



Civil Resolution Tribunal

Date Issued: August 30, 2018

File: SC-2017-003093

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goktepe v. Jeffs*, 2018 BCCRT 488

B E T W E E N :

Ozge Goktepe

APPLICANT

A N D :

Cheryl Jeffs

RESPONDENT

A N D :

The Owners, Strata Plan LMS3462

RESPONDENT BY THIRD PARTY NOTICE

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about mice in a strata lot. The applicant, Ozge Goktepe, claims the respondent, Cheryl Jeffs, failed to disclose a mice problem when she sold the strata lot to Ms. Goktepe. Ms. Jeffs denies knowledge of a mice infestation at all material times to her contract of sale. Ms. Goktepe claims \$5,000, as she wants Ms. Jeffs to pay for a kitchen upgrade that would seal the mouse access from the common wall to the kitchen.
2. In Ms. Jeffs' third party dispute against the respondent, The Owners, Strata Plan LMS3462 (strata), Ms. Jeffs says solving the mice problem is the strata's responsibility, as it is required to maintain common property and the mice exist in and travel through common property.
3. Ms. Goktepe and Ms. Jeffs are each self-represented. The strata is represented by Anthony Hahn, who I infer is a strata council member.

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 I can fairly resolve the dispute based on the documentary evidence and submissions before me. This conclusion is consistent with the court's observations of the tribunal's processes in *Yas v. Pope*, 2018 BCSC 282.

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 Ms. Jeffs failed to properly disclose a mouse infestation when she sold her strata lot to Ms. Goktepe, and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Ms. Goktepe has the obligation to prove her claim against Ms. Jeffs, and in particular that Ms. Jeffs misrepresented a mice infestation in the sale of her strata lot to Ms. Goktepe. In turn, Ms. Jeffs must prove her claim that the strata is responsible for providing a solution for any ongoing mice problem. Below, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Goktepe bought her strata lot from Ms. Jeffs in October 2016, who had owned the unit for 17 years since 1999. The completion date was October 14, 2016 and the possession date was October 15, 2016. Since she moved in, Ms. Goktepe says she has had ongoing mice problems. Before deciding this dispute, I asked the parties to advise if there have been any further mice problems since November 2017 when the strata's pest control service reported Ms. Goktepe's strata lot and the building were clear of mice. Ms. Goktepe responded that she found a dead mouse in March 2018, but acknowledged she did not tell the strata at the time. Ms.

Goktepe says she has not had any mice problems since March 2018, but based on conversations with neighbours contends the problem becomes worse in cold weather when the rodents' food supply is reduced.

11. Ms. Goktepe submits she has an aversion to rodents and says that while pest control has been helpful, it cannot provide a permanent solution. She says Ms. Jeffs failed to disclose a mice problem and is therefore responsible to pay for a kitchen renovation that would block access from the common property space behind her strata lot wall.
12. Central to Ms. Goktepe's dispute is the Property Disclosure Statement (PDS) that Ms. Jeffs, as the seller, completed on June 27, 2016. The PDS was incorporated as part of the parties' contract of purchase and sale. The key portions of the PDS relevant to this dispute are (my bold emphasis added):
 - a. The seller is responsible for the accuracy of the PDS answers, and where uncertain should reply "do not know".
 - b. "Are you aware of any **infestation** or unrepaired damage by insects or rodents?" to which Ms. Jeffs answered "no".
 - c. The seller states that the information provided on the PDS is true, based on the seller's "current actual knowledge" on the date the PDS is signed. **Any "important changes made known to the seller" will be disclosed by the seller to the buyer "prior to closing"**.
13. Ms. Goktepe says Ms. Jeffs knew there was a mice issue since December 2015, and therefore submits that Ms. Jeffs misrepresented the issue when she answered "no" to the rodent infestation question on the PDS. Ms. Goktepe says if she had known there was a mice problem, she would not have bought the strata lot from Ms. Jeffs.
14. Based on the evidence and submissions before me, I find the mouse problem resurfaced in the summer of 2016 and continued off and on through November

2017. However, in terms of Ms. Jeffs' liability for failure to disclose a mouse "infestation", what matters is the evidence of Ms. Jeffs' knowledge of mice at the time Ms. Jeffs signed the PDS on June 27, 2016 through to the date the sale completed or closed, on October 14, 2016.

