



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bourke v. Tahoe Ventures Inc.* (Incorporation Number BC0712178),
2018 BCCRT 424

B E T W E E N :

Tera Lee Bourke

APPLICANT

A N D :

Taho Ventures Inc. (Incorporation Number BC0712178)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. The applicant Tera Lee Bourke entered into a contract of purchase and sale to buy a house and property from the respondent Taho Ventures Inc. (Incorporation Number BC0712178) (Taho) in Vernon, BC (house).

2. This dispute is about whether Tahoe failed to disclose defects in the house's electrical system (system) to the applicant.
3. The parties were self-represented.
4. The applicant claims that Tahoe misrepresented the state of the system to her, and that she had to hire an electrician to upgrade the system because it was not to code and dangerous. The applicant wants compensation for the cost of repairs to the system, plus damages for loss of enjoyment of life and the house, all totaling \$3,500.
5. Tahoe denies that there was any defect in the system, or that it failed to disclose any material information about the house. For the reasons that follow, I agree with Tahoe and order that the dispute be dismissed.

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.
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; or
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are as follows:
 - (a) Were there were any defects in the system?
 - (b) Did Taho withhold material information about the system?
 - (c) What, if any, remedies should the tribunal award the applicant?

EVIDENCE AND ANALYSIS

Evidence

11. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
12. The parties filed submissions containing both their arguments and evidence. I will not refer to all of the evidence or deal with each point raised. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Background

13. The house was built in about 1940. Taho owned the house for roughly 8 years before selling it to the applicant. Initially Taho's principal lived in the house with his

family. They eventually moved out and kept the house as a rental property until listing it for sale.

14. Taho retained a real estate agent to list and sell the house. The applicant also used the services of a real estate agent for the transaction.
15. The listing sheet for the property noted recent improvements to the house including upgrades to the electrical system. However, these representations were not incorporated into the contract the parties entered into for the sale of the house.

The contract of purchase and sale

16. The parties signed a contract of purchase and sale dated March 24, 2017 in which Taho agreed to sell, and the applicant agreed to buy, the property for \$305,000 on certain terms and conditions (contract) described below.
17. The completion date for the contract was originally set for April 21, 2017, but was later changed to April 18, 2017.
18. The contract was subject to the following conditions (among others) for the applicant's benefit:
 - (a) The applicant approving the property disclosure statement with respect to information that may reasonably adversely affect the use or value of the house by April 8, 2017. If the applicant approved the property disclosure statement, it would be incorporated into and form part of the contract.
 - (b) The applicant obtaining and approving a professional home inspection report by April 8, 2017 against any defects that may have a cost of repair in excess of \$3,500, and which may adversely affect the house's use or value.
 - (c) The applicant obtaining any professional advice she considered necessary or advisable by April 8, 2017.

19. While the parties did not put into evidence an amendment to the contract confirming that the applicant waived the above conditions, there is no issue that the parties considered themselves bound by the contract and that they completed the contract by the completion date. As a result, I find that the applicant waived the conditions by April 8, 2017. In doing so, I find that the applicant,
- (a) approved the property disclosure statement, which therefore became part of the contract;
 - (b) was satisfied with the results of the inspection report; and
 - (c) obtained whatever advice she considered necessary or appropriate in respect of the purchase.
20. The contract also states that there are no representations, warranties, guarantees, promises or agreements other than those set out in the contract and the representations set out in the property disclosure statement.

The Property Disclosure Statement

21. The relevant sections of the property disclosure statement asked Taho the following questions:
- 3. BUILDING
 - N. Are you aware of any problems with the electrical or gas system?
 - 4. GENERAL
 - B. Are you aware of any material latent defect as defined by the Real Estate Council of British Columbia (council) Rule 5-13(1)(a)(i) or 5-13(1)(a)(ii) in respect of the Premises?
22. Taho's response to both of the above questions was "No".

23. For the purpose of section 4.B. of the property disclosure statement, the council defines a “material latent defect” as a defect that renders property either: a) dangerous or potentially dangerous; or b) unfit for habitation.
24. The property disclosure statement also states that a prudent buyer will use the disclosure statement as the starting point for her own due diligence on the property. The property disclosure statement further urged the applicant to carefully inspect the property and, if she wished, to have the house inspected by a licensed inspector.

The Home Inspection Report

25. The applicant hired a professional home inspector to inspect the house and obtained an inspection report dated March 31, 2017 (report).
26. The applicant put excerpts of the report into evidence. With respect to the system, the report notes that certain components of the system were not visible for inspection, and alerted the applicant to other issues (described in greater detail below). This section of the report also concludes with the statement “Please consult a licensed electrician.”
27. Following the inspection report, the parties amended the contract by way of a written amendment dated April 7, 2017 in which the parties agreed to reduce the purchase price by an amount of \$3,538.50 to cover the applicant’s cost to replace the furnace, which was not new – as described in the listing sheet.
28. There is no evidence that the applicant consulted a licensed electrician prior to removing the contract conditions outlined above, and I find that she did not do so.

