



Civil Resolution Tribunal

Date Issued: January 4, 2021

File: SC-2020-005699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miao v. Drezdoff*, 2021 BCCRT 2

BETWEEN:

CHUNCHENG MIAO

APPLICANT

AND:

AMY MARIE DREZDOFF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about alleged defects arising from a home purchase.
2. The applicant, Chuncheng Miao, purchased a detached home from the respondent, Amy Marie Drezdoff. Ms. Miao later found the surveillance system and hose bib did

not work. She says these issues were latent defects that Ms. Drezdoff intentionally hid or misrepresented. She also says Ms. Drezdoff agreed, through her husband James Ujimoto, to address any defects. Ms. Miao seeks \$2,429.71 for the cost of a new surveillance system and associated expenses, including 55 hours of her time investigating the system, and \$500 for a new hose bib.

3. Ms. Drezdoff says she never met Ms. Miao, made no promises, and was never obligated to repair the surveillance system or hose bib.
4. Both 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice.
7. Section 42 of the CRTA says 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 CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did Ms. Drezdoff fail to disclose latent defects, or misrepresent the condition of the surveillance system?
 - b. Did Ms. Drezdoff agree to repair or replace the surveillance system and hose bib?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Ms. Miao must prove her claims on a balance of probabilities. Neither party provided submissions other than brief descriptions of their evidence, so I have based this decision on the Dispute Notice, Dispute Response, the evidence, and the parties' respective descriptions of their evidence.
11. The parties entered into a May 14, 2018 contract of purchase and sale for the home (contract). The completion date was August 8, 2018, and the possession date was August 9, 2018. There is no property disclosure statement in evidence.
12. There is no dispute that Ms. Drezdoff did not meet Ms. Miao or attend the home viewings. Instead, her husband Mr. Ujimoto did.
13. Mr. Ujimoto is not a party to this dispute and was not a party to the contract. I find it is implicit in Ms. Miao's submissions that she alleges Mr. Ujimoto was acting as Ms. Drezdoff's agent during the home viewing. Although being spouses alone is not enough to establish agency, I find other facts here indicate agency by implication. Specifically, it is undisputed that Mr. Ujimoto built the home, lived in the home when

it was for sale, and made representations about the home when Ms. Miao viewed it. As a result, I find Mr. Ujimoto acted as Ms. Drezdoff's agent during the home viewing.

14. It is not clear when Mr. Ujimoto built the home, but it was covered under a new home warranty when purchased by Ms. Miao. On June 18, 2019, Ms. Miao made an insurance claim for various issues, including the surveillance system, with WBI Home Warranty (WBI). A June 24, 2019 "technical assessment report" from WBI said that it found some of the issues in Ms. Miao's claim qualified for repair and that WBI required Mr. Ujimoto to repair those defects. However, the letter said the surveillance camera issue was not considered a defect. Instead, WBI considered it a contractual issue between Mr. Ujimoto and Ms. Miao. There was no mention of the hose bib.

Failure to disclose defects

15. The principle of "buyer beware" applies to real estate transactions in British Columbia. A seller is not responsible for patent defects, which are those that can be discovered by conducting a reasonable inspection or inquiry. A seller is not obligated to disclose patent defects to a buyer, but they must not actively conceal them (*Cardwell v. Perthen*, 2007 BCCA 313). In contrast, a latent defect is one that cannot be discovered through a reasonable inspection. A seller must disclose a latent defect if they know about it.
16. Ms. Miao does not say when she became aware of issues with the surveillance system or hose bib.
17. I will consider the hose bib first. Ms. Miao says the hose bib leaked. If the hose bib leaked at the time of Ms. Miao's purchase, I find it would be a patent defect because it would be discoverable with a reasonable inspection. There is no inspection report in evidence and Ms. Miao did not say whether she obtained one, despite it being a condition of the purchase contract. I find Ms. Drezdoff was not obligated to disclose the hose bib leak. There is no evidence Ms. Drezdoff actively concealed a leak, so I dismiss this aspect of Ms. Miao's claim.

18. Turning to the surveillance system, I note that in technical assessment report, her claim is described as 2 cameras being not functional due to improper wiring.
19. Ms. Drezdoff does not dispute, and so I find, that 2 cameras were not functional. Instead, Ms. Drezdoff says she did not agree that the surveillance system was included in the purchase of the property. However, the contract says the purchase price includes improvements, fixtures, appurtenances and attachments thereto, to be in substantially the same condition as the possession date “as when viewed” by the buyer. I find the surveillance system was a fixture, as the evidence indicates the cameras were mounted to walls and ceilings, and wired underground and in walls. In any event, the surveillance system remained with the home, it just did not work properly.
20. If the 2 cameras were not functional when Ms. Miao viewed the home, I find it would be a patent defect. This is because whether a camera works or not can be discovered by a reasonable inspection. Ms. Maio does not say whether she inspected the surveillance system or noticed whether the cameras were functioning prior to the sale. Ms. Drezdoff was not obligated to disclose patent defects to Ms. Miao. However, as noted in *Nixon v. MacIver*, 2016 BCCA 8, a seller may not fraudulently misrepresent or conceal a patent defect.
21. Ms. Miao provided a statement from her real estate agent, Susan Chui. Ms. Chui said when she and Ms. Maio viewed the home, they met Mr. Ujimoto. Ms. Chui said there were many questions about the surveillance system, and Mr. Ujimoto said, “all was good and functional.”
22. Ms. Drezdoff did not provide a statement from Mr. Ujimoto about his representations to Ms. Maio. She did not explain why she did not obtain a statement. Given their spousal relationship, I find Ms. Drezdoff should have been able to obtain a statement. Therefore, I accept that Mr. Ujimoto represented that the surveillance system was “good and functional.”

