Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boe v. No. 145 Cathedral Ventures Ltd. et al.,* 2018 BCCRT 420

B E T W E E N :

Tyler Boe

APPLICANT

A N D :

No. 145 Cathedral Ventures Ltd. and
The Cathedral Development Group Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Susan E. Ross

INTRODUCTION

1. The applicant, Tyler Boe, claims that the respondents, No. 145 Cathedral Ventures Ltd. and The Cathedral Development Group Ltd., failed to supply and install a

laundry door and finish a plumbing installation in his newly constructed residence. He seeks an order requiring the respondents to pay $863.10 to reimburse him for his cost of completing that work.

2. The builder, No. 145 Cathedral Ventures Ltd. (the first respondent), denies that the work is unfinished under the contract of purchase and sale of the home. The second respondent, The Cathedral Development Group Ltd. (the second respondent) provided no evidence or argument in its dispute response.

JURISDICTION AND PROCEDURE

3. 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). Its 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 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. It may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate. It has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because the documents provided and the statements of the applicant and his witnesses were sufficient to resolve the dispute without an oral hearing.

5. 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

6. The issues in this dispute are:

   a. Is any claim proven against the second respondent?

   b. Did the first respondent fail to supply and install the laundry door?

   c. Did the first respondent fail to finish the plumbing installation?

   d. Did the applicant agree that the supply and installation of the laundry door was complete under the contract for purchase and sale?

   e. Did the applicant agree that the laundry door and plumbing installation were not items for completion?

   f. What was the applicant's cost for supply and installation of the laundry door and finishing of the plumbing installation?

EVIDENCE AND ANALYSIS

7. The applicant and the first respondent entered into a contract dated August 13, 2015 for the purchase and sale of the applicant's new strata home. Schedule B to the contract is a list of interior finishing specifications with a column indicating whether items are in progress, complete, not available, or not included in the contract. "Closet doors" are listed as "Complete". The contract is signed by the applicant and the first respondent's representative, JH. His initials are used in this decision because his full name is not legible. The completion date was October 1, 2015. The final walk through and possession by the applicant was on October 30, 2015.

8. The applicant has also provided several witness statements, photos, and an invoice for his cost of completing the laundry door and plumbing installation.

9. The first respondent has provided a home warranty completion certificate signed by the parties after the final walk through on October 30, 2015. The warranty exclusion for "Incomplete Work" is marked "N/A" in what appears to be the handwriting of the first respondent's representative who also signed the certificate. The items in this dispute are not included in the list of items for the warranty exclusion for defects or deficiencies noticeable at final inspection.

10. The first respondent has also provided a 2017 warrantable determination report in which the home warranty insurer found that the items in this dispute were not warrantable because they were incomplete work or a contractual issue. The report explains that home warranty insurance is specifically defect insurance and does not cover contracted-related issues such as incomplete work, unless it causes a building code contravention that is a health or safety risk.

11. On the first issue, the contract for purchase and sale was with the first respondent. The other evidence also relates only to the first respondent, and the applicant has not explained any relationship between the first and second respondents or articulated any allegations against the second respondent. I dismiss the applicant's claims against the second respondent as unproven.

12. On the second issue, the applicant says the laundry door was not supplied or installed by the first respondent and he repeatedly brought this to the attention of JH. He says JH told him at the closing walk through that the door would be installed after the applicant put in his laundry machines. The applicant's evidence is supported by two signed witness statements and photos. One witness, a neighbour who spent time in the applicant's unit, confirms there was still no laundry door at the end of October 2015. The second witness, another neighbour who was present with the applicant for the closing walk through, confirms that the laundry door was not installed and he witnessed JH tell the applicant this would be done after the applicant purchased his washer and dryer.

13. The first respondent offered no direct response to the applicant's evidence that the laundry door was not supplied or installed and JH assured the applicant it would

be. The applicant's evidence is consistent, credible and supported by witnesses. I find that the first respondent did not supply and install the laundry door despite agreeing, through JH, to do so.

14. On the third issue, I accept the applicant's evidence that the plumbing installation in issue was unfinished by the first respondent. The first respondent also offered no direct response to that evidence.

15. I also accept the applicant's evidence that multiple times, on October 30, 2015, in November 2015, and in 2016, representatives of the first respondent, including JH, tradesman and a handyman, verbally promised the applicant that the items in this dispute would be completed. This included several visits from the first respondent's handyman in the summer and fall of 2016 to view the unit and what was required to finish the work. The first respondent has not denied these events.

16. On the fourth issue, the first respondent says the laundry door is a closet door and Schedule B to the contract confirmed that closet doors were complete. It says the laundry door was therefore resolved and not an issue when the parties signed the contract.

