



# Civil Resolution Tribunal

Date Issued: June 12, 2020

File: SC-2020-001878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marlin v. Dillon*, 2020 BCCRT 652

BETWEEN:

LINDA MARLIN and TODD SWEET

**APPLICANTS**

AND:

MAGGIE DILLON and ELLIOT DILLON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The respondents, Maggie Dillon and Elliot Dillon, agreed to purchase a house owned by the applicants, Linda Marlin and Todd Sweet.
2. The applicants say the respondents breached the sales contract twice by failing to pay the balance of the purchase price on time. Although the parties subsequently

completed the sale, the applicants say they had to pay extra costs. The applicants claim \$1,000 for overnight accommodation and extra moving fees.

3. The respondents deny they breached the sales agreement and deny responsibility for the applicants' extra costs. They ask that the claim be dismissed.
4. Ms. Marlin represents the applicants. Mr. Dillon represents the respondents.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT 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. The issue in this dispute is whether the respondents breached the sales contract and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim, such as this one, the applicants must prove their claim on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I refer only to that which is needed to explain my decision.
11. The parties agree that they entered into a contract of purchase and sale on October 29, 2019. The contract identifies December 13, 2019 as the completion date and December 18, 2019 as the possession date. It is undisputed and I find that the respondents agreed to pay the applicants the balance of the purchase price by the December 13, 2019 completion date.
12. The parties agree they extended the completion date from December 13, 2019 to December 16, 2019. I find this to be the case, based on the December 11, 2019 addendum (the first addendum), which is signed by all parties.
13. Although the applicants say they signed the first addendum on December 12, 2019, I find nothing turns on this. I find all parties signed the first addendum, and thus agreed to amending the terms of the contract, before December 13, 2019. The courts have held that fresh consideration (something of value given by each party) is not required to enforce a contractual amendment (see *Rosas v. Toca*, 2018 BCCA 191). I find the amended contract, with a December 16, 2019 completion date, was in effect on December 13, 2019.
14. The applicants say the respondents breached the contract when they failed to pay the balance of the purchase price on December 13, 2019. I disagree, as the amended contract did not require the respondents to pay the balance until December 16, 2019.

15. However, it is undisputed that the respondents then failed to pay the balance of the purchase price on December 16, 2019.
16. The parties agree that they extended the completion date a second time, to December 18, 2019. I find this to be the case, based on the signed second addendum dated December 16, 2019.
17. The applicants say the respondents did not request a second extension of the completion date until the evening of December 16, 2019. The respondents do not dispute this statement and so I accept it as true. I also find support in the time stamps on the second addendum, which show that the applicants signed the document after 9:30 p.m.
18. The applicants say the respondents had agreed to complete the transaction by noon on December 16, 2019, based on what the respondents' notary told the applicants' notary. The CRT has flexibility to permit admission of hearsay evidence. However, here I do not place any weight on the hearsay evidence about what the respondents' notary said, particularly when it is not part of the parties' written contract or first addendum. Further, even if the notaries reached an agreement between themselves, this does not bind the respondents. I find the respondents were not required to pay the balance of the purchase price by noon on December 16, 2019.
19. The contract, and the addendums, are silent as to what time of day the balance of the purchase price must be paid on the completion date. I find the respondents were not required to pay the balance of the purchase price by any specific time on December 16, 2019. I further find the respondents had not yet breached the contract on December 16, 2019 when the parties that evening agreed to further extend the completion date to December 18, 2019. As the respondents did not breach the contract on December 16, 2019, they are not responsible for the applicants' extra expenses, or damages, arising from the extension of the completion date.

20. Even if the respondents had breached the contract on December 16, 2019, I find the applicants waived any such breach by agreeing to a new completion date. Where the parties treat the contract as continuing, without reserving the right to sue for damages, the breaching party will not be liable for any damages flowing from their failure to complete (see *King v. Odar*, 2008 BCSC 326). The applicants did not reserve their right to sue for damages in the second addendum. As such, even if the respondents did breach the contract on December 16, 2019, I find the applicants waived their rights to damages, by unconditionally agreeing to a new completion date.
21. I find the respondents are not responsible for the applicants' extra expenses associated with extending the completion date. I dismiss the applicants' claims and this dispute.
22. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicants were unsuccessful in their claims, I dismiss their claim for CRT fees and dispute-related expenses.

## **ORDER**

23. I dismiss the applicants' claims and this dispute.

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Sherelle Goodwin, Tribunal Member