Civil Resolution Tribunal

Date Issued: July 28, 2021

File: SC-2020-009885

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Drance v. Tepic Management Group Inc.,* 2021 BCCRT 824

B E T W E E N :

MICHAEL DRANCE

APPLICANT

A N D :

TEPIC MANAGEMENT GROUP INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. The applicant, Michael Drance, owns a strata lot in a resort strata corporation that operates as the Summerland Waterfront Resort (SWR). The respondent, Tepic Management Group Inc. (TMG), is the SWR hotel management company under a Hotel Management Agreement (HMA).

2. SWR is in the District of Summerland. The District's zoning only permits hotel use and does not permit owners to permanently reside in their strata lots. Most owners make their strata lots available for hotel use through a rental pool.

3. Prior to purchasing his strata lot in SWR, Mr. Drance spoke with TMG's president, "TM", who was the SWR hotel manager. Mr. Drance says TM failed to tell him about the District's hotel use zoning. He says he would not have purchased his strata lot had he known he could not permanently live in it. Mr. Drance also alleges TMG negligently removed him from the SWR rental pool and put him in violation of the District's zoning. He seeks $5,000 in compensatory and punitive damages.

4. TMG denies the claims. It says TM was not Mr. Drance's lawyer or realtor and TM only told Mr. Drance what he knew about other owners' strata lot use at the time. TMG says it was Mr. Drance who demanded TM remove him from the rental pool. In any event, it says removing Mr. Drance from the rental pool was not what put him in violation of the District's zoning. TMG says Mr. Drance chose to exclusively use his strata lot as his personal residence and it was this that put him in violation of the District's zoning. It says it is not responsible for Mr. Drance's choices.

5. Mr. Drance is self-represented. TMG is represented by its president.

6. For the following reasons, I dismiss Mr. Drance's claims.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. 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

11. The issues in this dispute are:

    a. Did TMG negligently misrepresent the permitted strata lot use?

    b. Did TMG negligently remove Mr. Drance from the rental pool?

    c. To what extent, if any, is Mr. Drance entitled to the claimed damages?

EVIDENCE AND ANALYSIS

12. In this civil dispute, Mr. Drance, as the applicant, must prove his claims on a balance of probabilities, which means "more likely than not".

13. On June 21, 2021, I issued a decision between related parties but over different claims. My decision is published as *Drance v. Matthews,* 2021 BCCRT 682. I find some of Mr. Drance's arguments and evidence in this dispute are the same as that

prior dispute. I have not discussed the argument and evidence related to those previous claims. I refer only to the evidence and argument that I find relevant to provide context for my decision on the claims before me in this dispute.

Did TMG negligently misrepresent the permitted strata lot use?

14. In about August 2019, Mr. Drance purchased his strata lot in SWR from a third-party owner. There is no contract of purchase and sale before me and so I do not have the specifics of his strata lot purchase.

15. The SWR is located on lands that are designated Tourist Commercial under the District's Official Community Plan. The District's CD-5 zoning applies to Mr. Drance's strata lot, which is for "hotel" use only.

16. The parties agree that Mr. Drance informally met with TM before he purchased his strata lot and asked TM questions about SWR. TMG did not act as the realtor for either the seller or Mr. Drance. This is undisputed.

17. Mr. Drance says he told TM his plan was to live in his strata lot and TM told him there was "no problem with that, and other are doing the same, for over 10 years". TMG does not dispute Mr. Drance's assertion but says Mr. Drance had only told TM that he intended to live in the strata lot during the summer months. In any event, TMG says "without dispute" TM represented to Mr. Drance that an owner could remove their strata lot from the hotel rental pool and use their strata lot as their permanent residence. So, I find TM likely represented that it would be no problem for Mr. Drance to permanently live in his strata lot.

18. After Mr. Drance purchased his strata lot, the District informed the strata about the hotel zoning. In December 2019, the District wrote to the strata and told it owners were required to comply with the zoning. As shown in the District's February 8, 2021 "Request for Decision", the District's position is that to comply with the CD-5 zoning owners may only stay in their strata lots for 90 consecutive days. The District wrote that owners may not permanently live in their strata lots as some owners had been doing in the past.

19. Mr. Drance says TM managed SWR for years and knew or should have reasonably known the District zoning prevented him from residing in his strata lot and yet failed to tell him about it during their discussion. Mr. Drance says he only learned after he purchased his strata lot that full-time residential use was not permitted. He argues that TM's representation was negligent. He asserts that he would never have purchased his strata lot had he known about the hotel use restriction.