17. Contracts are interpreted objectively and in the context of their surrounding circumstances. "Closet doors" is a general term. The laundry enclosure could be construed as a closet and the laundry door as a "closet door". However, the contract was signed on August 13, 2015, when the laundry door was not in fact complete and there is another entry in Schedule B indicating that the washer and dryer are not included in the contract.

18. The laundry machines had to be provided by the purchaser, the applicant, and the laundry door could not be completed until the laundry machines were in. The reason for this is evident from the photos provided by the applicant. The enclosure is so narrow that the machines had to be inserted before the door was hung.

19. I find the parties could not have intended the general term "closet doors" in Schedule B to include the laundry door, when Schedule B also notes that the

laundry machines are not included in the contract, and those had to be in place before the laundry door could be completed. This interpretation of “closet doors” to exclude the laundry door gives effect to the rest of Schedule B and the parties’ intentions. I reject the first respondent’s interpretation of “closet doors” because it does not.

20. On the fifth issue, the first respondent describes the contract and the warranty completion certificate as industry standards to document home purchase agreements and deficiencies. It says these were the applicant’s opportunity to note and enforce items overlooked in the final inspection and, since the items in this dispute were not noted in the completion certificate, they were not an issue.

21. Article 25 of the contract provides that there are no additional terms or agreements beyond the contract. Article 14 provides there are no promises or agreements beyond those in the contract, other than the homeowner warranty. I therefore turn the terms of the contract as they relate to the evidence in the completion certificate and warrantable determination report.

22. Article 10 provides that the applicant and a representative of the first respondent would inspect the unit on or before completion and a defects and deficiencies list would be drawn up and signed by both at the end of the inspection. That list would be governed by the Schedule C and the applicant would be deemed to be satisfied with the physical condition of the lot, subject only to the first respondent’s corrections of the items on the list.

23. Schedule C provides that “Deficiencies” are defined as “incomplete and/or damaged work” that can be easily identified on the final walk through, when “we”, the first respondent, “will review any deficient construction and compile a list.” I find this created an obligation on the first respondent to compile a list of incomplete or damaged work following the walk through on October 30, 2015 with the applicant and his witness.

24. The completion certificate has separate warranty exclusion sections for "Incomplete Work" and "Defects/Deficiencies". The attached "Deficiencies List", which does not list the items in this dispute, is indicated to relate to the noticeable "Defects/Deficiencies" exclusion. The completion certificate requests a separate dated and signed list of excluded "Incomplete Work". Instead, the first respondent wrote in "N/A". This was on the same day that its representative JH acknowledged the items in this dispute, promised the applicant and a witness that they would be completed, and was obliged by Schedule C to compile a list of "incomplete and/or damaged work." JH compiled the "Defects/Deficiencies" list attached to the completion certificate but failed to compile the list of "Incomplete Work".

25. When the applicant eventually made a warranty claim, some items were found covered but the warranty determination report shows that the items in this dispute were not warrantable because they were considered incomplete work.

26. I disagree with the first respondent that its entry of "N/A" under the warranty exclusion for "Incomplete Work" in the completion certificate, was the applicant's agreement that the items in this dispute were not required to be completed under the contract. Both parties are bound by the contract and the first respondent cannot benefit from its own failure to comply with its obligation to compile a list of incomplete items identified with the applicant, in the presence of his witness, on the walk through.

27. I find the first respondent was contractually obligated to list the items in this dispute and to complete them, and continued to acknowledge its obligation to complete them through the conduct of its representatives in November 2015 and 2016.

28. On the sixth issue, the applicant provides an invoice from Servicemaster Restore dated November 8, 2017 for $863.10, including taxes, of which $579.60 relates to the laundry door and $283.50 is for the plumbing work. I find the applicant is entitled to recover $863.10 from the first respondent for his cost to complete the items in this dispute.

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason not to do that here. I find the applicant is entitled to reimbursement of $125 in tribunal fees.

ORDERS

30. Within 30 days of the date of this order, the tribunal orders the first respondent, No. 145 Cathedral Ventures Ltd., to pay the applicant, Tyler Boe, $1,008.25, broken down as follows:

    a. $863.10 as the applicant's cost to complete the items in this dispute,

    b. $20.15 in pre-judgment interest under the *Court Order Interest Act*, calculated from October 1, 2015, the completion date for the contract of purchase and sale, and

    c. $125 as reimbursement of tribunal fees.

31. The applicant is entitled to post-judgment interest, as applicable.

32. The applicant's claim against the second respondent is dismissed.

33. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

34. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Susan E. Ross, Tribunal Member