



Civil Resolution Tribunal

Date Issued: February 18, 2020

File: SC-2019-004960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chau v. Chan*, 2020 BCCRT 180

BETWEEN:

YU LUNG CHAU

APPLICANT

AND:

WANG CHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a small claims dispute over a special levy on a strata lot sale.
2. The applicant, Yu Lung Chau, was the agent for purchasers in a real estate transaction. The applicant's clients purchased the respondent Wang Chan's strata lot in June 2019. The applicant claims that the respondent was required to pay a

\$4,735.62 special levy to the strata corporation that was payable in July 2019. Even though he was the agent and not the purchasers, the applicant says that he paid the special levy himself. The applicant claims reimbursement of the \$4,735.62 special levy. The purchasers are not parties to this dispute.

3. The respondent denies that he was required to pay the special levy because it was not payable until after the strata lot sale. The respondent says that in any event, the applicant was not a party to the strata lot purchase and sale agreement and has no right to a reimbursement of the special levy. Further, the respondent says it would be inequitable for him to pay since the special levy was for a new roof and the purchasers now have that benefit.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. 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.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. To what extent if any, must the respondent reimburse the applicant \$4,735.62 for the special levy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. As mentioned, the respondent sold his strata lot to the applicant's clients. The respondent and the purchasers signed a purchase and sale agreement on April 19, 2019. The applicant was not a party to that agreement. The agreement has no provision that the respondent pay a special levy.
12. The strata lot sale was completed on June 17, 2019. The statement of adjustments completed as part of the sale did not include a special levy.
13. The applicant says the special levy at issue was approved on January 30, 2019 and it was the respondent's responsibility to pay because it was approved before the sale date. The applicant says the respondent was aware of the special levy before the contract of purchase and sale but failed to disclose that it was approved. The applicant says he suffered loss due to the respondent's alleged misrepresentation. In other words, the applicant's position is not only that the respondent was required to pay the special levy, but also that he misrepresented the sale by not disclosing it was approved.
14. The applicant says his brokerage advised him to pay the special levy or claim the loss under his error and omission insurance. The applicant says it was the least

costly option for him to pay the \$4,735.62 special levy so he chose to pay the special levy himself rather than claiming it on his insurance.

15. At law, “misrepresentation” is often described as a false statement of fact, made in the course of negotiations or in an advertisement, that has the effect of inducing a reasonable person to enter into the contract.
16. I find the special levy was not approved on January 30, 2019 as the applicant alleges. The special levy was approved by the ownership on June 5, 2019 as shown in the strata’s meeting minutes, 12 days before the strata lot sale completed. The January 30, 2019 meeting minutes only say that “Council will consider withdrawing some funds from the reserves for a portion of the costs [of roof repairs], with the remaining costs to be paid by a way of a special levy”.
17. So, what representations did the respondent make about the special levy? The respondent disclosed his strata lot’s March 18, 2019 property disclosure statement (Form B). The Form B states that there is a “possible special levy for flat roof replacement”. It states that as of March 2019 no special levy was approved. I find this is accurate. I find that the respondent accurately represented the status of the special levy in the Form B.
18. According to the parties’ addendum agreement, the purchasers removed their subjects on May 1, 2019 on receipt of the Form B, the strata corporation meeting minutes, and other documents related to the strata lot. The meeting minutes in evidence explicitly discuss a potential special levy. I find in providing the minutes the respondent disclosed the special levy status.
19. I find that the applicant has not established that the respondent misrepresented the status of the special levy.
20. So, who has the obligation to pay the special levy on a strata lot sale to the strata corporation?

21. Section 109 of the *Strata Property Act* (SPA) addresses payment of a special levy when a strata lot is sold. It says that if a special levy is approved before a strata lot is conveyed to a purchaser,
 - a. the person who is the owner of the strata lot immediately before the date the strata lot is conveyed owes the strata corporation the portion of the levy that is payable before the date the strata lot is conveyed, and
 - b. the person who is the owner of the strata lot immediately after the date the strata lot is conveyed owes the strata corporation the portion of the levy that is payable on or after the date the strata lot is conveyed.
22. It is undisputed that the special levy was due and payable on July 1, 2019 by lump sum payment. So, the full portion of the special levy was due on July 1, 2019 after the date of conveyance (June 17, 2019). Therefore, I find that the applicant's clients, the purchasers, were responsible to pay the special levy to the strata corporation under the SPA. I find that the respondent was not responsible to pay any portion of the special levy under the SPA. Again, the purchase and sale agreement also had no requirement for the respondent to pay the special levy.
23. The applicant alleges that the respondent influenced the strata corporation's decision to make the special levy payable on July 1, 2019 so it was after the conveyance date. The respondent denies this allegation. The respondent says July 1, 2019 was the payment date originally included in the special resolution. The respondent says he did suggest a date later than July 1, 2019 or payments by installments. I accept the respondent's evidence because I find it consistent with the June 5, 2019 special resolution in evidence that shows July 1, 2019 as the payment date.
24. Overall, I find that the applicant has not established that the respondent did anything wrong with respect to the special levy information on the strata lot sale.
25. The BC Court of Appeal confirmed in *Nixon v. MacIver*, 2016 BCCA 8 that the buyer beware principle applies to the sale of real property. The purchaser is required to

make reasonable enquiries about the property they wish to purchase. I find the respondent had no positive obligation to disclose the special levy approved on June 5, 2019. The conditions on the strata lot sale were already removed by the applicant's clients. I find it was sufficient that the respondent had disclosed the Form B and the strata meeting minutes. I find the applicant, on behalf of the purchaser, had sufficient information to inform himself of the possible special levy before the sale closed.

26. At any rate, the applicant was not a party to the purchase and sale agreement. I also find the respondent did not cause or contribute to the applicant's loss. If the applicant decided to pay the special levy, I find that was the applicant's choice.

27. For all these reasons, I find the respondent is not responsible to reimburse the applicant for the special levy.

28. Under section 49 of the CRTA 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, I dismiss his claim for tribunal fees. Neither party claimed dispute-related expenses and so I award none.

ORDER

29. I dismiss the applicant's claims and this dispute.

Trisha Apland, Tribunal Member