



Civil Resolution Tribunal

Date Issued: June 24, 2021

File: SC-2020-009527

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Berze v. Steele Properties Ltd.*, 2021 BCCRT 699

B E T W E E N :

NATHAN BERZE

APPLICANT

A N D :

STEELE PROPERTIES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a pre-construction house purchase. The applicant, Nathan Berze, bought a pre-construction house from the respondent, Steele Properties Ltd. (Steele). Mr. Berze says Steele extended the closing and possession dates in breach of the contract and he signed an addendum to the contract under duress. He says it

was not safe for his family to move into the house on the possession date. He claims \$5,000 in damages for moving expenses and interim accommodations caused by Steele's alleged breach of contract.

2. Steele says the parties agreed in an addendum to extend the possession date to December 18, 2018. It says the municipality issued an occupancy permit on December 11, 2018, and although there were some remaining deficiencies with the house at that time, none of those deficiencies prevented Mr. Berze from moving in on December 18, 2018.
3. Mr. Berze is self-represented, and Steele is represented by its principal, Mark Steele.

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). 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.
5. 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.
6. 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.

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 whether Steele breached the parties' contract, and if so, whether Mr. Berze is entitled to \$5,000 in damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Mr. Berze must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Berze's claims.
10. It is undisputed that on March 9, 2018, Mr. Berze bought a pre-construction house from Steele through a contract of purchase and sale (contract). The contract stated that both the completion and possession dates were October 25, 2018. The contract allowed Steele to extend the completion date multiple times as long as the final completion date was no more than 180 days from the initial completion date. The contract required Steele to give Mr. Berze at least 14 days' written notice of any extension to the completion date. For any extension to the completion date, the possession date was also extended to one day after the new completion date. Subjects were removed on March 28, 2018.
11. On either September 14, 2018 or October 2, 2018 (there are 2 different versions of the same document in evidence), the parties signed an addendum to the contract which extended the completion date to November 29, 2018 and extended the possession date to November 30, 2018 (first addendum). The parties did not explain the discrepancy between the 2 different dates of the first addendum, but I find nothing turns on the date the parties signed it. On November 7, 2018, the parties signed a second addendum to the contract which extended the completion date to December

11, 2018 and extended the possession date to December 12, 2018 at 9:00 a.m. (second addendum). Both the first and second addendum state that all other terms and conditions of the contract remained the same. None of this is disputed.

12. On December 7, 2018 Mr. Berze did a walk-through inspection of the house with his realtors and several Steele representatives. It is undisputed that multiple deficiencies were identified for remediation in almost every area of the house. A deficiency list was created during the walk-through, but Mr. Berze did not sign it because he believed the list was incomplete.
13. It is undisputed that on December 11, 2018, the City of Chilliwack issued a final occupancy permit for the house. On December 11, 2018, the parties signed a third addendum to the contract which extended the completion date to December 17, 2018 and extended the possession date to December 18, 2018 (third addendum). Mr. Berze says he signed the third addendum under duress, which I address below.
14. On December 12, 2018, Mr. Berze and his family moved most of their belongings into storage and temporarily moved into a room at a family member's home.
15. On December 17, 2018, Mr. Berze did a walk-through inspection of the house with Steele's new site supervisor, RS. It is undisputed that most of the deficiencies from the December 7, 2018 inspection had yet to be remedied. On December 17, 2018, the parties signed a deficiency list which included an agreed holdback of \$25,000 for the identified deficiencies.
16. Mr. Berze and his family moved into the house in January 2019.

Did Steele breach the contract?

17. Mr. Berze says that on December 11, 2018, Steele notified him that the house was not ready and it had to move the completion date to December 17, 2018 and the possession date to December 18, 2018. Mr. Berze says this was a breach of contract because Steele did not provide 14 days' notice as the contract required. Mr. Berze

says he signed the third addendum under duress because he had no other options at the time.

