



Civil Resolution Tribunal

Date Issued: November 15, 2021

File: SC-2021-004007

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ren v. Alexander*, 2021 BCCRT 1205

BETWEEN:

SHEN REN

APPLICANT

AND:

DARLENE ALEXANDER and CHRIS BELTON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the sale of a house. The home's buyer was the applicant Shen Ren. The home's sellers were the respondents Darlene Alexander and Chris Belton. Ms. Ren says the sellers failed to disclose the sump pump's "near-dead" condition

on the Property Disclosure Statement (PDS). Ms. Ren says the sump pump stopped working in the same month she bought the house. She claims \$2,580.76 for cleaning costs and a new sump pump.

2. The respondent sellers say they never lived in the home as it was a rental. They say they last serviced the plumbing on May 19, 2020 and were told service would not be required for at least another year. The respondents say pumps “can go anytime” and the sump pump was not identified as problematic on Ms. Ren’s pre-purchase inspection. The respondents say they owe nothing.
3. The parties are each self-represented.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues are:
 - a. Are the respondent sellers liable for the sump pump's post-sale failure?
 - b. If so, to what extent if any is the applicant buyer entitled the claimed \$2,580.76 in cleaning and replacement costs?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Ms. Ren has the burden of proving her claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
10. Ms. Ren took possession of the home on February 1, 2021. She had King Rooter Plumbing Inc (King Rooter) replace the sump pump on February 26, 2021, 25 days later.
11. Ms. Ren did not provide a legal basis for her claim. The principle of "buyer beware" generally applies to real estate transactions in BC. A buyer is required to make reasonable pre-purchase enquiries about the property. Exceptions include negligent or fraudulent misrepresentations and the seller's duty to disclose latent effects: see *Nixon v. MacIver*, 2016 BCCA 8 at paragraphs 32 to 33.
12. The parties' contract of purchase and sale is not in evidence, but Ms. Ren submitted a copy of the PDS. In completing a PDS, the sellers are required to honestly disclose their actual and current knowledge of the property: *Hamilton v. Callaway*, 2016 BCCA 189. A seller will breach the contract where the representation they

made in the PDS was untrue and was inconsistent with the seller's true belief at the time.

13. The December 28, 2020 PDS signed by the respondents has a red line diagonally through all the pages, with a notation "tenant occupied property/sellers have never lived in the home". So, I find the respondent sellers made no representation in the PDS about the sump pump's condition, and so there was no misrepresentation about it. This is not the end of the matter.
14. Ms. Ren's essential argument is that the respondent sellers "should have" noted the sump pump's alleged "near-dead" condition on the PDS. I infer she argues it was a latent or hidden defect that the sellers had an obligation to disclose.
15. A latent defect is one that a buyer cannot discover through reasonable inspection: *Nixon* at paragraph 33. Here, I find the sump pump's actual condition at the time of sale was a latent defect. The buyer's pre-purchase inspection report is not in evidence, but it is undisputed there was no sump pump issue identified. However, as discussed below, I find it unproven that the respondent sellers knew there was any latent defect that required disclosure. Only known latent defects require disclosure.
16. Ms. Ren says the sump pump was "already on its last leg and had to be replaced, not repaired". She says King Rooter told her that the sump pump had previously been plugged and failed. Ms. Ren further alleges King Rooter told the respondents in May 2020 that the sump pump would need to be replaced in another year. Ms. Ren argues that "in another year is immediate future". So, Ms. Ren says the respondent sellers should have disclosed the sump pump's condition in the PDS but failed to do so.
17. In contrast, the respondent sellers say they did not know the sump pump needed to be replaced and say that King Rooter never told them that. Rather, they say King rooter told them after the last cleaning (in May 2020) that if the sump pump was maintained and cleaned on a regular basis (every year), there should be no issues.

So, the respondents say they did not think there was anything to disclose on the PDS. I agree that if only regular maintenance was required and there was no imminent hidden problem, there would be nothing for the respondents to disclose to the buyer Ms. Ren.

