



# Civil Resolution Tribunal

Date Issued: October 26, 2018

File: SC-2017-004239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ali v. Zhan et al.*, 2018 BCCRT 656

**B E T W E E N :**

Irfan Ali

**APPLICANT**

**A N D :**

Mei Zhan, Chengyi Zhou, Mingwei Du, and Royal Pacific Lions  
Gate Realty Ltd.

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Andrew D. Gay, Q.C.

## **INTRODUCTION**

1. The applicant, Irfan Ali, purchased a residential property in Burnaby from the respondents Mei Zhan and CHENGYI Zhou (the vendors). The respondent

Mingwei Du, a realtor with the respondent Royal Pacific Lions Gate Realty Ltd., acted as the agent for the vendors.

2. Mr. Ali says that prior to his purchase of the property Mr. Zhou and Mr. Du both represented that the heating system in the property was in good working order. Mr. Ali says he relied upon those representations in deciding to enter into a contract to purchase the property. The applicant later discovered that the furnace was not functional and had to be replaced. In addition to alleging that Mr. Zhou and Mr. Du made a fraudulent and negligent misrepresentation, the applicant argues that the defective furnace was a “latent defect” and that the respondents are obligated to compensate him for latent defects.
3. Mr. Zhou and Mr. Du deny they made a representation that the heating system in the property was in good working order. The respondents argue that the doctrine “buyer beware” applies to this case. They note that the plaintiff, himself a realtor, chose to make an unconditional offer, with no property inspection, and that he did not require that a Property Disclosure Statement (PDS) form part of the contract. The respondents further argue that there is no evidence of when the furnace stopped working, and that this could have happened after the closing date. Finally the respondents deny that the defective furnace was a “latent defect”.
4. The applicant seeks to have the respondents pay him \$3,450.60 for the cost of having the furnace inspected and replaced.
5. The parties are each self-represented, but I note that the claimant is a lawyer, a matter I return to below.

## **JURISDICTION AND PROCEDURE**

6. 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.

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. Although there is a credibility issue in this case, I find that the case can be decided without an oral hearing, consistent with the Act's goal of resolving cases quickly, efficiently and inexpensively. An oral hearing was not requested by either party.
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: 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**

10. The issues are as follows:
  - (a) Has the applicant established that the furnace was defective at the time the alleged misrepresentations were made and at the time the contract was formed?
  - (b) If so, are any of the respondents obligated to pay for the new furnace as a result of misrepresentations they made?
  - (c) Are any of the respondents obligated to pay for the new furnace because the defective furnace was a "latent defect"?

## **EVIDENCE AND ANALYSIS**

11. I have only referenced the evidence and submissions necessary to give context to my decision. The applicant has the burden of proving his allegations on a balance of probabilities.
12. Ms. Zhan and Mr. Zhou were the vendors of a residential property in Burnaby (the property). The property was divided into two suites, an upper and a lower suite.
13. The vendors completed and signed a PDS dated March 21, 2017. In response to every question on the PDS, including the question as to whether they knew of any problems with the heating system, the vendors indicated both “Do Not Know” and “Does Not Apply”. In addition, the entire form has hand-written lines struck across the pages, crossing out the questions and thereby indicating that the vendors were not making any representations as to the condition of the property.
14. On March 26, 2017, the vendors held an open house at the property, which the applicant attended. Also present was the respondent Mr. Du who was the vendors’ realtor.
15. The applicant says that during the open house he mentioned to Mr. Zhou that the upper suite in the house was cold and he asked Mr. Zhou if the heating system was working properly. The applicant claims that Mr. Zhou responded by saying that the heating system was in proper working condition. Mr. Zhou denies this.
16. The applicant further says that at the same open house he asked Mr. Du if the heating system was working properly. The applicant claims that Mr. Du said that the heating system was in good working condition. Mr. Du denies this.
17. The following day, March 27, 2017, the vendors and the applicant entered into a contract for the sale of the property (the contract). The contract provided that the completion date would be April 27, 2017 and the possession date would be April 28, 2017.

18. The contract is unconditional. The contract was not subject to a house inspection. The applicant did not seek to have any representation relating to the heating system included in the contract. The PDS was not attached to the contract and the contract does not include a provision stating that the PDS forms part of the contract. There is no evidence before me as to whether the applicant asked to see the PDS or whether he ever received it.
19. At the time the contract was entered into, the lower suite in the property was occupied by a tenant. The applicant agreed to keep the tenant.
20. The vendors gave the applicant keys to the house on April 5, 2017, despite the fact that the possession date was April 28, 2017.
21. On May 16, 2017, new tenants occupied the upper suite. That day, one of the new tenants texted the applicant to complain that the house was cold and the heating system did not appear to be working. The applicant texted Mr. Du to see if the vendors had any information about this. Mr. Du responded by text, indicating that the vendors said “the downstairs furnace probably needs to burning gas again” [sic].
22. The following day, the applicant retained a furnace repair company to inspect the furnace. The inspection revealed that there had been a fire in the furnace which had melted the thermostat wiring and had damaged a transformer. The repair company recommended that a new furnace be installed. The applicant retained a different company to install a new furnace on May 18, 2017.

