



Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2019-010993

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thera v. Shannon Veitch (dba Century-21 Veitch Realty)*, 2020 BCCRT 769

BETWEEN:

DALE THERA

APPLICANT

AND:

SHANNON VEITCH (Doing Business As CENTURY-21 VEITCH REALTY) and PETER MARTIN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the appliances from a sale of a manufactured home. The applicant, Dale Thera, purchased the home in July 2019. Peter Martin acted as realtor for Mr. Thera in the purchase. Shannon Veitch (doing business as Century-

21 Veitch Realty) acted as realtor for the sellers. Both realtors are respondents. The sellers are not parties to this dispute.

2. Mr. Thera says the sellers agreed to replace the appliances in the manufactured home with similar appliances. However, he says the microwave was not replaced, and the replacement stove and refrigerator are inferior. He seeks compensation of \$4,000. Mr. Thera says Mr. Martin is responsible because he inspected and guaranteed the quality of the appliances. Mr. Thera says Ms. Veitch is liable because she employs Mr. Martin or owns the company he works for.
3. The respondents disagree with Mr. Thera's claims. Mr. Martin says he only advised that the appliances worked and were well looked after, and both these statements were true. Ms. Veitch denies employing Mr. Martin or owning his employer.
4. The parties are self-represented.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. 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 proceedings 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 speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessary.

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.
9. CRT staff advised that Mr. Martin and Ms. Veitch did not have the opportunity to view Mr. Thera's comments in a statement of facts. I asked the CRT to provide the comments to Mr. Martin and Ms. Veitch. They each provided comments and Mr. Thera provided rebuttal comments.

ISSUES

10. This dispute has the following issues:
 - a. Did Mr. Martin guarantee or breach an obligation to advise about the value or quality of Mr. Thera's appliances, and if so, what is the appropriate remedy?
 - b. Is Ms. Veitch vicariously liable for any wrongdoing by Mr. Thera, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Thera bears the burden of proof on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. This dispute is largely about whether Mr. Martin verbally guaranteed the value or quality of appliances included in the sale of a manufactured home. For the following reasons, I find that he did not and I therefore dismiss Mr. Thera's claims against him. I also dismiss all claims against Ms. Veitch. I find those claims are based on the legal doctrine of vicarious liability and I am not persuaded Mr. Martin committed any wrongdoing. There is also no evidence that Ms. Veitch has any employment relationship with Mr. Martin. My reasons follow.
13. I will start with the background facts. Mr. Thera entered into a July 22, 2019 contract of purchase and sale to purchase a manufactured home from third-party sellers. Mr. Martin acted as Mr. Thera's realtor, and Ms. Veitch acted as realtor for the sellers.
14. Mr. Thera and the sellers also signed a contract addendum. It states that they agreed that the fridge, stove, and microwave currently in the home would not be included in the sale. Instead, the sellers would replace those specific appliances on or before the closing date of July 30, 2019. The replacement appliances would be "similar units" but "white in colour".
15. Mr. Thera says he agreed to the contract addendum terms to replace the appliances based on Mr. Martin's assurances about the replacement appliances. This included a guarantee. Mr. Martin disputes this. I discuss the alleged guarantee below.
16. The sellers also agreed in the contract that Mr. Thera could move into the home before the closing date. Mr. Thera moved in on July 24, 2019. By then, the sellers had removed the pre-existing appliances. On Mr. Thera's move-in date, a handyman delivered the seller's replacement fridge and stove to Mr. Thera.

17. The evidence before me indicates the fridge and stove work as intended. A July 25, 2019 invoice shows a gas fitter connected the replacement stove for natural gas service. Ms. Veitch provided a photo of these appliances. They are white and show no visible defects.
18. The sellers ultimately did not provide a replacement microwave. By removing the microwave, they also revealed or created a hole in the wall. Ms. Veitch sent a handyman to patch the hole. The handyman also offered his own microwave at the time, but Mr. Thera refused because he found it to be too old. The damage left from the microwave's removal is not part of this claim.
19. Mr. Thera did not express any immediate disappointment about the fridge and stove to the respondents. He says this was because he could not reach Mr. Martin. Mr. Thera says he complained about the fridge and stove in an August 12, 2019 letter to both respondents, but I disagree. In the letter he listed several issues with the home. He acknowledged receiving the replacement fridge and stove but did not complain about their quality. He did mention the missing microwave and the hole in the wall. The respondents says they first heard about Mr. Thera's dissatisfaction with the fridge and stove through CRT documents and I find this supported by the parties' submissions and evidence. I find this supports my conclusion that the replacement fridge and stove worked.

Issue #1. Did Mr. Martin guarantee or breach an obligation to advise about the value or quality of Mr. Thera's appliances, and if so, what is the appropriate remedy?

20. Mr. Thera says he relied on Mr. Martin's advice and guarantee to accept the sellers' replacement appliances rather than the pre-existing appliances. Mr. Thera submits Mr. Martin said, "As your realtor I personally viewed the appliances at the sellers' house, and I can guarantee they are of equal value. Therefore, there is no reason for me to take you to their house to view the appliances". I have edited this quote for grammar only.

