



# Civil Resolution Tribunal

Date Issued: August 6, 2021

File: SC-2021-001819

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blanchet v. Tkachuk*, 2021 BCCRT 859

BETWEEN:

PAULA BLANCHET and MARK TAYLOR

**APPLICANTS**

AND:

BRIAN TKACHUK and VALERIE DURANT

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an underground oil tank. The applicants, Paula Blanchet and Mark Taylor, purchased a house from the respondents, Brian Tkachuk and Valerie Durant. The applicants say that, contrary to a contract warranty, the respondents left behind an oil tank on the property. The applicants claim reimbursement for \$2,935, broken down as \$2,725 to remove the tank and \$210 for excavator rental fees.

2. The respondents disagree. They say any warranties about oil tanks expired after the completion date of the sale. They also raise other objections discussed below.
3. Ms. Blanchet represents the applicants. The respondents represent themselves.
4. For the reasons that follow, I find the applicants have proven their claims. I order the respondents to pay them the amounts set out below.

## **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 respondents breached any contractual obligations about underground oil tanks and if so, what remedy is appropriate.

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision. I note Ms. Durant chose not to provide evidence, though she was given the opportunity to do so.
11. I begin with the undisputed background facts. The applicants purchased their house from both respondents under the terms of a July 23, 2020 contract of purchase and sale. The parties were each represented by their realtors. The sale completed on October 15, 2020.
12. On January 11, 2021, the applicants' contractor discovered an underground oil tank on the property. The applicants' realtor emailed the respondents' realtor about this on the same date. The applicants hired the contractor to remove the oil tank. Photos and a video show the contractor used an excavator to remove the tank from the ground. It is undisputed, and I find the evidence shows in any event, that the oil tank was on the property at the time of the sale.

### ***Did the respondents breach any contractual obligations about underground oil tanks and if so, what is the appropriate remedy?***

13. The parties' contract included a signed and binding addendum. The relevant portion says the following:

Seller hereby warrants no underground oil tank is currently located on the property. Seller hereby agrees to provide a removal certificate of the oil tank from the premises. Upon discovery of an underground oil tank by a qualified inspector and provision of a survey inspection report to the Seller, the Seller shall ensure any underground oil storage tank located on the property shall be

removed by a qualified tank removal contractor and the surrounding soil remediated by a qualified contractor(s) at the Seller's expense. Seller shall provide to the Buyer on or before the Completion Date all necessary written certificates and reports pertaining to the removal and remediation, that all work was completed in compliance with the applicable statutes, bylaws and regulations.

14. The respondents say that the above terms, read as a whole, only obligate the respondents to be responsible for oil tanks discovered by an inspector prior to the completion date. As the oil tank was discovered after the completion date, the respondents say they are not liable.
15. In *Walton v. Warren*, 2020 BCSC 19, the court considered a contract addendum that obligated the sellers to ensure that any underground storage tank located on the property would be removed by a contractor. The sellers also agreed to remove the tank before the completion date. The sellers also had to provide the buyers written confirmation of the tank's removal on or before the completion date.
16. In *Walton*, the buyers subsequently discovered an underground oil storage tank more than 2 years after the sale completed. The court found that the sellers were nonetheless liable for its removal. It reached this conclusion in part because the addendum did not include any conditional language to suggest the sellers were only liable for oil tanks discovered prior to the completion date or those they were aware of at the time of sale.
17. I find the addendum's wording in *Walton* is similar to the addendum before me, so similar considerations apply. The respondents warranted that there were no underground oil tanks at the time of the sale. They used no conditional language to limit their liability to oil tanks that they knew of or were discovered prior to the completion date. I find the addendum wording was not ambiguous. I find that, as in *Walton* at paragraph 67, adding terms to the contract to make the obligation conditional on discovery of the oil tank prior to the completion date would distort the contract's plain terms. Given this, I find that both respondents breached the contract by warranting there were no oil tanks on the property when in fact there was one. I

find this to be the case even though the respondents say, and I accept, that they were not aware of the tank.

18. The respondents submit, alternatively, that the applicants failed to conduct due diligence. I disagree. While the principle of “buyer beware” generally applies to real estate transactions in BC, express warranties such as the one in this dispute are exceptions to this rule. See *Nixon v. MacIver*, 2016 BCCA 8 at paragraph 32.
19. The respondents also complained about the manner in which the applicants and their realtor communicated with the respondents’ realtor. I find they did not act inappropriately. In any event, I find the behaviour complained of does not affect the respondents’ liability for the oil tank.
20. This leaves the determination of the appropriate remedy. The applicants provided 1) a January 21, 2021 invoice for \$2,725 to remove the oil tank, and 2) a January 22, 2021 invoice for \$210 for an excavator rental. I find it appropriate to order the respondents to pay these amounts as damages for breach of contract, which is what the applicants have claimed.
21. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on damages of \$2,935, calculated using the underlying invoice amounts and dates, to the date of this decision. This equals \$7.24.
22. 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 applicants are entitled to reimbursement of \$125 in CRT fees. The parties did not claim any dispute-related expenses, so I order none.
23. I find that both respondents are jointly and severally liable to pay the amounts set out below. This means the applicants may recover the money owing from either Brian Tkachuk or Valerie Durant.

## ORDERS

24. Within 14 days of the date of this order, I order the respondents to pay the applicants a total of \$3,067.24, broken down as follows:
  - a. \$2,935 as damages for breach of contract,
  - b. \$7.24 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
25. The applicants 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

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David Jiang, Tribunal Member