23. The purchase contract says there are no representations, warranties, guarantees, promises or agreements other than those set out in the contract and the property disclosure statement, which is not before me.
24. However, exclusionary clauses such as the one described above do not bar a claim for fraudulent misrepresentation (see *444601 B.C. Ltd. v. Ashcroft (Village)*, 1998 CanLII 3923).
25. In order to establish fraudulent misrepresentation, Ms. Miao must establish 5 things:
- a. Mr. Ujimoto made the representation to Ms. Maio,
 - b. The representation was false,
 - c. Mr. Ujimoto knew the representation was false or made it recklessly without knowing whether it was true or false,
 - d. Mr. Ujimoto intended that Ms. Maio would act on the representation, and
 - e. Ms. Maio was induced to enter into the contract in reliance upon on the representation (see *Wang v. Shao*, 2019 BCCA 130).
26. I find Ms. Miao has failed to establish that Mr. Ujimoto's representation about the surveillance system was false at the time he made it. Nearly three months passed between the May 13, 2018 viewing and the August 9, 2018 possession date, so the system could have malfunctioned in that time. It also could have malfunctioned after the possession date, given Ms. Miao does not say when she discovered that the system did not function.
27. I also find Ms. Maio has failed to prove that the representation induced her to buy the home. Although a buyer need not prove that the representation was the only factor, or even the most important factor, the buyer must prove that the representation was a factor that contributed to the decision to enter into the contract (*Battrum v. MacKenzie*, 2010 BCSC 1285). The test is subjective, and Ms. Maio does not explain to what extent, if any, the surveillance system was a factor in her decision to purchase

the home. In the absence of subjective evidence, I find it appropriate to consider objective evidence. The evidence shows that the cost of the replacement surveillance system Ms. Maio had installed was around \$1,000, installed. This is less than 0.04 percent of the purchase price. Also, the surveillance system was not listed in the “included items” section of the purchase contract, although each appliance, the heat pump, central vacuum, keys, and 2 garage door openers were listed, suggesting the surveillance system was not of heightened importance to Ms. Maio. As Ms. Maio bears the burden of proving her claims, I find she had not proved she was induced to enter into the contract by Mr. Ujimoto’s representation about the surveillance system.

28. I conclude that there was no fraudulent misrepresentation about the surveillance system, and any defects with the hose bib or the surveillance system were patent defects to which the principle of “buyer beware” applies.

Agreement to be responsible for future repairs or replacement

29. According to Ms. Chui, Mr. Ujimoto “offered the buyer help and will fix [the surveillance system] should there be problem in future as he lives nearby.” As discussed above, because Mr. Ujimoto did not provide a statement, I accept that he offered to help address issues with the surveillance system.

30. However, these statements must be interpreted in their context. Mr. Ujimoto was the home’s builder. I find his statements reflected that he was required, as the builder, to address repairs covered by the warranty. Mr. Ujimoto was also still living in the neighborhood, so he offered to make reasonable efforts to help with the surveillance system. I find his statements did not create a binding legal obligation that Ms. Drezdoff would pay for future repairs or replacement costs.

31. Ms. Miao says Mr. Ujimoto spent an entire day looking for wires for the surveillance system but could not find them and left the problem for Ms. Maio. I find Mr. Ujimoto’s efforts were made in satisfaction of his offer to help, and did not reflect any legal obligation owed by Ms. Drezdoff to Ms. Miao.

32. As for the hose bib, Ms. Maio relies on a July 29, 2019 email, in which Mr. Ujimoto told her as a courtesy he reached out to the original plumber who said he would repair the hose bib at no charge. Subsequent emails show that Ms. Miao was unable to reach the plumber. However, I find Mr. Ujimoto's attempt to have a plumber repair the hose bib at no charge was a goodwill gesture and not an admission of liability or an agreement to be responsible for the repair cost.
33. Additionally, Ms. Drezdoff submits that she replaced the hose bib as a courtesy and discovered that Ms. Miao did not winterize the bib, which caused the gaskets to freeze and crack. Ms. Miao does not deny that Ms. Drezdoff replaced the hose bib, and does not dispute that she failed to winterize the bib.
34. For all these reasons, I dismiss Ms. Maio's claims.
35. Under section 49 of the CRTA and the CRT rules, as Ms. Miao was unsuccessful in this dispute, I find she is not entitled to reimbursement of her CRT fees. Neither party claimed dispute-related expenses.

ORDER

36. I dismiss Ms. Miao's claims and this dispute.

Micah Carmody, Tribunal Member