Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kovlaske v. Lee et al*, 2019 BCCRT 790

B E T W E E N :

KEVIN KOVLASKE

APPLICANT

A N D :

DONALD JAMES LEE and MARY CAMILLA LEE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, Kevin Kovlaske, bought a manufactured home from the respondents, Donald James Lee and Mary Camilla Lee. The applicant claims that the respondents sold the home in contravention of the *Electrical Safety Regulation* (ESR). The applicant claims for the cost to get the home's electrical system properly certified, for the time he has spent dealing with the alleged contravention, and for

the loss of enjoyment of the home. The applicant's combined claims exceed $5,000, which is the monetary limit of the Civil Resolution Tribunal (tribunal). The applicant has abandoned his claims that are in excess of $5,000.

2. The respondents say that they did not misrepresent the condition of the home or breach the ESR.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 118 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 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.

ISSUES

8. The issues in this dispute are:

   a. Did the respondents breach section 21 of the ESR by selling the home without the correct label from Technical Safety BC?

   b. If so, did the respondents misrepresent whether the home had the correct label in breach of the parties' contract?

   c. Does the principle of *caveat emptor*, also known as "buyer beware", apply to this dispute?

   d. How much, if anything, do the respondents owe the applicant?

EVIDENCE AND ANALYSIS

9. 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.

10. The parties signed a contract of purchase and sale for the home in November 2017 (the contract does not indicate the exact date it was signed). The contract included a property disclosure statement (PDS), which the respondents filled out and signed. The PDS included the following question:

    "Is the Manufactured Home Canadian Standards Association (CSA) Approved?"

11. The respondents answered "yes".

12. In addition, as part of the process of selling the manufactured home, the respondents swore an affidavit confirming that there was a CSA label affixed to the home. The affidavit noted the CSA label number as 9730.

13. The completion date in the contract was March 30, 2018, “or sooner”. The date that the transaction completed is not in evidence.

14. This dispute turns on section 21(1)(d) of the ESR, which says that a person must not sell or offer to sell a used manufactured home unless the electrical equipment in the manufactured home displays a label supplied by the appropriate provincial safety manager. A provincial safety manager is a person appointed to Technical Safety BC, which is the agency that the government has delegated the responsibility for administering the ESR. As for the CSA, it is a not-for-profit organization that publishes, among other things, the Canadian Electrical Code, which I infer from the evidence is the standard that Technical Safety BC uses when certifying electrical systems, including in manufactured homes.

15. The combined effect of the above is that the respondents were prohibited from selling the home unless it had a CSA label certifying the electrical equipment in the home. My conclusion is supported by the advice that the Real Estate Council of BC gives to agents representing sellers in manufactured home sales, which the applicant provided. The Real Estate Council says that agents should confirm the existence of a CSA label to ensure compliance with the ESR.

16. The applicant provided a photograph of the home’s electrical panel, which includes a label from the Ministry of Labour’s Electrical Safety Branch. The label bears number 9730, which reflects the number the respondents put in their affidavit. The Ministry of Labour has not been responsible for providing labels since at least 2004, when the current *Safety Standards Act* (SSA) came into effect.

17. The respondents say that the label in the home is a “CSA label” even though it does not bear the CSA’s logo. The respondents did not provide any other evidence that

they complied with section 21 of the ESR, even though the applicant raised the issue in his submissions.

18. The applicant provided emails from 2 employees of Technical Safety BC. One employee said that their records indicated that the label on the electrical panel was for the installation of a heat pump, not the electrical system as a whole. Another employee reviewed the label and said that it did not comply with the SSA and that to sell the home, the applicant would need to get certified by Technical Safety BC. I infer that the employee meant to refer to the ESR, which is a regulation under the SSA.

19. While neither party provided conclusive evidence about whether the label in question satisfies the requirements of section 21 of the ESR, on balance I prefer the applicant's evidence from Technical Safety BC. I find that the label is not the label required by section 21 of the ESR and that the respondents breached section 21 of the ESR.

20. It follows that the respondents' statement in the PDS that the home had a CSA sticker was incorrect.

21. In *Nixon v. MacIver*, 2016 BCCA 8, the Court of Appeal said that information contained in a PDS may be a representation that a purchaser can rely on, but in general a seller only needs to disclose their actual, current knowledge about the property. However, *Nixon* considered a question that explicitly asked about the seller's subjective knowledge. Indeed, most of the questions in the standard PDS contain caveats like "To the best of your knowledge" or "Are you aware".

22. The question at issue in this dispute does not ask about the respondents' subjective knowledge or awareness. It simply asks whether there is a CSA label or not. I find that the language of the question distinguishes this dispute from *Nixon* and the cases that the Court of Appeal refers to in *Nixon*. In light of my findings about the strict obligation that section 21 of the ESR placed on the respondents and the fact that the respondents swore an affidavit confirming the representation under oath, I

find that the applicant was entitled to rely on the representation. I find that the respondents breached the contract by misrepresenting that the home had a CSA label and by selling the home in contravention of section 21 of the ESR.

23. The respondents say that this does not end the matter. They rely on the doctrine of *caveat emptor*, which is Latin for "let the buyer beware". In *Nixon*, the Court of Appeal confirmed that *caveat emptor* provides sellers with a complete defence to claims about defects in real property, subject to few exceptions. One of those exceptions is when the sellers breach the contract of purchase and sale. Therefore, because I have determined that the respondents breached the contract, I find that *caveat emptor* does not apply.

24. For these reasons, I find that the respondents are liable to the applicant for breaching the contract by misrepresenting in the PDS that the home had a CSA label.

25. The applicant provided an estimate from an electrician "to bring mobile home to code and to receive silver label", which I understand is a colloquial term to describe the label required by section 21 of the ESR. The estimate is for $7,822.50. I find that the cost to bring the electrical system into compliance with the ESR is a reasonable measure of the applicant's losses for breaching the contract.

26. Because the cost to bring the home into compliance with the ESR exceeds $5,000, I find that I do not need to consider the applicant's remaining claims. I find that the applicant is entitled to $5,000 in damages.

27. 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.

28. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. As discussed above, the date of the sale of the home is not in evidence. I find

that March 30, 2018, which was the latest day the sale could have completed under the contract, is the appropriate date from which to calculate pre-judgment interest.

ORDERS

29. Within 28 days of the date of this order, I order the respondents to pay the applicant a total of $5,275.09, broken down as follows:

    a. $5,000.00 for breach of contract,

    b. $100.09 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 for tribunal fees.

30. The applicant is entitled to post-judgment interest, as applicable.

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 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