20. I find Mr. Drance is arguing negligent misrepresentation. To prove negligent misrepresentation, Mr. Drance must establish the following elements:

    a. That TMG owed him a duty of care,

    b. TMG's representation was untrue, inaccurate, or misleading,

    c. TMG acted negligently (breached the standard of care) in making the misrepresentation,

    d. Mr. Drance reasonably relied on the negligent misrepresentation, and

    e. The reliance caused his claimed damages.

    See test in *Queen v. Cognos Inc.,* 1993 CanLII 146 *(*SCC), [1993] 1 S.C.R. 87.

21. As the hotel manager, TM had special knowledge of SWR. I find TM knew Mr. Drance was asking him for information and the information was to help inform Mr. Drance's strata lot purchase. So, I find it was foreseeable that Mr. Drance would rely, at least in part, on information he received from TM during their pre-purchase conversation. I am satisfied that TM had a duty of care to provide Mr. Drance with accurate information within his role as the SWR manager.

22. I find TM's representations were reasonably consistent with what was true about other owners' strata lot use at the time. Despite the District's hotel zoning, the evidence shows several SWR owners had been residing permanently in their strata lots for many years without a problem. I find nothing to indicate that TM should have

reasonably known the District would start enforcing its zoning considering it had not done so in the past.

23. I find TMG's duty of care to Mr. Drance did not extend to require it to provide Mr. Drance with all the information that might be relevant to his strata lot purchase. I find it was ultimately Mr. Drance's responsibility as the strata lot purchaser to reasonably inform himself about the property, including the District zoning.

24. Normally, in a strata corporation, owners are permitted to live in their strata lots. In asking TM whether he thought it might be a problem, I find Mr. Drance had some idea that he might not be permitted to live in his strata lot. I find no other plausible reason for Mr. Drance discussing this concern with TM.

25. I find Mr. Drance had information that should have made him aware of the District's zoning or at least enough to make enquiries with the District about the permitted use. In particular, the parties' July 2019 emails show that Mr. Drance had a copy of the HMA. The HMA specifically references restrictive covenants filed in the Land Title Office that are registered on SWR's lands. The filed restrictive covenants state that they are in favour of the District and that strata lots must be used as a public hotel.

26. I note that Mr. Drance says he did not rely on his realtor or lawyer who were involved in the strata lot purchase because they did not manage SWR. Mr. Drance does not say whether he sought advice from his realtor or lawyer or what information they gave him about the strata lot use. Again, the purchase and sale agreement and supporting documents are not in evidence. To the extent Mr. Drance relied on an informal discussion with a hotel manager rather than on advice from his realtor or lawyer about the permitted use, I find Mr. Drance's reliance was unreasonable.

27. In summary, I find Mr. Drance has not proven TM's representations about the strata lot use were untrue, inaccurate or misleading at the time he made them. I also find Mr. Drance has not proven that he reasonably relied on TM's representations to purchase his strata lot. So, I find Mr. Drance has not proven negligent misrepresentation.

Did TMG negligently remove Mr. Drance from the rental pool?

28. The parties agree that after purchasing his strata lot, TMG removed Mr. Drance from the rental pool at Mr. Drance's request. Mr. Drance argues that by removing him from the rental pool, TMG put him in "violation" of the District zoning. I find no merit in this allegation.

29. The HMA states that when an owner purchases their strata lot, the owner is considered "In the Rental Pool" until the owner elects to be removed from it. On an owner's request, the HMA requires TMG to remove the owner from the rental pool subject to certain notice requirements. I find the HMA required TMG to remove Mr. Drance from rental pool when Mr. Drance requested it, and TMG only did what Mr. Drance asked it to do.

30. I also find removing Mr. Drance from the rental pool did not put Mr. Drance in violation of the zoning, as he asserts. I find the District's zoning is unrelated to owners being in the rental pool. For example, Mr. Drance could have still used his strata lot as a hotel and put his strata lot in an "unpooled" rental program as set out in the HMA.

31. I find TMG was not negligent for removing Mr. Drance from the rental pool.

To what extent, if any, is Mr. Drance entitled to the claimed damages?

32. Mr. Drance seeks $5,000 in compensatory and punitive damages.

33. Considering I found Mr. Drance has not proven that TMG was negligent, I dismiss Mr. Drance's claim for compensatory damages.

34. I find nothing vindictive, reprehensible, or malicious in the conduct of TMG or TMG's agent, TM, to attract punitive damages: see test in *Vorvis v. ICBC*, [1989] 1 SCR 1085. So, I dismiss Mr. Drance's claim for punitive damages.

35. 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. Drance is the unsuccessful party, I find he is not entitled to any reimbursement.

36. TMG did not pay any CRT fees nor claim any expenses.

ORDERS

37. I dismiss Mr. Drance's claims and this dispute.

Trisha Apland, Tribunal Member