21. Mr. Martin disagrees. He acknowledges viewing the replacement appliances. However, he says he only told Mr. Thera that the appliances worked and were well looked after.
22. In *East Ocean Seafood Restaurant (1991) Ltd. v. Bonanza Building Maintenance Inc.*, 2020 BCSC 874 paragraph 61, the court discussed the factors to consider in examining the credibility of a witness. These factors include the way in which the evidence harmonizes with accepted independent evidence and whether the testimony changes or seems unlikely.
23. Mr. Thera substantially changed his version of events. In his application for dispute resolution, he wrote that the sellers agreed he would keep the pre-existing appliances. He also alleges they were stolen, and the respondents played a role in facilitating the theft. I find these allegations are clearly refuted by the terms of the contract of purchase and sale and the addendum.
24. In subsequent submissions, Mr. Thera now says Mr. Martin provided specific assurances and a guarantee that form an entirely different basis for his claim. I find this negatively affects Mr. Thera credibility and I prefer Mr. Martin's submissions where they conflict with Mr. Thera's.
25. I find Mr. Martin's version of events is also in harmony with the undisputed facts. Mr. Martin acknowledges that he viewed the replacement appliances. From that, I find he would have had the opportunity to see if they worked and were in good condition. I find that Mr. Martin limited his comments on the appliances to this information, which the evidence shows was true at the time. There is no indication Mr. Martin knew whether the 2 sets of appliances were of equal value or quality. I therefore find it unlikely that he would comment or provide a guarantee on this issue.
26. The alleged guarantee is also inconsistent with the terms of the contract of purchase and sale. Mr. Martin did not represent the sellers. He had no stated responsibility or ability to deliver the replacement appliances as they were not his.

There is nothing to suggest that Mr. Martin would provide a guarantee about the appliances in such circumstances.

27. Mr. Thera also says that Mr. Martin had a responsibility to advise him if the 2 sets of appliances were of unequal value. Mr. Thera did not identify this as a breach of any contract term with Mr. Martin. I therefore find this to be a claim in professional negligence. To prove negligence, Mr. Thera must show that Mr. Martin owed him a duty of care, Mr. Martin breached the standard of care, Mr. Thera sustained damage, and the damage was caused by the Mr. Martin's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33.
28. Generally, in claims of professional negligence, an applicant must prove a breach of the standard of care through expert opinion evidence. I find that expert opinion evidence is necessary here, because the subject matter (a realtor's professional responsibilities) is outside the knowledge and everyday experience of the ordinary person: *Bergen v. Guliker*, 2015 BCCA 283. As Mr. Thera did not provide such evidence, I am not satisfied that Mr. Martin was negligent. If I am wrong and expert evidence is unnecessary, I would still find against Mr. Thera as Mr. Thera did not provide any other evidence of the applicable standard of care.
29. Mr. Thera also says Mr. Martin was aware that the sellers had damaged the cupboards and walls and failed to warn him. I find there is no merit to this claim as it is unsupported by any evidence. Mr. Thera also did not claim any remedy for the cupboards, which Mr. Martin says the handyman fixed.
30. Finally, even if I am wrong and Mr. Martin should be liable, I find that Mr. Thera has not proven that he suffered any loss. Mr. Thera provided a small, low-resolution picture of the replaced microwave, stove and fridge. He provided ads for a new fridge and stove that he says are comparable. I am not satisfied this is the case. Mr. Thera did not provide any basic information about the replaced fridge and stove, such as the make and model, original price, or features. There is no evidence regarding the value of the removed microwave. Mr. Thera also did not say what his

current fridge and stove are worth, which he used for several months without complaint.

31. In summary, I have found that Mr. Martin did not guarantee the financial value of the replacement appliances. I find the evidence insufficient to show that Mr. Martin was professionally negligent. I dismiss all claims against Mr. Martin.

Issue #2. Is Ms. Veitch vicariously liable for any wrongdoing by Mr. Thera, and if so, what is the appropriate remedy?

32. As stated above, Mr. Thera initially claimed that Ms. Veitch helped the sellers steal the pre-existing appliances. Mr. Thera now says that Ms. Veitch is either Mr. Martin's employer or owns his employer. As such, Mr. Thera says Ms. Veitch should be liable for any of Mr. Martin's misdeeds. Ms. Veitch denies any employment relationship or owning a company that employs Mr. Martin.

33. In law, an employer is generally liable for the actions of employees committed in the course of their employment. This is known in law as vicarious liability. Although Mr. Thera did not specifically mention vicarious liability, I find his submission is that Ms. Veitch is vicariously liable for Mr. Martin's wrongdoing.

34. I find this claim has no merit. I have already found that Mr. Martin did not provide any guarantee and did not breach any of his obligations to Mr. Thera. There is also no evidence that Mr. Martin works for Ms. Veitch or any company she owns. I dismiss all claims against Ms. Veitch.

35. Under section 49 of the CRTA and CRT rules, the CRT 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. I find the respondents are the successful parties. As they did not pay any tribunal fees or claim for dispute-related expenses, I do not award them for any party.

ORDERS

36. I dismiss all of Mr. Thera's claims against the respondents, and this dispute.

David Jiang, Tribunal Member