18. I find Mr. Berze is claiming economic duress as a defence to the enforceability of the third addendum. It is not enough for Mr. Berze to show that Steele took advantage of a superior bargaining position. To establish economic duress, Mr. Berze must prove that Steele exerted unfair, excessive, or coercive pressure on him to sign the third addendum such that his true consent did not exist. Factors I can consider include whether Mr. Berze objected to signing the document; whether he had any alternative actions available to him, such as an adequate legal remedy; whether he received independent advice; and whether he took steps to avoid the third addendum after signing it (see *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442, and *Capilano Stucco Ltd. v. Buildologist Construction Group Ltd.*, 2021 BCCRT 609).
19. On balance, I find Mr. Berze has not established that he signed the third addendum under duress. The third addendum states that Mr. Berze was ready, willing, and able to complete the terms of the contract at that time, but there is no indication in the document that he objected to signing it. On the contrary, I find his realtors' email to Steele on December 10, 2018 indicates Mr. Berze's willingness to extend the closing date (and by extension, the possession date). That email states, "Option 1: is that we extend the completion date to accommodate the time required to get the deficiencies and issues and, some defects, dealt with..." (reproduced as written).
20. Mr. Berze says he had no other option but to sign the third addendum. However, I find he could have refused to sign it and sued for damages but chose not to do so. Mr. Berze admits to receiving independent legal advice before signing the third addendum, and there is no indication that he attempted to avoid his obligations under the third addendum after signing it.
21. For all of these reasons, I find Mr. Berze has not shown that Steele exerted unfair, excessive, or coercive pressure on him such that he did not willingly sign the third addendum. I find Mr. Berze did not sign the third addendum under duress. So, I find the third addendum was a valid agreement between the parties which extended the

closing date to December 17, 2018 and the possession date to December 18, 2018. As such, I find nothing turns on Mr. Berze's allegation that Steele failed to provide 14 days' notice of the extension, because I find that by signing the third addendum, he waived any objection to the lack of notice. Since the December 17, 2018 closing date fell within 180 days of the initial closing date, I find the extension to the completion date in the third addendum was not a breach of the contract.

22. While Mr. Berze does not explicitly say so, I find he also argues that Steele breached the contract by failing to ensure the house was safe to move into on the December 18, 2018 possession date. However, for the following reasons I find Steele did not breach the contract in this manner. As a fundamental term of the contract, Steele was required to deliver to Mr. Berze a City of Chilliwack Occupancy Certificate by the completion date, "or other evidence satisfactory to the Buyer that construction is complete." It is undisputed that Steele fulfilled this obligation.
23. Mr. Berze acknowledges that the City issues occupancy permits when it determines a house is satisfactorily built and safe to occupy. However, he says the City does not consider any subsequent work agreed upon between the builder and the homeowner when issuing an occupancy permit. He says the deficiencies in the house on December 17, 2018 did not pose a safety risk on their own, but the work to remediate them did. He says the paint, flooring, and masonry work required to remediate the deficiencies would have created significant fumes and dust which would have aggravated his son's asthma. He says he was also concerned about contractors leaving tools and materials around the house which could have posed a danger to his three children. He says he was also concerned about security while having multiple subcontractors in and out of his home.
24. Mr. Berze submitted a statement from one of his realtors, Nicole Johnston, who said that in her opinion it was not safe or reasonable to expect Mr. Berze and his family to move into the house at the time of completion in December 2018.

25. While I acknowledge Mr. Berze's concerns about the practicality and safety of moving into the house on December 18, 2018, I find he has not established that Steele breached the contract in relation to the deficiencies. It is undisputed that the sale closed on December 17, 2018 and that Mr. Berze gained possession on December 18, 2018. The contract states that if the deficiencies were not rectified 1 day before the completion date, Mr. Berze would hold back an amount specified in a Deficiency List. It is undisputed that Mr. Berze held back \$25,000. On the evidence before me I find Steele fulfilled all of its obligations under the contract related to the deficiencies. I also note that in a December 10, 2018 email, Mr. Berze's realtors specifically stated that Mr. Berze and his family were willing to "delay possession, at their own option, until they feel it is time to move in." Steele says this is what the parties did, and on the evidence before me, I agree.
26. I also note that in their December 10, 2018 email, Mr. Berze's realtors mentioned that Mr. Berze would have to incur additional expenses related to his delayed move into the house. I find these are the very expenses Mr. Berze claims in this dispute. Steele says it never agreed, either in the contract or verbally, to pay Mr. Berze for any out of pocket expenses, and Mr. Berze never asked it to pay for any such expenses. Steele says the contract clearly states that it is the entire agreement between the parties. On the evidence before me, I agree. I find Mr. Berze has not established that Steele breached the contract or any other agreement to pay for the expenses he claims in this dispute. I find there is no legal basis for Steele to pay Mr. Berze for the claimed expenses, and I dismiss his claims.
27. 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. Berze was unsuccessful, I find he is not entitled to reimbursement of CRT fees. He did not claim any dispute-related expenses.

ORDER

28. I dismiss Mr. Berze's claims and this dispute.

Sarah Orr, Tribunal Member