



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bradshaw v. Epix Squamish Limited Partnership*, 2022 BCCRT 189

B E T W E E N :

SIMON BRADSHAW and ERIN HOBDAY

APPLICANTS

A N D :

EPIX SQUAMISH LIMITED PARTNERSHIP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a strata lot purchase. The applicants, Simon Bradshaw and Erin Hobday, purchased a new strata lot from the respondent owner developer, Epix Squamish Limited Partnership (Epix). The applicants say the sale included the right to use common property bike storage areas. The applicants say Epix never provided such bike storage areas, so they were forced to store their bikes in their personal

strata storage lockers instead, which left less room for their other stored items. They claim \$5,000, which they say is the value of their 2 personal storage lockers, the resulting alleged depreciation of their strata lot's value, and the alleged cost of damage to their bikes from using the storage lockers.

2. Epix says the contract of purchase and sale (CPS) for the strata lot did not require Epix to provide a common bike storage area, so it owes nothing. Further, Epix says the Civil Resolution Tribunal (CRT) cannot decide this dispute, because it is not a court and the CPS requires disputes to be decided by the "courts" of British Columbia.
3. The applicants are represented by Ms. Hobday. Epix is represented by a partner.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons, which 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. I address the CRT jurisdiction issue below.

ISSUES

8. The issues in this dispute are as follows:
 - a. Should I refuse to resolve this dispute because it is within the exclusive jurisdiction of the “courts” of BC?
 - b. If the CRT does have jurisdiction over this dispute, did Epix break the CPS or misrepresent the purchased strata lot, and if so, does it owe the applicants \$5,000?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning “more likely than not”. 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.

Should the CRT hear this dispute?

10. An October 29, 2021 CRT preliminary decision considered Epix’s allegation that this dispute was outside of the CRT’s jurisdiction. The tribunal member found that Epix had not explained why the dispute was outside of the CRT’s jurisdiction, and the parties submitted no evidence. So, on a preliminary basis, the tribunal member declined to refuse to resolve the dispute for lack of jurisdiction. The tribunal member noted it was open to a tribunal member making a final decision to reconsider this issue with the benefit of evidence and further submissions from the parties. I agree that I am not bound by the October 29, 2021 preliminary decision.

11. Epix then submitted a document that provided further evidence and arguments about the jurisdiction issue. Epix argues that the CRT has no jurisdiction over the dispute because under the CPS, the parties agreed that the courts of BC have exclusive jurisdiction, and the CRT is not a court. The applicants did not comment further on the jurisdiction issue.
12. The applicants purchased the strata lot under the CPS in evidence. Paragraph 18 of the CPS says the parties' contract is exclusively governed by:

“... the laws of the Province of British Columbia and **the parties agree to attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.**” (Emphasis added.)
13. The portion of paragraph 18 emphasized above is known in law as a forum selection clause. The recent court decision *National Dispatch Services Limited v Dumoulin*, 2021 BCSC 2138 considered the 2-part test for enforcing forum selection clauses in contracts. Referring to other court decisions, *National* confirmed that first, the party seeking to enforce the clause must establish that it is valid, clear, enforceable, and applies to the dispute claims. If the first part of the test is met, then second, the burden of proof shifts to the party seeking to avoid the clause to show that there is a “strong cause” why it should not be enforced. This is known as the “strong cause” test.
14. Under the first branch of the test, I find that Epix has not met its burden of showing that the forum selection clause is applicable and clearly excludes the CRT from hearing this dispute, for the following reasons.
15. I find that the CRT is an administrative tribunal created under the CRTA, and is not a court as that term is defined in legislation. However, the CRTA's small claims jurisdiction came into force on June 1, 2017, and the CPS was signed on October 2, 2017. The parties do not say when the forum selection clause was drafted, or whether they were aware of the CRT's existence when the CPS was drafted or signed. They also do not say whether or why, at the time of the agreement, they intended the forum

selection clause to exclude the CRT from hearing disputes about the CPS, or whether it was simply intended to exclude disputes brought in forums outside of BC.

