Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Taschuk v. Zieske*, 2020 BCCRT 767

B E T W E E N :

ANGELA TASCHUK and CRAIG TASCHUK

APPLICANTS

A N D :

AARON ZIESKE and MEIGHAN ZIESKE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about a contract of purchase and sale (contract) for a house (property). The applicants, Angela Taschuk and Craig Taschuk, were the buyers and the respondents, Aaron Zieske and Meighan Zieske, were the sellers. The Taschuks say the Zieskes removed items included in the contract, damaged items,

left garbage and unwanted items behind, and the property was unclean. The Taschuks claim a total of $5,000 to replace items and clean.

2. The Zieskes deny liability. They say they left the property in the same condition that existed when the Taschuks viewed the property, except for a missing window covering and a work bench. The Zieskes say these items were replaced.

3. The Taschuks are self-represented. Ms. Zieske represented herself and Mr. Zieske.

JURISDICTION AND PROCEDURE

4. 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.

5. The CRT may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario about what likely happened. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or CRT proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 the CRT's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.

7. 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 CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether the Zieskes breached the contract by failing to deliver included items, failing to remove unwanted items and leaving the property unclean. If so, how much must the Zieskes pay the Taschuks?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the Taschuks must prove their case on the 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. It is undisputed that the Taschuks viewed the property on May 11, 2018 and the parties signed the contact the next day.

11. The contract included the following terms:

> Section 3: The Zieskes will clean the property and remove garbage and items not included in the contract.
>
> Section 3: All included appliances will be in proper working condition at the time of possession.
>
> Section 5: The date of possession is July 14, 2018.

> Section 7: The contract includes the buildings, fixtures, and all attachments viewed by the buyers at the date of inspection, including an Electrolux refrigerator, Firestone refrigerator, all window coverings, 2 benches in the garage, and a hot tub.
>
> Section 8: The property and all included items will be in substantially the same condition as when viewed by the buyers on May 11, 2018.

Hot tub

12. The Taschuks say the contract included a hot tub. It is undisputed that there was no hot tub at the property when the Taschuks viewed the property on May 11, 2018 or on the date of possession.

13. Further, it is undisputed that the Taschuks knew that there was no hot tub at the property when they signed the contract. The Taschuks say they thought that the Zieskes may have been planning to install a hot tub before the possession date because the property's Multiple Listings Service (MLS) listing mentioned a hot tub.

14. It is undisputed that the Zieskes' MLS listing said that there was a hot tub at the property. The Zieskes say this reference was a mistake. They say the hot tub reference was accidently transferred from a different MLS listing.

15. The Taschuks argue that the Zieskes breached the contract by failing to provide a hot tub. For the reasons that follow, I disagree. I find the Zieskes did not promise a hot tub.

16. To interpret a contract, one should consider the plain and ordinary meaning of the words in a contract. See, *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489 (CanLII).

17. In this matter, section 7 of contract says that the Zieskes will deliver items, including a hot tub, as viewed by the Taschuks at the date of inspection. The plain reading of the contract says the Zieskes will deliver items that existed when the Taschuks

viewed the property. The contract does not simply say that the Zieskes will deliver a hot tub as the Taschuks argue. Rather, the contract says that the Zieskes will deliver a hot tub as viewed by the Taschuks. Since it is undisputed that there was no hot tub viewed by the Taschuks, I find that there was no hot tub included in the contract. So, I find that the Zieskes did not breach the contract by not delivering a hot tub.

18. I have also considered whether the Zieskes misrepresented the inclusion of a hot tub. A misrepresentation is a false statement made to induce a person to enter a contract. To establish a claim of misrepresentation, one must prove that they relied on the false statement. See *Ban v Keleher*, 2017 BCSC 1132 (CanLII).

19. In this matter, I am not satisfied that the Taschuks relied on the MLS listing reference to a hot tub when they purchased the property. Although the MLS listing does mention a hot tub, it also says that the listing's representations are not guaranteed. Further, it is undisputed the Taschuks knew there was no hot tub on the property when they viewed the property. Also, the Zieskes' property disclosure documents describe the hot tub condition as "not applicable." However, even though the Taschuks were aware that there was no hot tub, it is undisputed that the Taschuks did not ask the Zieskes about the hot tub's status at any time before completion. Rather, the Taschuks say that they thought the Zieskes may be installing the hot tub after the viewing.

20. I find the Taschuks' conduct does not indicate that they relied on the promise of a hot tub. Why would they expect to receive a property with a hot tub when they knew that there is no hot tub present? Why did they not ask about the status of hot tub? Why would they expect the seller to install a hot tub after the viewing? Why did they remove the contract subject clauses and complete the purchase when the disclosure documents did not disclose a hot tub? I am not satisfied that the MLS reference to a hot tub induced the Taschuks to enter the contract. Rather, I find it more likely that the Taschuks were at all times aware that the contract did not include a hot tub.

21. For the above reasons. I dismiss the Taschuks' claim relating to the hot tub.

Window coverings

22. The Taschuks say the Zieskes removed window coverings from the living room and dining room. The contract says that the Zieskes' must leave all window coverings for the Taschuks. The Zieskes' listing video shows window coverings in the living room and dining room when they marketed the property.

23. The parties agree that, after the Taschuks complained about missing items, the Zieskes' returned the living room window coverings. However, the Taschuks say the Zieskes did not return the dining room coverings. The Zieskes say that they never removed the dining room window coverings.