18. I turn to the relevant evidence from King Rooter. Ms. Alexander submitted its May 9, 2020 invoice, which set out its “sewer back up” and “grease build up” diagnosis along with the work done, described as “clean off float and test pump”. There is nothing on the face of this invoice that says replacement was required.
19. SR is the home’s tenant, both when the respondents owned it and after Ms. Ren’s purchase. In her July 26, 2021 statement in evidence (submitted by Ms. Alexander), SR said that to the best of her recollection the plumber told her “the last time” they came that the sump pump should be maintained and cleaned about every 6 months. Given the timing, the “last time” would have been May 2020. In her statement, SR wrote that the plumber (King Rooter) told her that “eventually it will need to be replaced but it could last another few years”.
20. Ms. Alexander also submitted an August 14, 2021 invoice from King Rooter. The customer is listed as “tenant” and so I infer SR provided Ms. Alexander with an invoice copy. King Rooter’s diagnosis was “sewage back up” with a lot of grease build-up. This invoice is 6 months after Ms. Ren replaced the sump pump. There is nothing on the face of this invoice that addresses the prior sump pump or the fact of the February 2021 replacement.
21. Ms. Ren relies on a February 22, 2021 email exchange between King Rooter’s Neil Klassen and Ms. Ren’s realtor. This was a few days before Ms. Ren replaced the sump pump. Mr. Klassen wrote that the sewage sump pump “should be replaced as it has been plugged and failed previously”. He added that the sump basin should be inspected and cleaned regularly “likely once a year”.
22. Contrary to Ms. Ren’s assertion, I find Mr. Klassen’s email does not show King Rooter told the respondent sellers in May 2020 that the sump pump required

imminent replacement. Rather, it only shows that in February 2021 Mr. Klassen decided it required replacement.

23. Ms. Ren did not submit anything else from King Rooter. Instead, she also relies on emails from her realtor that say King Rooter told the respondents the sump pump required replacement. While the CRT has discretion to accept hearsay, I decline to do so here. There is no explanation for the absence of evidence directly from King Rooter about what it told the respondent sellers. I draw an adverse inference against Ms. Ren, since I find this evidence would have likely been available to her given King Rooter serviced the new sump pump in August 2021. This means that I find King Rooter's evidence would likely not support Ms. Ren's position that King Rooter told the respondent sellers before the home's sale that the sump pump required imminent replacement or replacement within a year.
24. On the evidence before me, I find the respondents had no knowledge at the time of sale that the sump pump might require replacement in the near future, including within a year. Rather, I find King Rooter only told the respondents that the sump pump required regular servicing. I acknowledge SR's evidence that King Rooter told her servicing was required about every 6 months and the sellers say they were told yearly. However, in an August 2021 email between Ms. Ren and what appears to be her property manager, the property manager told Ms. Ren that King Rooter said a sump pump "usually only needs [to be] cleaned once a year." King Rooter's February 26, 2021 invoice for the sump pump's replacement also only mentions "annual" maintenance. I find it unproven a failure to regularly service the sump pump amounts to a latent defect, though in any event I find it unproven the respondents failed to regularly service it. In short, I find the respondents did not fail to disclose any latent defect with respect to the sump pump.
25. I further find the respondents had no obligation to disclose to Ms. Ren that they had had the sump pump serviced in May 2020. I find no evidence that the respondent sellers made any representations at all about the sump pump, in the PDS or

otherwise. I find they had no obligation to proactively disclose the sump pump's service that did not indicate any need for imminent repair or replacement.

26. Under CRTA section 49 and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Ren was unsuccessful, I dismiss her claim for reimbursement of paid CRT fees. The respondents did not pay fees and no dispute-related expenses were claimed.

ORDER

27. I dismiss Ms. Ren's claims and this dispute.

Shelley Lopez, Vice Chair