



Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-002351

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rodriguez v. Jhajj*, 2020 BCCRT 1025

B E T W E E N :

ASNORALDO MOSQUERA RODRIGUEZ and LORENA CASTILLO

APPLICANTS

A N D :

JINDER JHAJJ and Syed Azhar Mahmood

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This claim is about allegedly leaking bathroom plumbing. The applicants, Asnorald Mosquera Rodriguez and Lorena Castillo, purchased a strata lot from the respondent, Syed Azhar Mahmood. The respondent, Jinder Jhajj, acted as Mr. Mahmood's real estate agent in the transaction. Mr. Rodriguez and Ms. Castillo claim that Mr. Mahmood and Ms. Jhajj are responsible for the costs of repairing

leaking plumbing that was allegedly not disclosed during the transaction. Mr. Rodriguez and Ms. Castillo claim \$4,708.20 for repairs.

2. Ms. Jhajj and Mr. Mahmood deny the claim. Ms. Jhajj says that she was not aware of any plumbing problems. Mr. Mahmood says that there were no leaks when he sold the property.
3. Mr. Rodriguez, Ms. Castillo and Ms. Jhajj are self-represented. Mr. Mahmood is represented by a family member.

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 has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Jhajj fraudulently misrepresent the condition of the property, and if so, what are the appropriate damages?
 - b. Did Mr. Mahmood breach the contract by providing leaking plumbing, and if so, what are the appropriate damages?

EVIDENCE AND ANALYSIS

9. In this civil claim, Mr. Rodriguez and Ms. Castillo bear the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but only refer to them as I find necessary to provide context for my decision.
10. It is undisputed that on August 2, 2018, Mr. Rodriguez, Ms. Castillo, and Mr. Mahmood entered a contract of purchase and sale (contract) of Mr. Mahmood's strata lot (property). As noted, Mr. Jhajj acted as Mr. Mahmood's real estate agent.
11. The contract had the following relevant terms:
 - a. The contract had a completion date of September 26, 2018 and a possession date of September 29, 2018.
 - b. The contract stated that the property and all included items were at the Mr. Rodriguez's and Ms. Castillo's risk after the completion date.

- c. The contract stated that if Mr. Rodriguez and Ms. Castillo approve the property disclosure statement, then that document becomes part of the contract.
12. Mr. Mahmood submitted an August 6, 2018 property disclosure statement (PDS) that says he was not aware of leakage or plumbing problems.
13. Since Mr. Rodriguez and Ms. Castillo undisputedly signed and approved the PDS, according to the contract's terms, I find that the PDS representations became part of the contract.
14. It is undisputed that the parties completed the sale of the property and Mr. Rodriguez and Ms. Castillo took possession of the strata lot.
15. Mr. Rodriguez and Ms. Castillo say there were water leaks in both bathrooms when they received possession of the strata lot.

Claim against Ms. Jhajj

16. It is undisputed that Ms. Jhajj did not act as a real estate agent for Mr. Rodriguez and Ms. Castillo in the strata lot sale. Further, there is no evidence before me that Mr. Rodriguez and Ms. Castillo reasonably relied upon Ms. Jhajj to act for them.
17. I find that Ms. Jhajj does not owe a duty of care to Mr. Rodriguez and Ms. Castillo as the purchasers (see *Gordon v. Krieg*, 2013 BCSC 842). Ms. Jhajj's duty was owed to her client, Mr. Mahmood. In *Krieg*, the court found that the listing realtor made no representations to the plaintiff purchaser independent of or in addition to the seller's representations. So, in *Krieg*, the court found the plaintiff had no claim against the realtor for having made negligent misrepresentations to her.
18. I find that the law does not require vendors or listing agents, such as Ms. Jhajj, to verify the seller's own knowledge about their property (see *Krieg* and *Nixon v. MacIver*, 2014 BCSC 533). As set out in *Nixon*, the law of '*caveat emptor*' or buyer beware applies in BC. In general, purchasers bear the risk of defects in the quality of a property.

19. So, in order to succeed in their claims against Ms. Jhajj, I find that Mr. Rodriguez and Ms. Castillo must prove that Ms. Jhajj fraudulently misrepresented the property's condition. For the following reasons, I find that they have failed to do so.
20. In the case before me, the only possible separate representation by Ms. Jhajj was the multiple listing service (MLS) listing. However, the MLS listing does not express any representations about the plumbing's condition.
21. I have also considered Mr. Mahmood's PDS which says that he is not aware of any leakage or plumbing problems. However, there is no evidence before me that shows Ms. Jhajj was aware that this statement was not accurate. Also, I note that Mr. Rodriguez and Ms. Castillo signed the PDS directly above a clause that says they acknowledged that Ms. Jhajj does not warrant or guarantee the information provided about the strata lot.
22. I find that Mr. Rodriguez and Ms. Castillo have failed to prove that Ms. Jhajj was aware of any property defects or that she misrepresented the property's condition. So, I dismiss Mr. Rodriguez's and Ms. Castillo's claims against Ms. Jhajj.
23. I now turn to Mr. Rodriguez's and Ms. Castillo's claims against Mr. Mahmood.

Claims against Mr. Mahmood

24. Mr. Rodriguez and Ms. Castillo argue that Mr. Mahmood must reimburse the plumbing repair costs because he agreed to pay for the repairs. They also argue that he breached the contract. I will address these claims separately.
25. Mr. Rodriguez and Ms. Castillo say they noticed that the plumbing was leaking on September 28, 2018, the day after they received possession. I note that the contract says that the date of possession was actually September 29, 2018 rather than September 27. Mr. Rodriguez and Ms. Castillo do not explain this discrepancy. However, nothing in my decision turns on this difference of dates.
26. Mr. Rodriguez and Ms. Castillo say they notified their real estate agent immediately of the leaks and their real estate agent contacted Ms. Jhajj. Mr. Rodriguez and Ms.

