



Civil Resolution Tribunal

Date Issued: April 8, 2020

File: SC-2019-008354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McRae v. Paksi*, 2020 BCCRT 387

BETWEEN:

DANIEL MCRAE

APPLICANT

AND:

JAMIE PAKSI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a faulty furnace with an attached air conditioning unit. The applicant, Daniel McRae, purchased a home from the respondent, Jamie Paksi. The applicant says the respondent failed to disclose that the house's furnace was unsafe to operate. He seeks \$3,990 from the respondent as the replacement cost of the furnace.

2. The respondent says he was unaware that the furnace had any problems. He denies he ever misrepresented or concealed the furnace's condition. He disagrees he should pay and relies on the legal principle of "buyer beware", discussed below.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
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. 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.
8. In arguments, the applicant raised other issues about his new home. These included missing siding and mould. However, these issues are not before me and I make no findings about them.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did the respondent misrepresent the condition of the furnace and attached air conditioning unit?
 - b. Did the respondent fail to properly disclose the condition of the furnace and attached air conditioning unit?
 - c. Did the respondent breach the parties' contract of purchase and sale?
 - d. If yes to any of the above, is the applicant entitled to remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties agree that in May 2019 the applicant purchased the respondent's home. The applicant subsequently moved in and unsuccessfully tried starting the air conditioner in May or June 2019.
12. The applicant asked 2 technicians to inspect the furnace. In a September 4, 2019 estimate, the first technician wrote that the furnace was unsafe to run. He estimated some parts of the furnace and its wiring were more than 35 years old. The furnace's cooling fan was also stuck operating in "high limit" mode and would not stop running. The furnace's wiring safety switch appeared to be bypassed. The technician concluded that the furnace was not cost effective to fix and estimated \$4,729.19 to purchase a new furnace.
13. Similarly, in an October 20, 2019 letter, another technician said the furnace was old, unsafe, and had to be replaced. He observed problems including "code violations", exposed wires and cracks in the heat exchanger.

14. The respondent does not deny the furnace has issues. Instead, he relies on the principle of “buyer beware”. In BC, this principle applies to the sale of real property. This means that the buyer is required to make reasonable enquiries about the property they wish to purchase. This principle is subject to several exceptions. The most important in this dispute are a duty to disclose latent defects and fraudulent or negligent misrepresentation. See *Nixon v. MacIver*, 2016 BCCA 8 at paragraphs 32 to 33.
15. A latent defect is one which cannot be discoverable by a buyer through reasonable inspection. A seller has an obligation to disclose a latent defect if it renders the property dangerous or unfit for habitation: *Nixon* at paragraph 33.
16. The applicant says the following:
 - a. the respondent misrepresented the furnace’s condition in the PDS,
 - b. the faulty furnace was a latent defect that the respondent was obligated to disclose, and
 - c. the respondent should have ensured there was a safe working furnace when he sold it.
17. The respondent says he was unaware any issues with the furnace or air conditioner. He denies he misrepresented or concealed the condition of the furnace.
18. I now turn to each of the applicant’s bases for his claim.

Fraudulent or Negligent Misrepresentation

19. The parties agree their contract of purchase and sale included a property disclosure statement (PDS). The key representation in this dispute comes from the PDS. The respondent indicated on the PDS that he was unaware of any problems with the heating and central air conditioning system.

20. As noted above, fraudulent or negligent misrepresentation are exceptions to the principle of “buyer beware”. The test for fraudulent misrepresentation is summarized in *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16. In order to show fraudulent misrepresentation in the purchase and sale of a residential property, the applicant must show the following:
- a. the respondent made a representation of fact to the applicant,
 - b. the representation was false,
 - c. the respondent knew that the representation was false when it was made, or made the false representation recklessly,
 - d. the respondent intended for the applicant to act on the representation, and
 - e. the applicant was induced to enter into the contract in reliance upon the false representation and suffered a detriment.
21. For the following reasons, I find the respondent did not fraudulently misrepresent that he was unaware of any problems with the heating and central air conditioning system.
22. The evidence shows the respondent reasonably believed the furnace and air conditioning unit were operational. The respondent says he used the furnace leading up to the home sale without any issues. I find this was likely the case, as he provided gas bills showing usage from April up to May 17, 2019, when he terminated gas services after selling the property. The gas bills support the conclusion that the respondent thought the furnace was safe and operational.
23. The applicant also says in arguments that the furnace was running when his home inspector looked at it. This is consistent with the respondent’s submission that the furnace appeared functional when he sold his home.
24. The respondent also provided invoices dated June 10 and July 15, 2016, showing that he had the furnace serviced twice. The invoice states that a technician came to

service a heat pump and repair a leak in the air conditioning unit, which was caused by trapped dog hair. The technician fixed the issue at the second visit by installing a filter. The respondent says the technician did not report any other concerns to him. I accept this was the case, as the invoice is consistent with the respondent's submission.

