Civil Resolution Tribunal

Date Issued: May 10, 2021

File: SC-2020-006836

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. SLR Holdings Ltd.*, 2021 BCCRT 491

B E T W E E N :

BRUCE ROBERTSON and LAURA ROBERTSON

**APPLICANTS**

A N D :

SLR HOLDINGS LTD.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Micah Carmody

## INTRODUCTION

1. The applicants, Bruce Robertson and Laura Robertson, purchased a recreational vehicle (RV) lot from the respondent, SLR Holdings Ltd. (SLR). At the time of purchase, the lot was not ready for occupancy.

2. The Robertsons say after their purchase, SLR reduced the lot size by 6.99%, which was more than the allowable 5% variance under their purchase agreement. They say according to the agreement, SLR owes them 1.99% of the purchase price, or $1,042.66. The Robertsons are represented by Mr. Robertson.

3. SLR says the Robertsons are not entitled to a price adjustment for various reasons discussed below. SLR is represented by an employee of a related company.

4. For the reasons that follow, I find SLR must reimburse the Robertsons $1,042.66.

## 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.

## ISSUE

9. The issue in this dispute is whether the Robertsons are entitled to an adjustment to the RV lot purchase price, and if so, how much?

## EVIDENCE AND ANALYSIS

10. As the applicants in this civil dispute, the Robertsons must prove their claim 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.

11. The Robertsons say they purchased RV lot 101 on July 13, 2018. They provided only 1 undated page of the contract of purchase and sale. However, SLR did not dispute the purchase date or the contract's existence, so I accept that there was a complete written contract of purchase and sale between SLR and the Robertsons dated July 13, 2018 (purchase contract). The completion date is not entirely clear from the evidence, but template purchase agreements in evidence provide a completion date of 14 days from the agreement date.

12. Clause 15 of the purchase contract said the Robertsons acknowledge that the total expected area of lot 101, as defined in the disclosure statement, is approximate and may vary from the total actual area as shown on the "final site plan." A disclosure statement is a document developers must provide to consumers describing what they are building under the *Real Estate Development Marketing Act* (REDMA).

13. The purchase contract said if the variance is less than 5%, the purchase price will be increased or decreased by an adjustment factor based on the price per square metre. At the time of purchase, the disclosure statement showed lot 101's area as 558 square metres.

14. There is nothing identified as a "final site plan" in evidence, but the fourth amendment to the developer's disclosure statement, dated August 21, 2018, shows lot 101's area as 519 square metres. SLR does not dispute that this is the final size for lot 101.

15. SLR did not raise any limitation period issue, but the *Limitation Act* provides for a 2-year limitation period on most claims like this. The Robertsons filed their dispute application on September 4, 2020, so if the claim arose before September 4, 2018, it is out of time. However, the Robertsons say the fourth disclosure statement amendment was emailed to them on September 14, 2018. SLR did not challenge this submission, so I find the Robertsons' claim is not out of time.

16. The Robertsons calculate the reduction in lot 101's area at 6.99%. They say under the purchase contract, they are entitled to a refund of 1.99% of the $49,900 + GST purchase price (6.99% less the 5% variance allowed). Thus, they claim $1,042.66. SLR does not dispute this calculation and I find it is correct.

17. SLR says there are 3 reasons the Robertsons are not entitled to a price adjustment. First, it says SLR complied with all of its obligations under REDMA with respect to the RV lot's area. SLR does not elaborate on what these obligations are, or explain how its compliance with REDMA is a defence to the Robertsons' contractual claim for a price adjustment. As purchaser's rights are governed by contract law, I find the nonspecific argument about compliance with REDMA unpersuasive.

18. Second, SLR says the Robertsons had 2 weeks to dispute any amendments to the disclosure statement. It says given the Robertsons received the fourth amendment, reducing lot 101's area, on September 14, 2018, and did not dispute it within 2 weeks, the Robertsons have no claim for a price adjustment. SLR does not explain where this 2-week period comes from. Clause 15 of the purchase agreement specifically

addresses changes to lot areas identified in disclosure statements and does not mention any time period by which the purchasers must dispute reductions in the lot size. I find the Robertsons are only limited by the 2-year limitation period set out in the *Limitation Act*.

19. Third, SLR makes a number of arguments about the impact of the lot size reduction. It says the Robertsons have been able to make use of the areas surrounding lot 101 and so the lot size reduction had no practical impact on the lot's use. It also says there has been no reduction in the lot's market value, given other lots have resold for over $75,000. It further says the lots were not sold based on square footage and were all sold at the same price regardless of size. The Robertsons dispute some of the facts on which these arguments are based, but I find it unnecessary to parse the details. This is because I find SLR's arguments about the impact of lot size reduction do not override the clear wording of section 15 of the purchase contract, which specifically says a reduction in lot size is compensable in the form of a purchase price reduction, and sets out the formula for calculating that compensation.

20. I note that in the fifth disclosure statement amendment, SLR changed the compensation scheme for area variances under its purchase agreement forms such that there was no compensation unless the variance exceeded 20%. However, the fifth disclosure statement amendment was dated April 2, 2019, and there is no dispute that the Robertsons' July 13, 2018 purchase contract used a different form that provided a 5% variance limit.

21. In summary, I find that the Robertsons have established a contractual right to a purchase price adjustment of $1,042.66.

22. The *Court Order Interest Act* applies to the CRT. The Robertsons are entitled to pre-judgment interest on the $1,042.66 adjustment from July 27, 2018, the likely completion date, to the date of this decision. This equals $41.05.

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. I see no reason in this case not to follow that general rule. I find the Robertsons are entitled to reimbursement of $150 in CRT fees. They did not claim any dispute-related expenses. As it was unsuccessful in this dispute, I dismiss SLR's claim for $50 in CRT fees paid to set aside a previous default decision addressing the same issue. I also dismiss SLR's claim for $876.75 in "administrative fees," which in any event was unexplained and unsupported by any evidence.

## ORDERS

24. Within 14 days of the date of this order, I order SLR to pay the Robertsons a total of $1,233.71, broken down as follows:

    a. $1,042.66 as a reimbursement under the purchase contract,

    b. $41.05 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $150.00 in CRT fees.

25. The Robertsons are entitled to post-judgment interest, as applicable.

26. 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.

27. 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.

Micah Carmody, Tribunal Member