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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schuler v. AD Chilliwack Tsoona Holdings Inc.*, 2022 BCCRT 494

B E T W E E N :

DOREEN SCHULER

APPLICANT

A N D :

AD CHILLIWACK TSOONA HOLDINGS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about compliance with landscaping restrictions in a statutory building scheme.

2. The respondent, AD Chilliwack Tsoona Holdings Inc. (Tsoona), is 1 of 4 entities that make up the developer of a bare land strata development. The applicant, Doreen Schuler, purchased a bare land strata lot from the developer. The lot was subject to a statutory building scheme. Ms. Schuler paid a $5,000 deposit to ensure compliance with the building scheme.

3. Tsoona says Ms. Schuler has not met the building scheme's landscaping restrictions, so the claim should be dismissed. Ms. Schuler says she has, and requests her $5,000 deposit back.

4. Ms. Schuler represents herself. An employee represents Tsoona. For the reasons set out below, I dismiss Ms. Schuler's claim.

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 Ms. Schuler's yard complies with the building scheme's landscaping requirement and is therefore entitled to a return of her $5,000 deposit.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Schuler must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

11. Ms. Schuler purchased the bare land strata lot in January 2019 from Tsoona, which was the registered owner, holding the strata lots in trust for the 3 other entities that together made up the developer as defined in the disclosure statement. It is undisputed that Ms. Schuler paid the developer a $5,000 compliance deposit. Tsoona notes that Ms. Schuler's deposit is held by AD Chilliwack Limited Partnership, which is one of the developer entities but not a party to this dispute. Given my decision to dismiss this claim on its merits, I do not need to resolve this issue.

12. In the contract of purchase and sale, Ms. Schuler acknowledged that all construction on the lot was subject to the statutory building scheme. A statutory building scheme is a form of restrictive covenant that a seller of 2 or more parcels of land may impose under section 220 of the *Land Title Act.*

13. Tsoona says the developer has not released Ms. Schuler's deposit because she has not satisfied the requirements of section 2.5 of the building scheme.

14. Section 2.5 provides in relevant part that a person will not construct an improvement or develop the lot unless (a) all yard areas on the lot are landscaped, and (d) each lot has a minimum of 300 mm of absorbent soil.

15. Ms. Schuler says she has completed her landscaping and complied with section 2.5. Photos show that the front and side areas of the lot have been intentionally decorated with rock and gravel.

16. The parties disagree about the interpretation of the term "landscaped" in section 2.5(a). Ms. Schuler says she has thoughtfully designed her landscaping to co-exist with the mountainous natural surroundings and 2 rock retaining walls on the lot.

17. Tsoona says Ms. Schuler's yard looks unfinished and does not match the other lots. Photos of an "approved" lot shows that the majority of the non-driveway lot area is covered by lawn, although there are some large rocks. Tsoona refers to the applicable municipal zoning bylaw's definition of landscaping as "the planting and maintenance of some combination of trees, shrubs, flowers, ground cover, lawns or other horticultural elements, together with other architectural elements designed to enhance the visual amenity of a property."

18. Ms. Schuler counters that her lot must comply with the municipal zoning bylaw's definition of landscaping because the municipality granted her final inspection and occupancy permit. However, there is no evidence that landscaping is a requirement to obtain an occupancy permit, so I place no weight on this submission.

19. Statutory building schemes are to be construed according to general contract interpretation principles, including the purpose and objective of the parties at the time the scheme was imposed (see *Hofer v. Guitonni,* 2011 BCCA 393). To discern this objective, the precise words used must be considered in the context of the factual matrix at the time the document was created, considering the background and purpose of the document. Any existing ambiguity should be resolved in favour of the free use of property (see *Hofer*).

20. On balance, I find Ms. Schuler's yard, while it may be aesthetically pleasing, does not comply with section 2.5. I find "landscaping" in section 2.5(a) must be understood as the type of landscaping that is supported on 300 mm of soil required by section 2.5(d). In other words, there must be a substantial amount of planted, rooted, living landscaping. To interpret landscaping to allow for entirely non-living, rock and gravel landscaping would leave no reason to require 300 mm of absorbent soil.

21. Even if I found Ms. Schuler's yard met a reasonable, objective understanding of "landscaping", I would still find that the yard did not meet section 2.5(d)'s requirement for 30 mm of absorbent soil, which I find is mandatory.

22. I note that Ms. Schuler provided a copy of a receipt for 14 yards of top soil, dated June 21, 2021, and sold to "Harold" with no address. Ms. Schuler does not explain her relationship to Harold, or where the soil was placed. Without more, I find this receipt does not prove that Ms. Schuler installed 300mm of absorbent soil. There is no evidence of where the topsoil was placed, such as the front or back yard, and I cannot fathom the purpose of placing topsoil under rocks and gravel.

23. For these reasons, I find Ms. Schuler is not in compliance with the building scheme and is not entitled to a refund of her $5,000 deposit.

24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Tsoona was successful but did not pay CRT fees or claim expenses. I dismiss Ms. Schuler's claim for reimbursement of CRT fees.

ORDER

25. I dismiss Ms. Schuler's claims and this dispute.

Micah Carmody, Tribunal Member