15. The relevant evidence about Ms. Jeffs' knowledge of mice follows. Ms. Jeffs reported mouse droppings to the strata on July 8, 2016, about a week after she signed the PDS. She found the droppings while she was cleaning the unit in preparation of moving out. This was Ms. Jeffs' second report about mice, the first occurring in December 2015. Given these 2 reports, and the evidence of several mice traps behind kitchen appliances, Ms. Goktepe alleges that Ms. Jeffs failed to comply with her ongoing requirement to disclose prior to closing, as set out in the PDS. Ms. Goktepe says she lived with decaying mice behind these appliances for several months, which she says is a major health concern. Had she known of the traps and the poison, she says she would have addressed the problem more quickly.
16. Ms. Jeffs says she never believed there was a mice "infestation" in the 17 years she owned the strata lot. Ms. Jeffs acknowledges the 2 reports of mice to the strata, but she considered those to be isolated instances and says she was assured the problem had been addressed by the strata. I accept Ms. Jeffs' evidence, as I find it reasonable given the weight of the evidence before me. Ms. Jeffs says she never suggested those droppings were indicative of an "infestation". Ms. Jeffs also says while moving out, she cleaned behind all the appliances and did not find any dead mice or traps, but that it is possible the strata set the traps Ms. Goktepe found, after Ms. Jeffs moved out. The strata did not deny it set the traps.
17. Ms. Goktepe says her inspection report showed the strata lot had been cleaned well, and it did not disclose any mouse activity. Ms. Goktepe suggests that this is evidence of a cover-up by Ms. Jeffs. Ms. Jeffs denies any such cover-up, and says the fact the unit was clean and that there was no sign of mouse activity is

consistent with the conclusion that there was no infestation at that time. I agree with Ms. Jeffs and find Ms. Goktepe has not proved any such cover-up or fraudulent misrepresentation.

18. On balance, I find the strata set the traps that Ms. Goktepe found, which is consistent with the strata's overall pest control program of setting traps and poison, often in response to reports of mouse activity. The strata provided a copy of its February 2016 contract with Canadian Pest, for monthly service around the building to address rodents and ants. Further, the strata's property manager told Ms. Goktepe in October 2016 that Ms. Jeffs reported "mice activities" on July 8, 2016, and that "a pest control contractor from strata attended to it". The property manager asked Ms. Goktepe to report any further mice activity, which she never did. I find the dead and decaying mice Ms. Goktepe found in the winter of 2016 were caught in traps set by the strata, without Ms. Jeffs' knowledge of them.
19. Ms. Goktepe says she has captured 12 mice in 18 months in the 538 square foot strata lot, which she says supports the conclusion there is an infestation. It may be there is an infestation now, but as noted above, the central issue is whether there was an infestation between June 27, 2016 and October 14, 2016. I find Ms. Goktepe has not proved there was.
20. I agree with Ms. Jeffs that the case law is clear that the PDS disclosure question "are you aware" refers to present knowledge, and not past infestations. Thus, Ms. Jeffs' prior report in December 2015, several months before the June 2016 PDS was signed, is of less relevance. Given the absence of evidence that Ms. Jeffs was aware of an ongoing mice problem between December 2015 and June 27, 2016, I find Ms. Jeffs answered "no" honestly when she stated in the PDS there was no mice infestation to her knowledge.
21. In particular, Ms. Jeffs notes the March 16, 2016 strata council meeting minutes that note the property manager reported mice activities in 6 units for the past 3 months. The minutes noted a regular pest program was recommended. Ms. Jeffs and the strata both state the strata took steps to address the rodent issue. Ms.

Jeffer submits that when she completed the PDS on June 27, 2016, she reasonably believed the rodent issue had been resolved. Again, I accept Ms. Jeffer's evidence, as I find it reasonable and in harmony with the weight of the evidence before me.