Inspection by Electrician

29. On or about April 13, 2017 the applicant had an electrician look at the electrical panel. Tahoe’s principal was present for the electrician’s visit. The applicant claims that the electrician alerted her to defects with the system.

30. The applicant did not raise any concern about the system with Tahoe until after the completion date when she asked Tahoe to compensate her for the cost of repairing those items. Tahoe disagreed that there were any defects in the system or that it misrepresented the condition of the system, and it declined to reduce the purchase price.

Analysis

31. The applicant claims that the system contained “latent” defects, and that Tahoe knowingly withheld this information from her.
32. It is useful at this stage to set out the applicable legal principles.

Overview of Legal Principles

33. In a real estate transaction, a purchaser is expected to make reasonable enquiries and conduct a reasonable inspection of the property. Unless the seller breaches the contract, commits fraud or fails to disclose a latent defect, the purchaser assumes the risk for any defects in the condition or quality of the property. This principle is referred to as the doctrine of *caveat emptor* or “buyer beware”, and is very much alive and applicable in the context of BC real estate transactions: See *Nixon v. MacIver*, 2016 BCCA 8 (*Nixon*); *Paniccia v. Eckert*, 2012 BCSC 1428.
34. I will first deal with what constitutes a latent defect.
35. As set out above, the council defines a latent defect as one which cannot be readily discovered through a reasonable inspection of the property, including a defect that renders the property dangerous or unfit for habitation. This definition is consistent with how the courts interpret and define a latent defect.
36. By contrast, a “patent” defect is one that can be discovered by conducting a reasonable inspection and making reasonable enquiries about the property: *Cardwell v. Perthen*, 2006 BCSC 333, aff'd 2007 BCCA 313 (*Cardwell*).

37. A seller has no duty to disclose patent defects to purchasers: *Cardwell; Rogalinski v. Scorey*, 2011 BCSC 1050.
38. In general, there is a significant onus on the purchaser to inspect and discover patent defects. This means that a defect which might not be readily apparent on a casual inspection can nevertheless be “patent” if it would have been discovered on a reasonable inspection by a qualified person. In some cases, a purchaser is expected to retain the appropriate expert to inspect the property (such as an electrician). See for example *Eberts v. Aitchison*, 2000 BCSC 1103.
39. However, a seller has a duty to disclose a latent defect of which it has knowledge that: a) is not discoverable through a reasonable inspection or through reasonable inquiries; and b) makes the property dangerous or unfit for habitation. A seller will be considered to have knowledge of a latent defect where it is actually aware of the defect, or where it is reckless as to whether the defect exists. The applicant bears the burden of proving this degree of knowledge or recklessness: *McCluskie v. Reynolds et al* (1998), 65 B.C.L.R. (3d) 191 (S.C.).
40. I find the applicant’s claim that Tahoe failed to disclose defects is based on Tahoe’s representation in the property disclosure statement that there were no issues with the system. The applicant says this statement was untrue, inaccurate or misleading.
41. A property disclosure statement asks only for the seller’s awareness, which is inherently subjective: *Hamilton v. Callaway*, 2016 BCCA 189 (*Hamilton*). A property disclosure statement requires a seller to honestly disclose its actual knowledge of the property to the extent set out in the disclosure statement, but that knowledge does not have to be correct: *Nixon*. In other words, the statements in the disclosure statements are not warranties: *Hanslo v. Barry*, 2011 BCSC 1624.
42. In this dispute, Tahoe will have met its disclosure obligations if it honestly believed that the representations about the system in the property disclosure statement were true. Even if the claimant was able to establish that Tahoe did not have an

honest belief that there were no issues with the system or latent defects, the applicant would still have to establish that a misrepresentation caused her loss (discussed further below).

43. In sum, in order for Taho to be liable for a latent defect in the system, the applicant has to demonstrate that:
- (a) There were defects in the system;
 - (b) The defects were latent in that they were not readily discoverable on a reasonable inspection by a qualified person;
 - (c) The defects made the house uninhabitable or inherently dangerous;
 - (d) Taho had knowledge of the defects and deliberately failed to disclose them; and
 - (e) Taho's misrepresentation caused her loss.

44. I will now deal with the applicant's claims.

Were there defects in the system?

45. The parties disagree as to whether there were any defects in the system.
46. The applicant provided a letter from her electrician dated May 24, 2017 (letter) in support of her claim that there were latent defects in the system. The letter states that there were the following "electrical deficiencies" in the house at the date of purchase:
- (a) 2 ungrounded circuits in the main panel which required the use of ground fault circuit interrupter (GFCI) breakers to be code compliant; and
 - (b) The system had a service rating of 60 amps, while the rating on the electrical panel indicated a rating of 100 amps.