25. I note the respondent also referred to conversations with a different HVAC technician that were favourable to his position. However, these technicians provided no evidence in this dispute. I reach my conclusions without relying upon those alleged conversations.
26. The applicant says the respondent likely tampered with the furnace to bypass the safety switches. In an email to the respondent, he suggested this was done to reduce the respondent's metered gas usage. The applicant also says the safety switch bypass could have occurred recently when the respondent hired contractors to install a new digital thermostat and air conditioning unit.
27. Ultimately, I find this speculative. The respondent used the furnace in April and May 2019. I find it unlikely that the respondent would knowingly risk his safety to save on gas bills. I also did not find anything noteworthy about the gas bills for those months.
28. The respondent also says the house had a previous owner 8 years ago. As one of the applicant's technicians wrote that the furnace was more than 30 years old, this leaves open the possibility that the former owner made the alterations to the furnace. The applicant did not dispute the house had another previous owner.
29. This still leaves whether the respondent negligently misrepresented that he was unaware of any problems with the heating and central air conditioning system. A misrepresentation in a PDS is capable of giving rise to a claim for damages for negligent misrepresentation: *Hanslo v. Barry*, 2011 BCSC 1624 at paragraph 109. As summarized in *Hanslo*, the applicant must establish 5 elements to prove negligent misrepresentation:

- a. there must be a duty of care,
 - b. the representation in question must be untrue, inaccurate, or misleading;
 - c. the respondent must have acted negligently in making the misrepresentation;
 - d. the applicant must have relied, in a reasonable manner, on the negligent misrepresentation; and
 - e. the reliance must have resulted in damages.
30. In real estate transactions the law presumes a special relationship between buyer and seller, and the seller owes the buyer a duty of care: *Hanslo* at paragraphs 117 to 118. The applicable standard of care is that of the reasonable person: *McCluskie v. Reynolds (1998)*, 1998 CanLII 5384 (B.C.S.C.) at paragraph 67.
31. The issue here is not whether the respondent reasonably maintained the heating and central air conditioning system. Instead, the test considers whether the respondent's representation was untrue, inaccurate or misleading and reasonably made.
32. I have already determined that the respondent reasonably believed the furnace was safely operational. This was demonstrated by the July 2016 invoices and the fact that he used it in the months leading up to the sale of the property. I therefore find the applicant has not shown the respondent negligently misrepresented his knowledge of the furnace and attached air conditioning system.
33. I dismiss this part of the applicant's claim.

Latent Defect

34. A seller must disclose latent defects they know of that make a house unfit for human habitation. A seller must also disclose a latent defect where the seller is reckless about whether or not it exists. See *Nixon* citing *McCluskie* at paragraph 36.

35. I have found the respondent reasonably believed the furnace was safe to operate. I therefore find the respondent did not fail to disclose any latent defects about the furnace.
36. Additionally, while I find the furnace's defects likely made the home dangerous or unfit for habitation, I am not persuaded that all of the furnace's defects were latent. My reasons follow.
37. A latent defect is one that cannot be discovered through reasonable inspection. The 2 technicians hired by the applicant identified multiples issues with the furnace. These included the safety switch bypass, the cracked heat exchanger, exposed wiring, and the age of the furnace itself. I infer that at least some of these issues, such as the furnace's age and exposed wiring, would be readily apparent on professional inspection.
38. The applicant says he obtained a home inspection report before buying the respondent's home, but this report is not in evidence. I therefore do not know if the inspector identified any of these issues in the report.
39. I acknowledge the respondent's July 2016 invoices did not identify any issues with the furnace. At some point the respondent also hired contractors to install the new digital thermostat and air conditioning unit. There is no indication the contractors noted any issues. This lends some support to the conclusion that at least some of the furnace's issues were latent. However, the inspection report is a key piece of evidence that the applicant did not provide in this dispute. As stated earlier, the applicant bears the burden to prove his claim.
40. I dismiss this part of the claim.

Breach of Contract

41. The applicant says he feels there should be a safe working furnace when a home is purchased. He says this is because the furnace is a key part of the home and it must be operated safely.

42. I find this is a claim for a breach of contract. However, there is no indication the respondent ever provided a warranty for the furnace. As noted above, the law in BC for the sale of land is “buyer beware”. The PDS only obligates a seller to disclose their current actual knowledge of the property to the extent set out in the PDS. That knowledge does not have to be correct, nor are the statements in the PDS warranties: *Nixon* at paragraph 48.

43. I dismiss this part of the claim.

TRIBUNAL FEES AND EXPENSES

44. 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. I see no reason in this case not to follow that general rule. The respondent is the successful party. I do not order any tribunal fees or dispute-related expenses as he did not claim any.

ORDER

45. I dismiss the applicant’s claim and this dispute.

David Jiang, Tribunal Member