16. On the date the CPS was signed, the CRTA contained section 14.1 (now repealed), titled “Small claims must go through tribunal before going to Provincial Court”. That section said that a person may not bring a CRT small claim in Provincial Court, including a claim for debt or damages not exceeding \$5,000 like this claim, unless certain conditions were met. Those conditions included the CRT making a final decision in a claim and a party filing a Notice of Objection, the CRT refusing to resolve a claim, the Provincial court ordering that the tribunal not adjudicate the claim or the tribunal not having jurisdiction to adjudicate the claim.
17. I find former section 14.1 essentially required most small claims disputes to be considered by the CRT before proceeding to Provincial Court. If the parties intended to exclude the CRT from hearing disputes at the time they signed the CPS, I find former section 14.1 of the CRTA likely would have prevented the applicants from bringing a small claim in Provincial Court, possibly leaving the applicants without an accessible remedy. I note that the CRTA’s current provisions have the same effect.
18. Epix does not explain why it allegedly intended to exclude the CRT from hearing CPS disputes, and why the CRT would not otherwise be an appropriate forum for this dispute. Epix also does not say why the forum selection clause did not explicitly exclude the CRT by name, especially given the CRTA’s former section 14.1 requirement at the time of the agreement to bring small claims disputes to the CRT before proceeding to Provincial Court.
19. For the above reasons, I find that the parties likely did not intend, at the time they agreed to the CPS, for the forum selection clause to exclude the CRT from hearing CPS claims within its section 118 small claims jurisdiction. On balance, I find that the CPS’s forum selection clause does not clearly apply to prohibit the CRT from hearing this dispute’s claims. I find this dispute is properly before the CRT. So, I find it is unnecessary to consider the second “strong cause” branch of the forum selection test

in any detail. However, I would say there are likely public policy considerations that would weigh against allowing parties to contract out of the CRT's statutory jurisdiction.

Did Epix break the CPS or misrepresent the purchased strata lot?

20. The CPS in evidence was between Epix and Mr. Bradshaw, although the parties do not directly deny that Ms. Hobday was also an owner and purchaser of the strata lot. Given the outcome of my decision below, nothing turns on this. Under the CPS, Mr. Bradshaw agreed to purchase from Epix strata lot 64 in a new strata development, together with an interest in the common property in proportion to the strata lot's unit entitlement.
21. The strata was still being built when Mr. Bradshaw signed the CPS on October 2, 2017 and acknowledged receiving a copy of the disclosure statement. The CPS said the strata lot purchase included the use of 1 parking space. The applicants were undisputedly given access to 1 private storage locker as part of the strata lot purchase, and they purchased the use of a second private storage locker for \$2,500.
22. The applicants say that Epix's marketing materials and the strata disclosure statement advertised that common bike storage or bike racks would be available for strata lot owners' use. They say that upon the strata's completion in March 2021, it became apparent that areas originally intended for general bike storage actually contained private storage lockers that were "sold" to owners. It is unclear on the evidence before me whether the lockers were sold or leased, but they were undisputedly assigned for an owner's exclusive use in return for a payment. The applicants say they were "forced" to store their bikes in their storage lockers as a result, which prevented them from storing other items in the lockers and resulted in bike damage due to the lockers' small size.
23. Epix denies committing to provide common bike storage for the applicants' and other owners' use, and says that nothing outside of the CPS and the disclosure statement formed part of the parties' purchase agreement.

