Civil Resolution Tribunal

Date Issued: October 3, 2018

File: SC-2018-000572

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gravel v. Dinh et al,* 2018 BCCRT 587

B E T W E E N :

Ryan Gravel

**APPLICANT**

A N D :

Martin Dinh, Dave Dinh, and Dan Grondin

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member: Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a heat pump and a contract of purchase and sale for a home. The applicant, Ryan Gravel, alleges that the respondents made a false real estate advertisement that the house had a heat pump as a main heat source, because a

heat pump was in fact not installed. The applicant wants the respondents to buy and install a heat pump, and claims $5,000 as the associated cost.

2. The respondents Martin and Dave Dinh and Dan Grondin are all realtors working through the same realty firm, Century 21 Harbour Realty. The respondents represented the sellers of the house, DH and MH. The sellers are not parties to this dispute. The applicant had originally named his own realty firm, but withdrew that claim and thus this dispute is now only against the Dinhs and Mr. Grondin. The respondents deny liability for the heat pump. The applicant is self-represented and the respondents are represented by Mr. Grondin.

## JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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.

4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I find I am able to fairly resolve this dispute based on the documentary evidence and written submissions before me. An oral hearing is not necessary.

5. 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.

6. 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.

## ISSUE

7. The issue in this dispute is to what extent, if any, the respondent realtors are liable to compensate the applicant for a heat pump that was not included in the applicant's purchase of a house but was said to be included in the advertisement for it.

## EVIDENCE AND ANALYSIS

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.

9. The applicant and his spouse made the offer on November 9, 2017 to buy the house from the sellers. It is undisputed that the Multiple Listing Service (MLS) listing for the house says a "heat pump" was a feature and that "this home is equipped with heat pump …" The reference to the heat pump was removed from the MLS listing on November 14, 2017.

10. It is undisputed the applicant wanted the heat pump included in the sale. However, the sellers struck out the words "heat pump" from the included items in section 7 of the contract in their counteroffer. The applicant tried again to have the heat pump included. It is undisputed that the sellers did not agree and the final November 18, 2017 version of the contract did not mention a heat pump.

11. I find there was no existing heat pump, but that the sellers had prepared a concrete pad and were prepared to install one if the applicant paid the higher listing price for it ($5,000 extra), but the applicant did not want to do so. I find the applicant did not pay for a heat pump when it bought the house.

12. The respondents say the MLS listing was not a term of the contract of purchase and sale, which specifically excludes any extra-contractual representations. I agree. It is undisputed that there was no contractual relationship between the applicant and the respondents, who acted only for the sellers.

13. The respondents also say that the MLS listing had a clear disclaimer: "The above information is from sources deemed reliable but should not be relied upon without independent verification".

14. I find that the applicant's claims are, in law, allegations of fraud and fraudulent misrepresentation. There is a high burden on the applicant to establish such claims, given their serious nature, although not reaching the higher criminal standard of "beyond a reasonable doubt" (see: *Dhillon Industries Ltd. v. Clifford*, 1996 CanLII 2326 (BC SC), and *Campeau v. Provident Life & Accident Insurance Co*., 1996 CanLII 789 (BC SC)).

15. I find the respondents did not owe a duty of care to the applicant purchaser (see *Gordon v. Krieg*, 2013 BCSC 842). The respondents' duty was owed to its clients. In *Krieg*, the court stated that the listing realtor made no representations to the plaintiff purchaser independent of or in addition to the seller's representations. In *Krieg*, the court stated that as such, the plaintiff had no claim against the realtor for having made negligent misrepresentations to her. In the case before me, the only possible separate representation by the respondents was the MLS listing.

16. First, I find there is no evidence before me to support a conclusion the respondents intentionally misrepresented the existence of a heat pump in the MLS listing.

17. In any event, I find the applicant did not reasonably rely upon any representations in the MLS listing. I say this because it was clear to the applicant that the sellers were not going to include the heat pump at the reduced listing price. The applicant chose to complete the contract knowing the heat pump was not included. In addition, the MLS listing has the disclaimer, as referenced above. A party must

rely on a misrepresentation in order to be entitled to an associated remedy (see *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2008 BCCA 387).

18. Given my conclusions above, I find the applicant's claims must be dismissed. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I find he is not entitled to reimbursement of tribunal fees.

## ORDER

19. I find the applicant's claims, and therefore his dispute, must be dismissed.

Shelley Lopez, Vice Chair