



Civil Resolution Tribunal

Date Issued: July 31, 2019

File: SC-2019-000825

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Han v. Camozzi*, 2019 BCCRT 925

BETWEEN:

JEONG HAN

APPLICANT

AND:

ARTHUR JAMES CAMOZZI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an allegedly defective roof. The applicant, Jeong Han, says the respondent, Arthur James Camozzi, should pay him \$5,000.00 to fix the roof on the house that the respondent sold to him. The applicant is representing himself.

2. The respondent says he is not responsible for paying anything to the applicant as he went through with the purchase of the home knowing the roof needed to be fixed. The respondent is representing himself.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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 where permitted under section 118 of the Act: 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 whether the respondent is responsible for a guarantee on the roof of the home he sold the applicant and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. The house was put up for sale in June of 2017. The applicant and respondent entered into contract of purchase and sale dated January 8, 2018. An inspection took place before the deal was completed.
11. The applicant says the respondent guaranteed that the roof on the home was 10 years old and that it would last for another ten years. He says that these were misrepresentations. During a December 2018 storm some shingles came off the house and the roofers said the roof is not repairable and needs to be replaced. The applicant wants the respondent to pay half the replacement cost, namely the \$5,000,00 claimed.

12. Contrary to the applicant's assertion, the respondent says he did not guarantee anything about the roof because, with the help of others, he put the new roof on himself. He also says that the inspection report signed before the sale of the home indicated that the state of the roof was poor and he told the applicant at that point he was not going to fix it.
13. The principle of "buyer beware" generally applies to real estate purchases, and the onus is on the purchaser to determine the state and quality of the property. However, buyer beware does not apply when a vendor makes a fraudulent misrepresentation about the property: *Cardwell v. Perthen* 2006 BCSC 333 (CanLII).
14. In *Ban v. Keleher*, 2017 BCSC 1132 (CanLII), a BC Supreme Court judge reviewed the law of fraudulent misrepresentation in the context of the purchase and sale of a residential property. The judge set out what a claimant must prove to succeed in a claim for fraudulent misrepresentation:
 - a. the defendant made a representation of fact to the claimant,
 - b. the representation was false in fact,
 - c. the defendant knew that the representation was false when it was made, or made the false representation recklessly, not knowing if it was true or false,
 - d. the defendant intended for the claimant to act on the representation; and
 - e. the claimant was induced to enter into the contract in reliance upon the false representation and thereby suffered a detriment.
15. In addition to considering fraudulent misrepresentation, the different rules that apply about disclosure of patent defects or latent defects in a home sale need to be considered. A patent defect is one that can be discovered by conducting a reasonable inspection and making reasonable enquires about a property (see *Cardwell v. Perthen*, 2006 BCSC 333, affirmed 2007 BCCS 313). By contrast, a latent material defect is a material defect that cannot be identified though a

reasonable inspection of the property, including a defect that makes the property dangerous or potentially dangerous to the occupants or unfit to live in. A seller must disclose a latent defect if they have knowledge of it.

16. In this case, I find that the state of the roof was a patent defect as the applicant was able to become aware of it and, in fact, did become aware of it in the course of the pre-sale inspection. So, the question is whether the respondent made a non-innocent misrepresentation about the roof's age, and, whether he guaranteed the roof.
17. The respondent filled out a property disclosure statement which said that the roof was ten years old. The applicant says that his roofers say it is about 20 years old, and that evidence is discussed below. He also says that a neighbor with the same type of shingles said that they were discontinued 13 to 14 years ago. The applicant did not provide any proof that the shingles were discontinued. He provided a text message which I infer was about this issue but the text is not in English and has not been translated. Therefore, I am not able to consider it.
18. The applicant says that the respondent should provide proof that he bought the shingles ten years ago by providing receipts or proof of a bank transfer. The applicant provided a report from a roofing company that said it was their opinion that the roofing "system looks installed 20 years ago." The roofer said he could not guarantee his opinion. The roofer describes it as interlocking asphalt shingle. I note that the roofer's opinion is speculative and not determinative based on the language he used and his admission that he could not guarantee his opinion.
19. The respondent provided numerous witness statements from people who either assisted in replacing the shingles on the roof in the summer of 2007, or witnessed him doing so. I do not find it necessary that the respondent provide receipts for the purchasing of the shingles in 2007. Although the roofing company said that the "system" was installed 20 years ago, the report does not address whether the shingles had been replaced more recently. I rely more on the witness statements and find that there is sufficient evidence to establish that the respondent replaced

the shingles on the roof in the summer of 2007. It is unnecessary to make orders about the production of the respondent's bank records and purchase records from Home Depot, as requested by the applicant. Therefore, I find that the respondent did not make a false representation about the age of the roof.

20. The applicant says that the respondent also told him that he guaranteed the roof for another ten years. However, the applicant has provided no evidence to support this claim. Further, I do not accept that the respondent would say this in the face of the inspection report obtained prior to the sale of the home which stated that "all asphalt shingle roof cover for the main house roof & the southwest wall attaching roof have curling, cracking, splitting, clawing, brittleness, discoloration, rot and weather-worn, need all roof asphalt shingle replacement as soon as possible."
21. The applicant says that although the inspector told him about the state of the roof he relied on the respondent saying it was ten years old and giving him a ten-year warranty. I have found that applicant has not proved that the respondent provided a ten-year warranty. However, the respondent did say the roof was ten years old, and I have found this to be true. I do not accept that the applicant would rely on the respondent saying that the roof was ten years old to mean it did not need to be repaired and disregard his own inspector telling him how bad the roof was using words like "curling, cracking, splitting and rot" and telling him that all roof asphalt shingles had to be replaced as soon as possible.
22. Therefore, I find that the applicant has not proved on a balance of probabilities that the respondent made a misrepresentation about the state of the roof or offered the respondent a guarantee that it would last another ten years. The applicant knew the roof was in a state of bad repair and needed to be replaced which was a patent defect that was in fact discovered during the inspection. I find the respondent indicated at the time of sale that he was not willing to take any responsibility for fixing it. Given my findings, I dismiss the applicant's claim.
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. As the applicant was unsuccessful in his claim he is not entitled to have his tribunal fees reimbursed.

ORDER

24. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member