24. I find the CPS does not say that any common bike storage would be provided at the strata. The applicants say that the disclosure statement indicated that common bike storage would be provided. The applicants submitted a disclosure statement receipt, the disclosure statement's title page and index, and an unregistered, proposed strata plan that was part of the disclosure statement. However, none of the parties submitted the text of the disclosure statement itself, without explanation.
25. Further, the CPS contained an "entire agreement" clause in paragraph 10, which essentially states that documents and representations made outside of the contract do not form part of the contract and do not bind the parties. I find paragraph 10 said that the CPS was the entire agreement between the parties, and superseded any prior written or oral agreements, negotiations, or discussions. I find the clause excluded from the CPS all of the marketing materials, advertisements, and other documents and discussions referred to by the applicants, except for the disclosure statement.
26. The applicants say paragraph 10 is unfair and should not be enforced, because it allowed Epix to deliver something under the CPS completely different than promised in the prior marketing materials. They said it would, for example, allow Epix to sell a mansion and instead deliver a cardboard box. I find that is not the case, because paragraph 10 says that the contents of the CPS and the disclosure statement are part of the parties' agreement, and those documents describe the sale in some detail. The applicants also say that Epix did not specifically draw their attention to paragraph 10. However, they do not say that they were unaware of paragraph 10 or that they did not agree to it. I find paragraph 10 was not unconscionable, and is enforceable. So, I find that Epix is only bound by the terms and representations contained in the CPS and the disclosure statement.
27. The applicants rely on the proposed, unregistered strata plan in the disclosure statement, and point out that the drawings include 2 "bike storage" areas and 1 "bike rack" area on the strata's parking levels. They say that these labelled areas amount to a promise by Epix that those areas would contain common bike storage. It is

undisputed that those areas actually contain private storage lockers assigned to individual owners. Given that no other storage areas are shown in the proposed strata plan, I infer that the applicants' 2 storage lockers are located in those areas, and that the applicants store their bikes there.

28. The proposed strata plan indicated that the labelled bike storage and bike rack areas were limited common property for the exclusive use of strata lots 3 to 75, which included the applicants' strata lot 64. I find this likely indicated to the applicants, at the time they agreed to the CPS, that the proposed bike storage and bike rack areas were not general common property, but were restricted for the exclusive use of specific owners. Epix says that use of those areas and the storage lockers are governed by lease agreements. The disclosure statement index identifies sections addressing common property and facilities (3.3), limited common property (3.4), and storage lockers (3.6). However, as noted the disclosure statement text is not in evidence, and there are no storage locker leases in evidence.
29. On the evidence before me, I find that the bike storage and bike rack areas shown in the disclosure statement's proposed strata plan are used to store owners' bikes in individual storage lockers, as the applicants are presently doing. I find this is "bike storage" as shown on the proposed strata plan. I find the evidence, including the proposed strata plan and the CPS, does not show that Epix was required to provide the applicants with the use of a common bike storage area in addition to their private storage lockers. So, I find that Epix did not break the CPS by failing to provide a common bike storage area.
30. The applicants also allege that Epix misrepresented what it would provide under the CPS. Given the paragraph 10 "entire agreement" clause, and my finding that Epix did not promise to provide common bike storage under the CPS, I find that Epix did not misrepresent the property sold under the CPS.
31. The applicants say that they damaged their bikes when transferring them to and from their storage lockers, because of the lockers' small size. However, the bikes undisputedly fit in the lockers. Even if they did not, I find Epix did not promise that the

lockers would fit a specific size of bike, and the evidence does not show that the lockers were generally too small for bikes. So, I find that any such bike damage was entirely the applicants' responsibility. Further, and in any event, the applicants provided no evidence supporting the existence of such bike damage or its cost to repair. The applicants also say the lack of common bike storage has devalued their strata lot. As noted, Epix was not responsible for providing common bike storage, and regardless, the applicants provided no evidence supporting a devaluation of their strata lot.

32. For all of the above reasons, I find Epix was not responsible for providing the applicants with access to a common bike storage area. I dismiss the applicants' claim for \$5,000 in compensation.

CRT FEES AND EXPENSES

33. Under section 49 of the CRTA, and the 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. The applicants were unsuccessful in this dispute, but Epix paid no CRT fees and neither party claims CRT dispute-related expenses. So, I order no reimbursements.

ORDER

34. I dismiss the applicants' claim, and this dispute.

Chad McCarthy, Tribunal Member