47. With respect to the first item in the letter dealing with ungrounded circuits, I note that the March 31 report alerted the applicant to issues with the electrical grounding system – namely, the report stated that:
- (a) the grounding system was not accessible for visual inspection;
 - (b) GFCIs for the kitchen were either not in place or were not operating correctly, and that GFCIs were required in certain circumstances; and
 - (c) that the applicant should consult a licensed electrician.
48. The letter further states that these deficiencies “were easily visible within the first few minutes of inspection.”
49. Based on this evidence, I find that the applicant had already been alerted to potential issues with the system in the report, and that the items she claims to be latent defects were in fact easily visible and could readily have been discovered had she retained a licensed electrician to conduct a reasonable inspection.
50. Apart from the applicant’s allegation that the deficiencies were dangerous and needed to be urgently repaired, there does not appear to be any objective evidence to support this assertion. In particular, while the letter suggests that the above items needed repair, it does not state that the electrical issues made the house dangerous or unfit for habitation.
51. By contrast, Taho’s evidence was that the system was safe and more than adequate to meet the occupants’ needs. On this issue, Taho put into evidence a letter from its own electrician who had serviced the house while Taho was the owner. Taho’s electrician states (among other things) that:
- (a) it inspected the house in 2009 when Taho purchased the house and at that time determined that the system was safe and adequate to service the house;
 - (b) it upgraded plugs and switches and installed new light fixtures in 2015; and

(c) the electrical panel was rated for 100 amps and the feed supplied by BC Hydro to the panel was 60 amps, and concluded that the panel could therefore handle service up to 100 amps which was more than adequate to service the house.

52. While the applicant alleges that the system was not to code and therefore dangerous, she has not provided evidence to support this. Taho's electrician found the house safe, noted that codes change over time and there is no requirement to bring houses up to current code standards when they are bought and sold.
53. On the evidence, I find that the items at issue were readily discoverable on a reasonable inspection, and did not make the house dangerous or unfit for habitation.
54. In the result, I find that there were no latent defects in the system.

Did Taho withhold material information about the system?

55. The applicant claims that Taho fraudulently or negligently misrepresented the condition of the system.
56. In order to succeed on a claim for negligent misrepresentation, the applicant has to establish that:
- (a) Taho owed the applicant a duty of care to provide accurate information;
 - (b) Taho made a representation to her;
 - (c) the representation was untrue or misleading;
 - (d) the applicant reasonably relied on the misrepresentation; and
 - (e) the reliance caused the applicant loss.

See: *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110.

57. To succeed on a claim for fraudulent misrepresentation the applicant would have to establish that:

- (a) Taho made a representation of fact to her;
- (b) the representation was actually false;
- (c) Taho knew the representation was false at the time it was made, or made the false representation recklessly, not knowing if it was true or false;
- (d) Taho intended the applicant to act on the representation; and
- (e) the applicant was induced to enter into the contract in reliance upon the false representation and as a result suffered a loss.

See: *Hamilton* at para. 25; and *Van Beek v. Dodd*, 2010 BCSC 1639 at para. 42.

58. I find the applicant's claim for misrepresentation is based on her allegations that:

- (a) Taho knew the electrical system was not to code and dangerous, and that Taho failed to disclose this information to the applicant; and/or
- (b) Taho misrepresented the condition or quality of the system.

59. With respect to the first point, based on my findings above, I concluded that there were no latent defects in the system. It therefore cannot be said Taho had a positive obligation to disclose any knowledge of the same. In any event, I have also found that Taho did not know the system was dangerous or not to code.

60. In response to the second point, the only contractual representations Taho made about the system are contained in the property disclosure statement which states that Taho was not aware of any problems with the system or latent defects. This is consistent with Taho's evidence about the condition of the system and, as set out above, I accept this evidence.

61. As a result, I find that Taho's representations about the system were not untrue, inaccurate or misleading.
62. Further, even if there were a misrepresentation, I find that Taho did not make the representation intentionally or recklessly, such that there is no basis for a claim of fraudulent misrepresentation. This would leave only the potential for a claim of negligent misrepresentation, which I find cannot succeed on the following ground. Taho's representation about the system could not have caused the applicant's loss because the applicant could not have reasonably relied on the representation where the report alerted her to issues with the system and urged her to have an electrician inspect the system.
63. I therefore dismiss this claim.
64. Having failed to establish any breach, it is unnecessary to consider the applicant's claim for remedies.
65. Given the applicant was not successful, I find she is not entitled to reimbursement of tribunal fees or expenses.

ORDER

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

Jordanna Cytrynbaum, Tribunal Member