



Civil Resolution Tribunal

Date Issued: October 18, 2021

File: SC-2021-002327

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. Mehta*, 2021 BCCRT 1100

BETWEEN:

JASWINDER GILL

APPLICANT

AND:

ROHIT MEHTA and POOJA MEHTA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a \$3,000 holdback related to a house sale in December 2019. The applicant seller, Jaswinder Gill, says the respondent buyers, Rohit Mehta and Pooja Mehta, kept a \$3,000 hold back on the basis that deficiencies were not fixed.

2. The applicant says they tried to fix the deficiencies, but the respondents were uncooperative and continued to add further deficiencies. The applicant says the holdback was released to the respondents without the applicant's knowledge. The applicant seeks payment of the \$3,000 holdback.
3. The respondents dispute the applicant's claims. They say the applicant did not fix the deficiencies as required by the parties' contract, and the holdback was released to the respondents as required by the contract.
4. The parties are each self-represented in this dispute.

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.
9. Section 3 of the parties' contract of purchase and sale for the house (CPS), provided that any dispute between the parties about the deficiencies or releasing the holdback would be determined under the provisions of the *Commercial Arbitration Act* (CAA). The CAA provides for the appointment of an arbitrator, whose decision is reviewable by a "court". The CRT is neither an "arbitrator" within the meaning of the CAA nor is it a "court". However, I have not placed any weight on this provision as the parties did not rely upon it. I infer that the parties have waived this CAA provision and instead accept the CRT's jurisdiction over the dispute.

ISSUES

10. The issues in this dispute are whether the applicant left outstanding deficiencies and whether the applicant is entitled to payment of the \$3,000 holdback.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

The parties' contract

12. It is undisputed that the parties entered into a November 17, 2019 CPS, which had a December 18, 2019 completion date.
13. Section 3 of the CPS included the following terms and conditions, which I have summarized below:

- a. The respondents and the applicant will complete a walk-through inspection no later than 5 days before completion, and immediately complete a deficiency list of mutually-agreed deficiencies and mutually-agreed value for the deficiencies,
 - b. If the deficiencies are not fixed 2 days before completion, the respondents' conveyancer will hold back "the amount specified" until "all the deficiencies specified" are fixed,
 - c. The holdback will be placed in the respondents' conveyancer's trust account, and the conveyancer will retain the holdback until the applicant fixes the specified deficiencies, which shall not be later than 10 days after completion,
 - d. If the specified deficiencies have not been fixed by ten days after completion (December 28, 2019), the respondents' conveyancer may release the holdback to the respondents so they may fix the deficiencies themselves.
14. I find it is undisputed that the parties agreed to holdback \$3,000 for deficiencies, and the respondents' lawyer held back \$3,000 in their trust account, as required by the CPS.

Deficiencies

15. The respondents say a deficiency list was agreed to in accordance with the CPS. They submitted a December 8, 2019 email from their realtor to the applicant's realtor, titled "Deficiency List". The list identifies several deficiencies. On December 9, 2019, the applicant's realtor responded to this email saying "we will get that list done", subject to a few disputed deficiencies. I find that the December 8, 2019 email is a deficiency list that was prepared at least 5 days prior to completion and agreed upon by the parties in accordance with the CPS, with limited exceptions that are not relevant to my decision.
16. The applicant does not dispute that the deficiencies were not completed by December 28, 2019, as required by the CPS, but says they attempted to complete deficiencies "at various times" and the respondents were uncooperative. The respondents say

they were entitled to retain the holdback on December 28, 2019. The respondents also say they provided the applicant with additional time to fix the deficiencies, and the holdback was not released to them until May 2020.

17. The applicant also says a March 18, 2020 list of deficiencies was provided by the respondents' lawyer. The applicant says the deficiencies in this list were not agreed to, as required by the CPS, so he is not bound by it. I infer the applicant argues that the holdback does not apply to any deficiencies in the March 2020 list. However, the applicant did not submit a March 2020 list of deficiencies from the respondents' lawyer in evidence, and the respondents do not rely on it to justify keeping the holdback. I find the only relevant deficiencies are those identified by agreement in December 2019, as required by the CPS. So, I find that this alleged March 2020 list is irrelevant to the applicant's claim for payment of the holdback under the CPS.

Attempts to fix deficiencies

18. As noted above, the applicant says that the respondents made completing the deficiencies difficult. In support of this, the applicant submitted a statement from a tradesperson hired to fix some of the deficiencies, SL. SL says one of the respondents refused them entry on two occasions because "his wife was sleeping" and by "making another excuse". SL does not identify when this occurred, and whether it was before or after December 28, 2019. I accept that the respondents may have refused SL entry to the house at some point. However, without evidence about when this occurred, I find that this statement is not helpful in determining whether the applicant entitled to payment of the holdback under the CPS.
19. It is undisputed that after the completion date, the parties' relationship deteriorated. The respondents say someone trespassed on their property and stole their hose, which they reported to the police. They say they later discovered it was the applicant. The applicant does not dispute taking the hose, but says the hose belonged to them. The applicant says the respondents yelled at the tenant and sent the police to the applicant's home. The applicant says they had completed 80 percent of the deficiencies at this point and refused to return because of "difficulty and danger" to

themselves and their trades. However, as with the respondents refusing entry to SL, the applicant does not say whether the police incidents happened before or after December 28, 2019. So, I find these submissions unhelpful.

Release of holdback

20. The applicant also says that the respondent's lawyer released the holdback to the respondents without telling the applicant's lawyer, which is in itself a "breach". The respondents dispute this and say their lawyer reached out to the applicant's lawyer before releasing the holdback. The applicant did not provide any evidence from their lawyer about the holdback's release. I would have expected that if the holdback was released without their lawyer's knowledge, the applicant would have provided evidence from their lawyer confirming this. As the applicant has not, I place no weight on this submission. In any event, I find nothing turns on this, as the CPS clearly states that the respondents' conveyancer was entitled to release the holdback to the respondents if the deficiencies were not completed 10 days after completion.
21. As noted above, the applicant bears the burden of proof. In order to be entitled to payment of the holdback under the CPS, the applicant must show that they fixed the agreed upon deficiencies by December 28, 2019. I find the applicant admittedly did not complete the deficiencies by December 28, 2019. I also find that the applicant and has not provided sufficient evidence to prove that the respondents either prevented the applicants from completing the deficiencies by that date, or made another agreement with the applicant for the holdback's release.
22. While there is some evidence that the respondents did not immediately receive the holdback on December 28, 2019, and provided the applicant with more time to fix the deficiencies, the applicant did not claim that there was any such agreement, and did not provide evidence that the parties further agreed the respondents would not retain the holdback in December 2019, as they were entitled to do under the CPS. In any event, the deficiencies undisputedly remain incomplete. So, I find that under to the CPS, the respondents were entitled to retain the holdback to fix the deficiencies

themselves. It follows that I find that the applicant is not entitled to payment of the \$3,000 holdback.

CRT fees and expenses

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. As the applicant was unsuccessful, I dismiss the applicant's fee claim. The respondents did not pay any CRT fees or claim any dispute-related expenses, so I award none.

ORDER

24. I dismiss the applicant's claims and this dispute.

Leah Volkens, Tribunal Member