy for the air conditioner.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (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.
7. 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. No party requested an oral hearing.
8. 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.

9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did the respondent breach the contract of sale for the air conditioner?
 - b. Did the respondent misrepresent the condition of the air conditioner?
 - c. Was the air conditioner a latent or hidden defect that made the property uninhabitable?
 - d. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all of the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.

Background

12. On January 23, 2017 the applicant and respondent entered into a contract for purchase and sale of a residential property. The contract was subject to a number of conditions, including that the applicant obtain and approve an inspection report on or before January 30, 2017. The sale completed on March 28, 2017.

13. The applicant and respondent have both provided text message exchanges between themselves and the real estate agents for the sale. The applicant says that these text messages show that the respondent led them to believe they fixed the air conditioner prior to the sale completing. The respondent says that these text messages show that they were unaware of air conditioner issues, and that they made no promises about it. As discussed below, I find that I can resolve the conflicting accounts based upon the content of the text messages themselves.
14. The applicant also argues that they should succeed even if the respondent did not know, or did not promise to fix the air conditioner before completion. They say that the air conditioner was in any event a latent defect of the property. The applicant says that as a result, the respondent should compensate them for the cost of the repair and their expenses associated with this claim. As discussed below, I find that this is a claim about buyer beware.

Buyer beware

15. In general, purchasers in private sales bear the risks of defects in the quality of a property. Buyer beware does not apply when there is: (i) a breach of contract, (ii) fraud, (iii) non-innocent misrepresentation, (iv) there is a warranty, or (v) a latent defect makes a property uninhabitable and cannot be discovered by reasonable inspection (see: *Nixon v. MacIver*, 2016 BCCA 8 (CanLII)).
16. In other words, for the applicant to succeed on this claim, they must show that buyer beware should not apply because one of the conditions above existed. Here there has been no allegation or evidence of fraud or warranties, so I will not address those.

Breach of Contract

17. I accept that the applicant and respondent entered into and completed a contract for purchase and sale of the property. There is no evidence that there was any

term in that contract about the air conditioner or that required the respondent to fix the air conditioner. Therefore, I find that there was no breach of the contract.

Non-Innocent Misrepresentation

18. To succeed on this claim, the applicant must show that the respondent made a promise about the air conditioner that led the applicant to complete the contract that was untrue, inaccurate, or misleading.
19. I accept that both the applicant and respondent sent a series of text message with the realtors involved with the purchase between January 23, 2017 and the completion of the sale on March 28, 2017. I note the same realtors represented both parties for the transaction. There is no evidence of direct contact between the applicant and respondent between these dates.
20. I accept that the applicant advised the realtors of concerns about an alarm system, the doorbell, a leak, and the air conditioner. I also accept that the realtors said the respondent would address all of the issues.
21. I accept that the realtors advised the respondent about the alarm system, doorbell and leak. I find there is insufficient evidence before me that the realtors advised the respondent about the air conditioner concerns.
22. I find that the applicant has not proven on a balance of probabilities that the respondent knew about, or promised to fix the air conditioner before the sale completed. The text message from the realtors to the applicant was not a promise by the respondent, and I find that the respondent did not control what the realtors said. If there had been a promise by the respondent, I would expect that promise to become a condition of the contract for purchase and sale. Yet, there is no evidence of a change to the original contract. As a result, I find that respondent made no enforceable promises about the air conditioner.

Latent Defect

23. The applicant also says that the respondent is responsible for the air conditioner because it is a latent defect of the property. The applicant's evidence is that they discovered the air conditioner issue during the property inspection. A latent defect cannot be discovered by reasonable inspection. I find the air conditioner was not a latent defect of the property.

Conclusion

24. Given my conclusions above, I do not need to address the applicant's claims for damages.
25. In accordance with section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of its tribunal fees because they were unsuccessful in this dispute. The parties did not request other expenses.

ORDERS

26. I order that that the applicant's dispute is dismissed.

Samuel A. Hyman, Tribunal Member