



Civil Resolution Tribunal

Date Issued: August 8, 2018

File: SC-2017-0007369

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lasser v. van Elder et al*, 2018 BCCRT 427

B E T W E E N :

Doug Lasser

APPLICANT

A N D :

Phillip van Elder and Sandra Grykuliak

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a real estate transaction and whether the respondents failed to fulfill a term of the contract. In particular, the applicant, Doug Lasser, says

in December 2016 he bought a home and workshop from the respondents, Phillip van Elder and Sandra Grykuliak, and that the workshop's contents were expressly included in the signed sales agreement. The applicant alleges that on taking possession, numerous items had been removed from the workshop, and the applicant claims \$4,000 to replace them.

2. The respondent Sandra Grykuliak was properly served by registered mail but did not provide a response as required. As such, she is in default. However, Mr. Elder in his Dispute Response stated she was essentially only a name on title and thus the applicant's claims were for him to answer. As discussed below, I find the respondents are equally responsible to the applicants, as both respondents were parties to the contract.
3. Mr. Elder says that it is their selling realtor's fault, although the respondents did not file a third party claim against their realtor. Mr. Elder says that when their home was initially listed, they were clear that all personal items were not included. Mr. Elder says that the agreement was that they were allowed to leave certain items behind after the possession date, if they were unable to remove everything in time, but they were always free to remove whatever items they wanted, including sentimental and personal items. Mr. Elder also says they removed items in good faith in an effort to clean up the workshop, and that at no time did their realtor advise them that by doing so they would be in breach of their contract.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.
6. 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.
7. Under tribunal rule 126, 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

8. The issues in this dispute are a) whether the respondents failed to provide items included in their property sale, and b) if so, what remedies are appropriate.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referred to the evidence as necessary to give context to my decision.
10. The November 18, 2016 contract adds a handwritten and initialed notation that “all contents in the workshop” were included in the sale, “as is where is”, with no warranty for their condition or that they were in working order. A paragraph from an earlier version of the contract was deleted, which was that the respondent sellers would remove all personal possessions, debris, garage and/or junk. The revised and accepted completion date was December 20, 2016.
11. I accept that at the time the contract was signed, the addition of the workshop’s contents was primarily for the sellers’ benefit. The applicant’s realtor supports this

conclusion: the respondents were concerned they would not have time to remove all of the workshop's contents as they did not live locally. The applicant's realtor said his client, the applicant, was happy to keep the workshop contents. The listing price for the property was \$360,000. The applicant's initial offer was \$340,000 and the property sold, with the workshop's contents included, for \$357,000.

12. Mr. Elder does not deny items were removed, and blames his realtor. As noted above, the realtor is not a party to this dispute. The contract between the applicant and the respondents clearly states that the contents of the workshop were included with the sale, and is a separate paragraph from the deleted paragraph about removing junk. While I accept for the purposes of this dispute that Mr. Elder did not intend that all of the workshop's contents be included in the sale, they were included. The applicants have a right to the value of those items. The fact that the respondents may have a claim against their realtor is not a matter before me given there is no third party notice. Nothing in this decision prevents the respondents from pursuing a claim against their realtor if they consider it appropriate. I make no findings about the realtor's liability.
13. I turn then to the central issue in this dispute: the value of the missing items from the workshop. Mr. Elder submits that he has only ever asked for a realistic estimate of the items, noting several discrepancies. Mr. Elder says the appropriate value is \$855. As noted, the applicant claims \$4,000.
14. The applicant provided a "missing items list from workshop". This list was based on photos of the workshop that were part of the listing, as compared to what was in the workshop at the time of possession. Several items have "???" beside them, such as "equipment on floor under welder". The most expensive single item on the 29-item list is \$1,400, for a "Miller welder, cables, welding rods". Many items are in the \$25 to \$50 range. The applicant says the pricing was done online, "averaging the replacement value price". The applicant's list totals \$3,100, plus 12% tax for a total of \$3,472.

15. The applicant claims the \$528 balance of his \$4,000 claim is to cover “emotional stress, time spent” and the cost of serving the respondents. I dismiss that \$528 claim for a variety of reasons. First, the tribunal generally does not award compensation for “time spent”, given our rules state the general rule is not to award legal expenses. I see no reason to deviate from that practice here. Second, the applicant has provided no evidence to support an “emotional stress” claim, nor has he provided any receipts to support an expenses claim.
16. The applicant has not provided any supporting evidence about the price of the items. I also do not accept that replacement value is appropriate given the sale was for “as is where is” items that may not have even been in working condition. There is no indication the applicant paid more for the house in order to get the workshop contents. Mr. Elder provided a statement from K, his realtor, that to her it was very clear that no value attached to the workshop’s contents. K reiterated that including the workshop contents was a condition primarily to assist the seller respondents. I note K does not squarely address the express inclusion of all of the workshop’s contents in the sale, when her clients now submit that they never intended to include them, but nothing turns on this. I do accept Mr. Elder’s evidence that much of what he removed from the workshop is what he reasonably believed was garbage, and I note the witness evidence about a “donation” box being left for pick-up. I also accept the undisputed evidence that most of the missing items were at least 30 years old.
17. Overall, based on the evidence before me, I accept there was little value to the workshop’s contents. While I accept many items were missing, which is admitted, I do not accept the \$3,100 value, let alone \$4,000.
18. On the one hand, the applicant has failed to reasonably provide supporting evidence as to the value of the missing items, which as noted above I find should be based on what the old items were worth, not what it would cost to replace them. On the other hand, the respondent acknowledges that items were removed. On a

judgment basis, I accept the respondent's valuation of \$730, which I consider to be reasonable in all of the circumstances.

19. There were no tribunal fees paid and I have addressed the applicant's claim for dispute-related expenses above. The applicant is entitled to pre-judgment interest on the \$730 under the *Court Order Interest Act* (COIA), from December 20, 2016.

ORDERS

20. Within 30 days of this decision, I order the respondents to pay the applicant a total of \$740.75, comprised of:
 - a. \$730, as compensation for the missing workshop items, and
 - b. \$10.75, as pre-judgment interest under the COIA.
21. The applicant is entitled to post-judgment interest under the COIA, as applicable.
22. 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.
23. 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.

Shelley Lopez, Vice Chair