



# Civil Resolution Tribunal

Date Issued: May 31, 2021

File: SC-2020-006014

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaler v. Nepomuceno*, 2021 BCCRT 591

BETWEEN:

HARPREET SINGH KALER

**APPLICANT**

AND:

LORIELIZA NEPOMUCENO and JAMEEL AHMAD

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This small claims dispute is about the sale of a strata lot. The applicant, Harpreet Singh Kaler, claims the respondent seller, LorieLiza Nepomuceno, failed to disclose in the property disclosure statement (PDS) an “outstanding notice from the strata council” that the strata building’s roof would be replaced soon. Mr. Kaler also claims that Miss Nepomuceno’s realtor, the respondent Jameel Ahmad, failed to inquire

about and disclose “all the outstanding matters from the seller and strata council”. Less than one month after the sale contract’s completion date, the strata corporation passed a resolution that the owners would pay for roof repair costs through a special assessment. Mr. Kaler claims \$5000, which is the small claims monetary limit in the Civil Resolution Tribunal (CRT).

2. Miss Nepomuceno denies any liability and says she did not receive “a letter from the strata about roof replacement” during the process of selling the strata lot to Mr. Kaler. She says all the strata documents were disclosed to Mr. Kaler’s realtor before the completion date.
3. Mr. Ahmad also denies any liability to Mr. Kaler. Mr. Ahmad says he owed no duty to Mr. Kaler because he was not Mr. Kaler’s agent. He says any issues related to roof replacement or repair were in the strata documents provided to Mr. Kaler under the terms of the contract of purchase and sale (CPS) between Mr. Kaler and Miss Nepomuceno. Mr. Ahmad says that any loss Mr. Kaler suffered was as a result of Mr. Kaler’s failure to diligently investigate the strata lot.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT’s formal written reasons. 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. Whether Miss Nepomuceno misrepresented the status of the strata's roof replacement in the PDS, and if so, whether this breached the CPS?
  - b. Whether Mr. Ahmad was professionally negligent or owed a duty of care to Mr. Kaler?
  - c. If yes to any of the above, is Mr. Kaler entitled to any remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Kaler must prove his claims on a balance of probabilities. Mr. Kaler did not provide submissions despite CRT staff providing him with opportunities to do so. I have reviewed the parties' evidence and the respondents' submissions but refer to them only as I find necessary to explain my decision.

11. Mr. Kaler purchased a strata lot from Miss Nepomuceno under the terms of the signed August 4, 2019 CPS. The CPS's completion date was September 26, 2019.
12. In BC, the "buyer beware" principle applies to the sale of real property. This means that the buyer is required to make reasonable enquiries about the property they wish to purchase. This principle is subject to several exceptions. The most important in this dispute is fraudulent or negligent misrepresentation. See *Nixon v. MacIver*, 2016 BCCA 8 at paragraphs 32 to 33.

### ***Fraudulent or Negligent Misrepresentation***

13. As noted above, Mr. Kaler says Miss Nepomuceno failed to disclose an outstanding notice from the strata council that the roof would be replaced soon and that the strata council was in the process of getting quotes. In essence, I find Mr. Kaler alleges that Miss Nepomuceno misrepresented the existence of a pending special assessment for the roof replacement costs.
14. The CPS included a PDS, which Miss Nepomuceno filled out and signed on August 4, 2019. The key representation in this dispute comes from the PDS where Miss Nepomuceno indicated that she was unaware of "any special assessments voted on or proposed".
15. As noted above, fraudulent or negligent misrepresentation are exceptions to the principle of "buyer beware". The test for fraudulent misrepresentation is summarized in *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16. In order to show fraudulent misrepresentation in the purchase and sale of a residential property, the applicant must show the following:
  - a. The respondent made a representation of fact to the applicant,
  - b. The representation was false,
  - c. The respondent knew that the representation was false when it was made, or made the false representation recklessly,

- d. The respondent intended for the applicant to act on the representation, and
  - e. The applicant was induced to enter into the contract in reliance upon the false representation and suffered a detriment.
16. To prove negligent misrepresentation, the applicant must establish 5 elements (see: *Hanslo v. Barry*, 2011 BCSC 1624 at paragraph 108):
- a. There must be a duty of care,
  - b. The representation in question must be untrue, inaccurate, or misleading,
  - c. The respondent must have acted negligently in making the misrepresentation,
  - d. The applicant must have reasonably relied on the negligent misrepresentation, and
  - e. The reliance must have resulted in damages.
17. In real estate transactions the law presumes a special relationship between buyer and seller, and the seller owes the buyer a duty of care: *Hanslo* at paragraphs 117 to 118. The applicable standard of care is that of the reasonable person: *McCluskie v. Reynolds (1998)*, 1998 CanLII 5384 (B.C.S.C.) at paragraph 67.
18. While it is undisputed that Miss Nepomuceno represented that she was unaware of any proposed special assessments in the PDS, I find the available evidence does not prove that her representation was false or misleading. For the following reasons, I find Miss Nepomuceno did not fraudulently or negligently misrepresent that she was unaware of any special assessments.
19. In evidence are the strata council meeting minutes from July 11, 2019. These strata minutes include the following information:

#### 4.6 Roof Assessment Update

Council is advising Roof Repair Contractors have been provided with the report by BC Roof Inspection and quotes for full roof replacement with gutter replacement will be requested after the meeting. A Resolution for Full Roof Replacement will be forwarded for Owners' consideration at the 2019 General Meeting (AGM) to be held on October 10, 2019.