Castillo say their real estate agent told them that Ms. Jhajj said that Mr. Mahmood agreed to pay for the repairs.

27. Both Ms. Jhajj and Mr. Mahmood deny saying this. Mr. Rodriguez and Ms. Castillo have not provided a statement from their real estate agent in support of these submissions. In the absence of evidence directly from their real estate agent, I find Mr. Rodriguez's and Ms. Castillo's summary of their agent's conversations insufficiently reliable and so I give that summary no weight in my decision.
28. Also, Mr. Rodriguez and Ms. Castillo did not provide any written evidence corroborating their claim that Mr. Mahmood promised to pay for the bathroom repairs. In the absence of supporting evidence, I find that Mr. Rodriguez and Ms. Castillo have failed to prove that Mr. Mahmood promised to pay for the repairs or that Mr. Rodriguez and Ms. Castillo reasonably relied on such a promise.
29. I will now consider Mr. Rodriguez's and Ms. Castillo's argument that Mr. Mahmood breached the contract. I find that, under the contract's terms, Mr. Mahmood's responsibility for the property's condition of the property ended on September 26, 2018. To establish their claim that Mr. Mahmood breached the contract, Mr. Rodriguez and Ms. Castillo have the burden of proving that the plumbing was damaged, and this damage existed before the contract's completion date. For the reasons that follow, I am satisfied that Mr. Rodriguez and Ms. Castillo have proved this.
30. Mr. Rodriguez and Ms. Castillo say the strata lot had substantial plumbing damage when they received possession of the property. They provided multiple videos showing water leaking into the garage below the strata lot, a large crack in the bathtub and tiles removed around the shower for repairs. Based on Mr. Rodriguez's and Ms. Castillo's representations and the videos, I am satisfied that the plumbing was damaged when Mr. Rodriguez and Ms. Castillo received possession of the strata lot.

31. Mr. Rodriguez and Ms. Castillo provided an October 6, 2018 invoice from First Rate Mechanical Services Ltd. (First Rate). First Rate's invoice says they inspected a water leak in the strata's parking garage on September 20, 2018 on behalf of the strata's property manager. The invoice says that water was leaking into the garage from a crack in the concrete below Mr. Mahmood's strata lot. The invoice says they entered Mr. Mahmood's strata lot on September 27, 2018 and noticed that the shower stall was in very poor condition and the grout was missing and cracked. The invoice says that this damage allowed water to enter behind the tiles and inside the wall. The invoice also says that it appears that this was leaking for some time so there may be damage behind the wall.
32. I find that First Rate's invoice does not meet the criteria for an expert report under CRT rule 8.3. The invoice does not identify the specific First Rate representative who prepared the invoice as required by rule 8.3. Also, the invoice does not provide the representative's education, training or experience that qualifies them to investigate and identify water leak sources. For these reasons, I do not accept the invoice opinions as expert evidence. However, I have given weight to First Rate's observations about the cracked and missing grout.
33. Based on First Rate's observations and Mr. Rodriguez's and Ms. Castillo's submission that they discovered the water leaks as soon as they took possession of the property, I am satisfied that the shower was damaged before the completion date.
34. Mr. Mahmood says that he lived in the strata lot until the sale completed. I find that as a resident, more likely than not, Mr. Mahmood was aware that the plumbing was leaking. So, I find that Mr. Mahmood's PDS statement that he was not aware of leakage or any plumbing problems was not accurate. Since the PDS was part of the contract, Mr. Mahmood breached the parties' contract based on his failure to accurately disclose the plumbing leak.
35. Mr. Rodriguez and Ms. Castillo say that they needed to replace tiles, faucets, pipes and tub to repair the water leaks. Mr. Rodriguez and Ms. Castillo provided a

January 15, 2019 invoice of \$4,708.20 for plumbing repairs. The invoice stated that the bathtub, faucets and tiles were replaced to perform the repairs.

36. While I am satisfied that the significant work was needed to repair the leaks, I find that Mr. Rodriguez and Ms. Castillo have not proved that the bathtub and the faucets could not have been repaired. In addition, they have not provided sufficient evidence to prove that the existing tiles needed to be replaced with new tiles. So, I find that they are not entitled to reimbursement for the material costs for the replacement faucets, bathtub and tiles. Based on the invoice, I am satisfied that Mr. Rodriguez and Ms. Castillo have suffered a loss of \$2,350, plus \$117.50 tax, for the repair services from Mr. Mahmood's breach of the contract.
37. For the above reasons, I find that Mr. Mahmood's breach of the contract caused damages of \$2,467.50 and Mr. Mahmood must pay this amount to Mr. Rodriguez and Ms. Castillo.
38. The *Court Order Interest Act* applies to the CRT. Mr. Rodriguez and Ms. Castillo are entitled to pre-judgement interest on the damages of \$2,467.50 from January 15, 2019, the date of repair invoice, to the date of this decision. This equals \$72.57.
39. 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 Mr. Rodriguez and Ms. Castillo were partially successful in this matter, I find that they are entitled to reimbursement of one-half the CRT fees, being \$175. Since no party requested reimbursement of dispute-related expenses, none are ordered.

ORDERS

40. Within 30 days of the date of this order, I order Mr. Mahmood to pay Mr. Rodriguez and Ms. Castillo a total of \$2,627.57, broken down as follows:
 - a. \$2,467.50 in damages for breach of contract,

- b. \$72.57 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

41. Mr. Rodriguez and Ms. Castillo are entitled to post-judgment interest from Mr. Mahmood, as applicable.
42. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
43. 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