22. Further, Ms. Jeffer relies on *Lamontagne v. Andersen et al*, 2005 BCSC 343, which involves a similar fact pattern as in the case before me, although it involved insects. That decision defines "fraudulent misrepresentation" as including false statements made "knowingly" or "recklessly". Ms. Jeffer denies making such statements, and says "at the time of purchase", she and Ms. Goktepe had exactly the same information about a past rodent issue in the building.
23. As in *Lamontagne*, I find Ms. Goktepe has not proved Ms. Jeffer knowingly made false or misleading statements about a mice issue with the intent to deceive a buyer. I accept that when she completed the PDS, Ms. Jeffer truly believed the mice problem was resolved. Further, based on the evidence before me I find that at that time, there was no evidence available to Ms. Jeffer that would have caused her to believe there was an active mouse problem. A seller's representations in a PDS must be honest, but they do not necessarily need to be correct.
24. What about Ms. Jeffer's ongoing obligation to disclose any "important changes" to her statements in the PDS, prior to closing? This turns on whether Ms. Jeffer's discovery of mouse droppings on July 8, 2016 amounted to an "important change" that obliged her to disclose an "infestation" to Ms. Goktepe. I find the evidence simply does not support Ms. Goktepe's position. I find that the nature of the July 2016 discovery of mouse droppings (possibly old) does not amount to knowledge of an "infestation", and thus there was no "important change". This conclusion is supported by the court's observation in *Lamontagne* that "infestation" means "large swarms" or "visit persistently or in large numbers". Ms. Jeffer reported the July 2016 discovery of mouse droppings to the strata and reasonably expected the strata to consider it and deal with the issue as necessary. I find that relatively isolated episode did not amount to an infestation. Thus, there was nothing Ms. Jeffer was required to disclose.

25. The law does not require sellers to verify their own knowledge about their property (see *Nixon v. MacIver*, 2014 BCSC 533, confirmed 2016 BCCA 8). As set out in *Nixon*, the law of ‘*caveat emptor*’ or buyer beware applies in BC. In general, purchasers bear the risk of defects in the quality of a property. Liability for this risk may shift to a seller like Ms. Jeffs where there is a) a breach of contract, b) active concealment, i.e. fraud, and c) non-innocent misrepresentation. I find the applicant Ms. Goktepe has not proved any of those things. As for the PDS, in *Nixon* the court held that vendors are only obliged to disclose their current knowledge of the property to put prospective purchasers on notice of any current known problems. I find Ms. Jeffs met that obligation.
26. I have concluded above Ms. Jeffs is not responsible for Ms. Goktepe’s mouse problem, as there was no failure to disclose an “infestation”. Ms. Goktepe did not name the strata as a respondent, and therefore I make no order against the strata with respect to Ms. Goktepe’s claims. As for Ms. Jeffs’ third party dispute against the strata, given my conclusion above that Ms. Jeffs is not liable, I dismiss it. However, the tribunal’s mandate includes recognizing the ongoing relationship between parties. Ms. Goktepe and the strata’s relationship is ongoing. The strata is responsible for managing any ongoing problem with rodents that originate in common property areas of the building, under the *Strata Property Act*. I leave it to Ms. Goktepe to report any mice issues to the strata so that the strata can deal with the problem as it considers appropriate.
27. Finally, I note that Ms. Goktepe claimed \$5,000 to renovate her kitchen to “seal off the common wall”, and yet she provided no evidence, such as a quote, to support the amount claimed. Even if I had found Ms. Jeffs liable, I would not have granted the order sought.
28. As Ms. Goktepe was unsuccessful in this dispute, in accordance with the Act and the tribunal’s rules I find she is not entitled to reimbursement of tribunal fees. Ms. Jeffs paid \$125 in tribunal fees to bring her third party claim against the strata. I find it was reasonable for Ms. Jeffs to have filed the third party notice in the

circumstances. I say this because Ms. Goktepe was seeking an order that her kitchen be renovated to prevent further mice ingress, and pest control is generally the strata's responsibility, as noted above. Given my conclusions above, I find it is appropriate that Ms. Goktepe, as the unsuccessful party on the substance of the disputes, pay Ms. Jeffs' tribunal fees.

ORDERS

29. Ms. Goktepe's claims against Ms. Jeffs are dismissed. Ms. Jeffs' third party claim against the strata is also dismissed.
30. I order Ms. Goktepe to pay Ms. Jeffs \$125 in tribunal fees, within 14 days of the date of this decision.
31. 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.
32. 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 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