20. I find that the above strata minutes show that strata intended to put forward a resolution for a full roof replacement. However, I find the strata minutes do not show that the roof replacement would be paid for by special assessment as opposed to the strata's contingency reserve fund.
21. Also in evidence are emails from WM, the strata manager, to Mr. Kaler. In their emails, WM said that the owners were informed of the "special levy resolution" when they were mailed the AGM package on September 26, 2019. I find this evidence does not prove that Miss Nepomuceno knew about a proposed special assessment before the strata lot's sale, because the AGM package was mailed on the same day as the completion date. The strata minutes in evidence also confirm that the proposed special assessment was voted on and approved at the 2019 AGM on October 17, 2019.
22. Mr. Kaler has not provided any other evidence or submissions to prove that there was a proposed special assessment for the roof repairs when Miss Nepomuceno completed the PDS, or at any time prior to the completion date. I also find that Mr. Kaler has not proven that Miss Nepomuceno was aware of any proposed special assessment. So, I find Miss Nepomuceno's representation was not false or misleading.
23. However, even if Miss Nepomuceno was aware of a proposed special assessment and misrepresented that fact to Mr. Kaler, I find Mr. Kaler has not proven that he reasonably relied upon Miss Nepomuceno's representation in any event, and so his claim for fraudulent and negligent misrepresentation must fail.

24. In particular, one of the conditions in the CPS was that Mr. Kaler receive and approve a number of strata documents, including the strata minutes from August 4, 2018 to August 4, 2019. This condition was for Mr. Kaler's sole benefit. The evidence shows that Mr. Kaler removed the condition on August 6, 2019. As noted above, Mr. Kaler did not provide any submissions and so he did not address whether he received and reviewed the strata documents listed in the CPS before approving them and removing the condition in the CPS.
25. The strata minutes in evidence span several months leading up to the strata lot's sale, and clearly note that the roof was being investigated and required repair in the near future. As noted above, the July 2019 strata minutes indicated that quotes were being requested and a resolution for the roof's replacement would be put forward at the October 2019 AGM. The strata's depreciation report dated April 15, 2016 also recommends that the roof be replaced or repaired in 2021.
26. As noted above, the "buyer beware" principle applies to the sale of real property. The roof replacement issue was apparent in the strata minutes provided to Mr. Kaler, and so I find it was a patent defect. As noted, there was no special assessment even proposed as of the sale's completion date. Here, I find Mr. Kaler failed to make reasonable inquiries into the status of the strata and strata lot prior to approving the strata documents in the CPS and proceeding with the strata lot purchase. Had Mr. Kaler reviewed the strata documents, I find he would have been aware that the roof required repair and he could have made further inquiries into how the roof repairs costs would be covered, whether through the strata's contingency reserve fund or a special assessment. Again, and as noted above, Mr. Kaler did not provide any submissions and so there is no explanation of whether he relied on Ms. Kaler's representation in the PDS. In the circumstances, I find Mr. Kaler has not established on a balance of probabilities that he relied on Miss Nepomuceno's representation.
27. I also note that the CPS included a specific term on liability for special levies. It provided that Miss Nepomuceno would be liable to pay all special levies approved before the sale's completion. As noted above, the strata minutes in evidence show

that the strata corporation passed the special assessment at the October 17, 2019 AGM, about three weeks after the sale's September 26, 2019 completion date. For the above reasons, I find Ms. Nepomuceno is not liable under the CPS to pay the special levy.

### ***Claim against Mr. Ahmad***

28. I turn to Mr. Kaler's claim against Miss Nepomuceno's realtor, Mr. Ahmad. Mr. Kaler says that Mr. Ahmad had a duty to inquire about "all the outstanding matters" with Ms. Nepomuceno and the strata council and disclose them in the CPS. I find that Mr. Kaler alleges Mr. Ahmad was negligent. To prove negligence, Mr. Kaler must show that 1) Mr. Ahmad owed him a duty of care, 2) Mr. Ahmad breached the standard of care, 3) Mr. Kaler sustained a loss, and 4) and the loss was reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33.
29. Mr. Ahmad says that as Miss Nepomuceno's realtor he did not owe Mr. Kaler a duty of care to independently inform himself of "all outstanding matters" with Miss Nepomuceno and the strata and disclose those matters on the CPS. Mr. Ahmad says Mr. Kaler had his own realtor. Mr. Kaler's realtor is not a party to this dispute.
30. I find that Mr. Ahmad did not owe Mr. Kaler a duty of care, as alleged. Listing agents (here, Mr. Ahmad) owe no duty of care to buyers (here, Mr. Kaler) to independently inform themselves of defects in properties or report such defects to the buyers (see *Gordon v. Krieg*, 2013 BCSC 842 at paragraphs 130 - 140). I find this includes Mr. Kaler independently informing himself of the current status of the strata's roof replacement and reporting this information to Mr. Kaler. Imposing such a duty would place the listing agent in a conflict of interest with their principal or client (here, Miss Nepomuceno) and would have the effect of imposing a dual agency on parties who have specifically contracted for sole agency (see *Brown v. RE/MAX Select Realty*, 2020 BCPC 250 at paragraph 39).



31. As I do not find that Mr. Ahmad owed Mr. Kaler a duty of care, I find that Mr. Kaler's negligence claim against Mr. Ahmad must fail. So, I find I do not need to address whether Mr. Ahmad breached any standard of care.

### ***CRT Fees and Expenses***

32. 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. As Mr. Kaler was unsuccessful, I dismiss his claim for CRT fees. Neither of the respondents paid any CRT fees or claimed any dispute-related expenses, and so I award none.

### **ORDER**

33. I dismiss Mr. Kaler's claims and this dispute.

---

Leah Volkers, Tribunal Member