



Civil Resolution Tribunal

Date Issued: May 30, 2019

File: SC-2018-009219

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jackman v. Unger*, 2019 BCCRT 657

BETWEEN:

Cody Jackman

APPLICANT

AND:

Gregory Unger

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Cody Jackman, entered into a contract to purchase a house owned by the respondent, Gregory Unger. The property was not vacant on the day the

purchase was to complete, so the purchase did not proceed. The applicant claims \$4,083.78 for costs incurred because of the breach.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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 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.
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 9.3(2), 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;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is what losses the applicant suffered because of the respondent's breach of the contract.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The respondent filed a Dispute Response but did not provide any evidence or submissions during the tribunal decision process. In his Dispute Response, the respondent agreed with the facts that the applicant alleged, saying only that the applicant "could have had possession of the home had they waited longer". Therefore, I find that the facts described below are not in dispute.
10. The parties entered into the contract of purchase and sale on March 11, 2018, for a property in Campbell River. The contract said that the applicant would have vacant possession on June 2, 2018.
11. The respondent had tenants and, for reasons that are not explained, the respondent was unable to provide vacant possession on June 2 because the tenants had not left. On June 1, the parties negotiated an extension to the completion date to June 4. However, on June 4, the tenants still had not left.
12. As mentioned above, the respondent's only argument is that the applicant could have had the home if he had waited longer. The applicant says that the respondent had an arbitration to get his tenants out of the house, presumably with the Residential Tenancy Branch. However, given that there was no guarantee that the respondent would be successful in that arbitration, the applicant was not prepared to wait further. I find that this was reasonable.

13. In any event, the applicant had no contractual obligation to give the respondent more time. As the applicant points out, it was the respondent's responsibility to provide vacant possession on the completion date and he did not do so. The sale did not complete and the applicant received the deposit back.
14. As mentioned above, it is undisputed that the respondent breached the contract. The question is what losses the applicant can recover from the respondent. The applicant's Dispute Notice claims \$4,083.78, but the applicant only provided invoices for the following amounts, which total \$3,861.78:
 - a. \$551.25 for a home inspection.
 - b. \$278.25 for a perimeter drain inspection.
 - c. \$2,459.18 in legal fees.
 - d. \$573.10 for a storage unit from June 4 to August 31, 2018.
15. The applicant says that he incurred other losses, like moving truck fees, missed days of work and "opportunity costs". He does not provide any objective evidence to explain these other losses. He provided a settlement offer from his lawyer to the respondent's notary that alleges that the moving truck cost \$80. I will address this claim in more detail below.
16. The general rule for assessing damages for a breach of contract is that the innocent person is entitled to the amount of money that would put them in the same position as if the contract had been performed. These are called "expectation damages".
17. When it is not possible to assess losses as expectation damages, then the innocent person's losses can be assessed as "reliance damages". Reliance damages compensate the innocent person for the expenses they incurred relying on the existence of the contract.
18. I find that in the context of a failed real estate purchase, it is impossible to calculate expectation damages because no amount of money can give the applicant the

house. Therefore, I find that it is appropriate to assess the applicant's damages as reliance damages.

19. Based on the evidence provided, I am satisfied that the applicant has proven that the damages claimed are appropriate. The applicant reasonably incurred the cost of the 2 inspections and a real estate lawyer as part of the usual process of purchasing real property and the defendant's breach of contract robbed these costs of any value.
20. As for the storage costs, the applicant's undisputed evidence is that he did not know until June 4, 2018 that the purchase would not complete. By this time, he and his family had packed up their belongings in preparation for the move and had no backup plan. The applicant says that they scrambled for alternate rental accommodation while they looked for a new permanent home, which took until September 2018. I find that just under 3 months is a reasonable period for the applicant to require storage in these circumstances.
21. As for the remaining claims, I award the applicant \$80 for moving truck fees. Parties are generally expected to provide objective evidence of losses, such as invoices. However, the tribunal has flexibility to consider evidence that would not be admissible in court, such as hearsay. I find that in the circumstances of this dispute, in which the sale collapsed at the last minute, it is likely that the applicant incurred the wasted expense of a moving truck. I find that \$80 is a reasonable amount to compensate for this expense. I also rely on the fact that the respondent did not dispute any of the amounts claimed, despite having the opportunity to do so.
22. As mentioned above, the applicant provides no explanation for the remaining \$142 that he claims. In the absence of an explanation, I decline to order any further damages. I therefore order the respondent to pay the applicant \$3,941.78.

The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). I have calculated pre-judgment interest for the 2 inspections and the moving truck from June 4, 2018, the date of the breach of contract. I have calculated the remaining expenses from date the applicant incurred each expense.

23. 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. The applicant has been successful so I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

24. Within 28 days of the date of this order, I order the respondent to pay the applicant a total of \$4,179.28, broken down as follows:
 - a. \$3,941.78 for breach of contract
 - b. \$62.50 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Eric Regehr, Tribunal Member