24. The Taschuks did not provide evidence supporting their submissions that the dining room window coverings were missing. I may make an adverse inference against a party where, without sufficient explanation, they fail to produce expected supporting evidence. See, *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd*., 2018 BCSC 2146. If the dining room window coverings were removed, I would expect the Taschuks to provide photographs showing that. Based on their failure to provide this evidence, I make an adverse inference against the Taschuks and I find that the dining room window coverings were not removed.

25. So, I dismiss the Taschuks' claim for window coverings.

Work bench

26. It is undisputed that the Zieskes removed a work bench that was included in the contract. The Zieskes say this was a miscommunication between real estate agents.

27. On July 20, 2018, the Zieskes' real estate agent, AH, sent an email saying he would resolve this issue by replacing the work bench. The Taschuks say they did not receive a replacement.

28. The Zieskes did not provide a statement from AH confirming that he sent the replacement work bench. If AH had already replaced the work bench, I would expect the Zieskes to provide a statement verifying this. Further, I would expect that it would not be difficult for the Zieskes to get a statement from their own real estate agent. In the absence of this expected evidence, or an explanation for its absence, I draw an adverse inference against the Zieskes. Based on this adverse inference, I find that the Zieskes did not replace the work bench they removed from the property.

29. The Taschuks provided a receipt dated September 21, 2018 for the purchase of a replacement work bench. After removing unrelated purchases from the receipt, I find that the Taschuks paid $447.99, including tax, to replace the work bench. Since the Zieskes did not provide any evidence contesting the reasonableness of the Taschuks' replacement, I find the Zieskes are responsible for this amount.

Refrigerator replacement

30. The Taschuks say the Firestone refrigerator included in the contract was not working. The Firestone refrigerator was specifically listed as an included item in section 7 of the contract. The Taschuks argue the Zieskes are responsible for the cost of replacing the refrigerator since this item was included in the contract and section 3 of the contract says that all included appliances would be in working order at the time of possession. For the reasons that follow, I disagree.

31. The Zieskes say that the Firestone refrigerator in the basement was never working as a refrigerator. They say it was converted to a gun safe before the Taschuks viewed the property. Since the Taschuks did not dispute this, I find that the Firestone refrigerator was not functioning as a refrigerator when the Taschuks viewed the property on May 11, 2018.

32. Section 8 of the contract says that the appliances would be as viewed by the Taschuks. So, I find that Taschuks were entitled to receive a non-working refrigerator converted to a gun safe, which is what the Zieskes delivered. Further, the Taschuks did not provide any evidence showing that the Firestone refrigerator was not in working condition as a gun safe. So, I dismiss the claim relating to the Firestone refrigerator.

Icemaker

33. The Taschuks say the icemaker in the Electrolux refrigerator, included in the contract, did not work. The Zieskes do not dispute this. The Zieskes say that the icemaker was never working.

34. Section 3 of the contract says that all included appliances will be in proper working condition at the time of possession. Since it is undisputed that the icemaker was not working, I find that the Zieskes breached section 3 of the contract.

35. However, the Taschuks did not prove the monetary value to repair the icemaker. In the absence of evidence, on a judgment basis I find that a nominal award of $100 damages is appropriate. I find the Zieskes owe the Taschuks $100 to repair the icemaker.

Garbage removal

36. The Taschuks say the Zieskes left garbage and unwanted items at the property. The Taschuks provided photographs showing cardboard, building supplies, old tools and equipment, old chains, and a stack of old wood left at the property. The Zieskes say they left these supplies as a courtesy for repairs and maintenance.

37. Section 3 of the contract says the Zieskes are responsible for removing items not included in the purchase. I find that the materials left at the property were not included under section 7 of the contract. So, I find that the Zieskes breached the contract by failing to remove them.

38. However, the Taschuks did not prove the monetary value to remove the materials. In the absence of evidence of the cost of removal, on a judgment basis I find that a nominal award of $100 damages is appropriate. I find the Zieskes owe the Taschuks $100 for garbage removal.

Cleaning

39. The Taschuks say the Zieskes left the property unclean. Section 3 of the contract says the Zieskes are responsible for leaving the property clean.

40. The Taschuks provided photographs showing a small amount of swept dirt and some blemishes in a cupboard. The Taschuks also provided a photograph of the inside of an oven that did not appear to be significantly unclean.

41. The Zieskes say that they had the property professionally cleaned and they left the property in immaculate condition. The Zieskes provided a cleaning contractor's email saying they spent 5.5 hours cleaning the property on July 13, 2018.

42. I also note that the Taschuks' real estate agent, JK, sent an email on July 14, 2018 saying the property was left in a clean state.

43. Based on the evidence provided, I am not satisfied that the Zieskes left the property unclean. So, I dismiss this claim.

44. The *Court Order Interest Act* applies to the CRT. The Taschuks are entitled to pre-judgement interest on the damages of $647.99 from July 14, 2018, the date of possession, to the date of this decision. This equals $23.35.

45. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the Taschuks were partially successful, I find they are entitled to reimbursement of one-half of the CRT fees, being $87.50.

ORDERS

46. Within 30 days of the date of this order, I order the Zieskes to pay the Taschuks a total of $758.34, broken down as follows:

    a. $647.99 in damages, for the replacement of the work bench and garbage removal costs,

    b. $23.35 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 in CRT fees.

47. The Taschuks are entitled to post-judgment interest, as applicable.

48. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

49. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member