### ***The Applicant’s Professional Status***

23. The applicant is a licensed realtor and a lawyer. He made no mention of this in his Dispute Notice. In response to the claim, the respondents provided a printout from the website of the Law Society of British Columbia indicating that someone with the same name as the applicant is a practising lawyer in British Columbia. The

applicant did not deny that he is a lawyer in the reply section of the Tribunal Decision Plan.

24. The fact that the applicant is a licensed realtor and a lawyer has some significance in this case, as I describe below.

***Has the applicant established that the furnace was defective at the time the alleged misrepresentations were made and at the time the contract was entered into?***

25. It is not disputed that the vendors lived with their family in the upper suite of the property until the end of February, 2017. They say that there was nothing wrong with the heating system during that time, adding that they could not have made it through the winter without the furnace working properly.
26. The evidence from the furnace repair company is simply an inspection invoice. It does not provide any evidence of when the furnace fire may have occurred. The applicant did not lead any evidence of when the furnace fire occurred.
27. I find that there is no evidence that the furnace was defective on the date the alleged misrepresentations were made or as of the date the contract was entered into.
28. As a result, the applicant cannot succeed on his latent defect argument, as that argument depends on a finding that the defect existed at the time the contract was entered into. Further, I find that the furnace defect would not be a “latent” defect as it would have been readily discoverable upon a reasonable inspection by a qualified house inspector.

### **The *Misrepresentation Claim***

29. The absence of evidence as to the date of the furnace fire also means that the applicant cannot succeed on his misrepresentation claim, as that claim depends

on a finding that the furnace was defective as of the date the alleged representations were made.

30. Further, even if Mr. Zhou and Mr. Du told the applicant that the heating system was working properly, a matter I need not decide, to succeed in this case the applicant would have to establish that he relied upon those statements in deciding to enter into the contract.

31. I find that the applicant has failed to prove, on a balance of probabilities, that he relied upon the alleged statements in deciding to enter into the contract, for the following reasons:

(a) As a lawyer and a realtor the applicant would have known and understood that the contract contained what is commonly known as an 'entire agreement' clause – i.e. a clause which says that there are no representations or warranties outside the written contract. In the face of such a clause, the applicant knew that if he wanted to place reliance on any representation relating to the fitness of the heating system he would have to write it into the contract. He did not do so.

(b) The applicant did not seek to have a PDS incorporated into the contract;

(c) If he received a copy of the PDS signed by the vendors, the applicant would have seen that the vendors were making no representations as to the condition of the property, including the condition of the heating system. Alternatively, if he did not ask to see the PDS, then he clearly was not relying upon on the vendors to disclose to him the condition of the property;

(d) The applicant did not seek to have a property inspection. He knew he was taking risks relating to the condition of the property generally. It is difficult to accept that he was prepared to take this risk with respect to all aspects of the property, but that with respect to heating system he was placing reliance on the alleged representations of Mr. Zhou and Mr. Du which he then failed to include in the contract;

- (e) The applicant had no basis for thinking that Mr. Du would be in a position to make representations as to the fitness of the heating system. There is no evidence that the applicant asked Mr. Du how he knew that the heating system was in good working order; and
  - (f) When the applicant texted Mr. Du after learning that the furnace would have to be replaced, he did not suggest to Mr. Du that Mr. Du had misled him or that he had relied on Mr. Du's alleged statement that the heating system was in good working order. If he had placed reliance on a representation by Mr. Du, it is more likely than not that he would have said something to that effect to Mr. Du.
32. The more likely version of events, as asserted by the respondents, is that the applicant was taking known risks by making an unconditional offer, with no PDS and no house inspection, because he knew that this was how to beat any competing offers.
33. For these reasons, I find that none of the respondents is obligated to pay for the applicant's new furnace.

### ***Tribunal Fees***

34. 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. In this case, the applicant was unsuccessful and is not entitled to be reimbursed for the tribunal fees.



## **ORDERS**

35. The applicant's claims, and therefore this dispute, are dismissed.

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Andrew D. Gay, Q.C., Tribunal Member