Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buttler v. 1031007 B.C. Ltd.*, 2020 BCCRT 873

B E T W E E N :

DALE BUTTLER

APPLICANT

A N D :

1031007 B.C. LTD. c/o FH&P Lawyers LLP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This dispute is about a contract for the sale of a strata lot. The applicant, Dale Buttler, says that the respondents, 1031007 B.C. Ltd. c/o FH&P LLP (the

developer), did not complete the strata lot's sale. Mr. Buttler asks for reimbursement of $2,842.43 he spent on blinds and appliance upgrades. He also requests $771.90 as compensation for storage fees. Mr. Buttler represents himself.

2. The developer agrees that the sale did not complete but says that Mr. Buttler chose to buy the blinds and he can get take them because the strata lot did not sell and is unoccupied. The developer also says that Mr. Buttler chose to upgrade the dishwasher and the microwave above the list price that would have been included in the cost of the strata lot. The developer says that Mr. Buttler can also take these from the strata lot as well, but he has to pay the base price of the appliances plus taxes, or $898.24. The developer says that it is not responsible for Mr. Buttler putting items in storage. It also says that these claims are out of time and barred under the *Limitation Act* (*LA*). The developer is represented by a business contact.

JURISDICTION AND PROCEDURE

3. 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.

4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. 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.

6. 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.

7. The developer raised the issue of whether the time for filing the claim has elapsed under the *Limitation Act* (LA). In British Columbia, the current LA came into effect on June 1, 2013. Under the statute a debt claim must be started within 2 years of the day it was discovered, which is the first day a person had knowledge of the matters in the claim or reasonably ought to have known about the claim.

8. Mr. Buttler says that he entered into the contract to buy the strata lot in March 2016. Issues arose and the building was not finished. The timeframe for closing was extended several times. There is a March 14, 2018 letter on file from FH&P, the developer's lawyers, stating that completion could not occur and therefore, according to the agreement, the contract was terminated. Neither party provided the contract. Mr. Buttler says that he then extended the contract again but in the spring of 2019 the building still was not complete, so he took his deposit back. The developer does not dispute this. The developer also did not provide submissions detailing why it thought the claim was out of time.

9. Based on the evidence, I find that before March 14, 2018 the timeframe for completion was extended but the expectation was still that the sale was going to complete. It is only as of March 14, 2018 that the developer's lawyers informed Mr. Buttler that the contract was going to be terminated. Therefore, I find that the earliest Mr. Buttler reasonably ought to have known about the claim was as of

March 14, 2018. Therefore, the claim is not out of time under the LA because Mr. Buttler submitted his claim on February 4, 2020, which is within the two-year limitation period.

ISSUE

10. The issue in this dispute is whether the developer is responsible for the expenses Mr. Buttler incurred before the strata lot sale collapsed.

EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, the applicant Mr. Buttler must prove his claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

12. It is undisputed that that the parties entered into a contract for the strata lot's sale in March 2016. Mr. Buttler provided invoices showing that he bought blinds for the strata lot and paid to upgrade the microwave and the dishwasher in the summer of 2017, before the sale's completion. Mr. Buttler also provided invoices showing that he rented a storage unit at around the same time to hold his personal property until he could move into the strata lot. Mr. Buttler says that the developer is responsible for reimbursing him for these costs because it failed to complete the contract.

13. Mr. Buttler says that the developer continuously pushed back the completion date, so Mr. Buttler got tired of waiting and purchased another property. Mr. Buttler also says that when he took his deposit back in April 2019, the developer promised to reimburse him for the blinds and appliance upgrades once the unit sold. The developer denies this. Mr. Buttler provided an email he says he sent to the developer's representative which proves that the developer made this promise.

14. I find that the email does not establish this. The email stated that Mr. Buttler had a conversation with the developer's representative the day previous but does not set out what was said. The email also indicated that Mr. Buttler provided a list of what was installed in his unit including the appliances and the blinds. Mr. Buttler did not provide the developer's response. I find that Mr. Buttler has not proved that the developer promised to reimburse him for these costs when it sold the unit to a future buyer.

15. The developer says that Mr. Buttler chose to buy the blinds and pay for the upgrades and it is not responsible for these costs. It says that these items are not

part of the disclosure statement or the contractual agreement. As noted above, the developer also says that Mr. Buttler is free to take the blinds and the appliances as long as he pays the base cost of the appliances. The developer also says it was not involved in Mr. Buttler's decision to put items in storage.

16. In his reply submissions, Mr. Buttler says that the developer did not complete the project and therefore it is responsible for Mr. Buttler's losses. He says he had faith that the developer would hold up their side of the contract, but it did not do so.

17. The problem with Mr. Buttler's argument is that he has not provided the contract. The developer says that the compensation Mr. Buttler is requesting is not set out in the agreement. Mr. Buttler has not proved that it was. Also, the only evidence aside from Mr. Buttler's statement about the contract is set out in FH&P's March 14, 2018 letter. FH&P's letter indicates that the contract of purchase and sale addressed what would happen if the sale did not complete during the timeframe. The letter stated that because the contract did not complete, and there had not been a subdivision, the contract was terminated. FH&P indicated that it would return Mr. Buttler's deposit. There is no suggestion that Mr. Buttler is entitled to reimbursement of things he might have bought for the strata lot or any appliance upgrades Mr. Buttler requested.

18. Based on the evidence, I find that Mr. Buttler has not proved that the contract indicated that Mr. Buttler was entitled to anything other than his deposit back if the sale did not complete. Similarly, there is no evidence that the developer promised in the contract, or in any other manner, that it would be liable for Mr. Buttler's storage costs if the contract did not complete. In fact, because the contract considered what would happen if the contract did not complete, I find that Mr. Buttler should have known that this was at least a possibility. This means that Mr. Buttler should have been aware that there was a chance he would lose his money for these additional expenses if the sale did not go through.

19. Further, Mr. Buttler says that he then agreed to another extension. It is unclear if this led to a whole new contract or an extension of the previous one. There is no

new contract in evidence and nothing to suggest that Mr. Buttler was promised to be reimbursed for his blinds, the appliance upgrades, or his storage costs. Based on the evidence, I find that Mr. Buttler has not proved that he is entitled to reimbursement of these costs under the contract.

20. Although it was not specifically argued, I have also considered whether the developer was unjustly enriched by the blinds and the upgraded appliances left in the still unsold strata lot. The legal test for unjust enrichment is that the applicant must show: a) that the respondent was enriched, b) that the applicant suffered a corresponding deprivation or loss, and c) there is no valid basis for the enrichment (see *Kosaka v. Chan,* 2009 BCCA 467).

21. I again note that the developer says that it does not want the blinds or the appliances and that Mr. Buttler is free to take them so long as he reimburses the developer for the base amount the appliances are worth. The developer says that most buyers are satisfied with the regular appliances and therefore it does not want to keep the appliances.

22. Based on the evidence, I find that the developer was not unjustly enriched by the blinds and appliances Mr. Buttler left in the strata lot. Mr. Buttler has not proved that a future party buying the strata lot will want the blinds or the appliances that Mr. Buttler picked out or that the developer will get more money on the strata lot's sale than it would if it did not have the blinds or these specific appliances. Therefore, I find that the evidence does not show that the developer was unjustly enriched. It is up to Mr. Buttler to take the blinds and the upgraded appliances, after paying for the appliance's base price, if he wishes to do so.

23. 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. Because Mr. Buttler was unsuccessful, he is not entitled to reimbursement of his CRT fees. There was no claim for expenses.

ORDER

24. I dismiss Mr. Buttler's claims and this dispute.

Kathleen Mell, Tribunal Member