Civil Resolution Tribunal

Date Issued: May 5, 2022

File: SC-2021-009221

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Almanza v. Westhills Land Corp.*, 2022 BCCRT 536

B E T W E E N :

PAUL ALMANZA

APPLICANT

A N D :

WESTHILLS LAND CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about an alleged breach of a home purchase contract. The applicant, Paul Almanza, and another individual purchased a home from the respondent, Westhills Land Corp. (Westhills). Mr. Almanza says that under their contract, Westhills agreed the home would have 200 amp electrical service, but Westhills only installed 125 amp service. Mr. Almanza claims $5,000 for the cost of installing 200

amp service, which is the maximum Civil Resolution Tribunal (CRT) small claims amount. I find Mr. Almanza has abandoned any claim over $5,000.

2. Westhills says the contract mistakenly specified 200 amp electrical service, which was unnecessary for the home. Westhills says Mr. Almanza has suffered no damages because 125 amp service was installed instead, so it owes nothing.

3. Mr. Almanza is self-represented in this dispute. An employee represents Westhills.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.

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.

8. The parties each submitted late evidence, about the home's market value and electrical consumption. I find the evidence is relevant and the parties had an opportunity to comment on it, so it would not be unfair to allow it. I allow the late evidence.

9. The parties provided submissions on whether Mr. Almanza's CRT claim was out of time under the *Limitation Act*. Neither party disputed, and I find, that Mr. Almanza first discovered that the home did not actually have 200 amp service in May 2021, as further explained below. That was less than 2 years before Mr. Almanza applied for CRT dispute resolution on December 3, 2021, which is within the requirements of section 6 of the *Limitation Act*. I find the claim is not out of time.

ISSUE

10. The issue in this dispute is whether Westhills breached the parties' contract by failing to install 200 amp electrical service, and if so, does it owe Mr. Almanza $5,000 in damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Almanza must prove his claim on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

12. The parties signed the Contract of Purchase and Sale (contract) for a newly constructed home on January 9, 2018, with a contract completion date of June 7, 2018. Paragraph 7 of the contract said that the sale included various items, some of which were listed in Appendix B, which formed part of the contract. Appendix B was titled Standard Building Specifications. It included a list of interior features, one of which was "200 amp service."

13. I find that under the contract, Westhills was required to provide 200 amp electrical service in the home, in return for the purchase price that Mr. Almanza undisputedly paid. Westhills agrees that the contract specified 200 amp service, but the home only had 125 amp service. On the face of it, I find that was a breach of the contract.

14. I note that paragraph 9 of Addendum #1 to the contract said that the buyer and seller must inspect the home before the completion date and prepare and sign a conclusive list of defects or deficiencies. The buyer was deemed to have accepted the condition of the home subject only to the listed corrections. Neither party commented on this provision, or whether the parties held the required inspection.

15. However, in a May 28, 2018 email to Mr. Almanza's co-purchaser, a Westhills employee confirmed that, "The electrical panel is 200 amp service." So, I find that prior to the completion date and in response to the purchasers' inquiry, Westhills specifically confirmed that the home had 200 amp service when it did not. Further, Westhills does not argue that it did not have sufficient notice that the home's electrical service did not meet the contract's requirements. In the circumstances, and given the 200 amp requirement in the contract, I find that Westhills had sufficient notice that providing electrical service of only 125 amps was a defect or a deficiency under the contract, including for the purposes of Addendum #1 paragraph 9.

16. In a May 25, 2021 email, the co-purchaser of the home emailed Westhills that the purchasers had just discovered that their electrical panel provided 125 amp service and not 200 amp service as agreed, and inquired about upgrading the service. Nothing before me shows that Mr. Almanza had any reason to suspect that the home did not have 200 amp service until he discovered that fact in May 2021. Further, the evidence does not show that he had the required expertise to determine the home's true electrical capacity without assistance.

17. Westhills says that it mistakenly inserted and confirmed the contract term requiring 200 amp service in the home, because it inadvertently copied that term from a different contract with another party. It also says that its employee relied on the mistaken term when they confirmed on May 28, 2018 that the home's electrical panel provided 200 amp service. I infer from the evidence that Westhills drafted the part of the contract that said 200 amp service would be provided. Westhills does not say that it did not have an adequate opportunity to review the contract for errors or omissions before signing it.

18. The "law of mistake" applies to contract law (see *Hannigan v. Hannigan*, 2007 BCCA 365 at paragraph 63, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* (2003), 2003 ABCA 221). There are 3 types of mistake: common mistake where the parties make the same mistake, mutual mistake where the parties make different mistakes, and unilateral mistake where one party makes a mistake that the other party knows about. Here, the mistake at issue is Westhills' contract drafting mistake.

19. The law of mistake says that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistake, remained silent, and 'snapped' at the offer (see *256593 B.C. Ltd. v. 456795 B.C. Ltd.*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd.* (1971), 1971 CanLII 594 (ONSC)). As noted, Mr. Almanza did not know or reasonably suspect that the house would not have 200 amp service when he agreed to the contract. I also find the evidence does not show that Mr. Almanza knew or reasonably suspected that Westhills mistakenly inserted the term requiring 200 amp service, in particular because a Westhills employee specifically verified that 200 amp service would be provided. So, I find Westhills is not entitled to relief for its contract drafting mistake.

20. I find Westhills was bound by the terms of the contract as written, and which it wrote, including the term that the home would have 200 amp service. Westhills undisputedly refused Mr. Almanza's request to upgrade the home to 200 amp service, so I find Westhills breached the contract.

21. I find Mr. Almanza is entitled to damages resulting from Westhills' contract breach. Without citing any authority, Westhills says that the party claiming damages for breach of contract must show they suffered direct damages from the breach, and that they are not entitled to damages for "intangible losses". Westhills says that because 125 amp service was completely adequate for the home, and that its value was likely not impacted by the lack of 200 amp service, it owes no damages. I find that is not an accurate summary of the law of damages for breach of contract.

22. Damages for breach of contract are generally intended to place the innocent party in the position they would have occupied had the contract been carried out by both parties: see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. These are known as expectation damages. In this case, if Westhills had followed the contract, Mr. Almanza would have a home with 200 amp electrical service rather than 125 amp service. So, I find the appropriate measure of damages is the cost of Mr. Almanza installing 200 amp service in the home. I find the questions of whether 200 amp service was necessary for certain purposes, whether the lack of 200 amp service affected the home's market value, and even whether Mr. Almanza still owns the home, are not relevant.

23. Mr. Almanza submitted a December 1, 2021 quote from Mazzei Electric Ltd. that said the cost of supplying an underground cable, upgrading the home's electrical panel to 200 amps, and obtaining an electrical permit, would total $6,816. The price excluded excavation, backfilling, concrete work, drywall work, and other related work. Westhills does not dispute the quote's accuracy. I find Mr. Almanza has proven that it would cost him in excess of $5,000 to upgrade the home to 200 amp service as agreed in the contract. As noted, Mr. Almanza abandoned his claim to any amounts exceeding $5,000. I allow his claim for $5,000 in damages.

24. Westhills says only 50% of any damage award should be provided to Mr. Almanza, and the home's other owner is entitled to the other 50%. Mr. Almanza is a party to the contract, so I find he is entitled to receive 100% of the damages awarded in this dispute. The other owner is not a party to this dispute, and the issue of whether Mr. Almanza must share the damages award with the other owner is not before me.

CRT Fees, Expenses, and Interest

25. Mr. Almanza does not say that he has yet paid anything to upgrade his home to 200 amp service, or that the lack of that service has resulted in any out-of-pocket expenses. So, under section 2(a) of the *Court Order Interest Act*, I find he is not entitled to pre-judgment interest on the $5,000 owing.

26. 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. Mr. Almanza was successful in his claims, so I find he is entitled to reimbursement of the $175 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order Westhills to pay Mr. Almanza a total of $5,175, broken down as follows:

    a. $5,000 in damages for breach of contract, and

    b. $175 in CRT fees.

28. Mr. Almanza is also entitled to post-judgment interest, as applicable.

29. 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.

30. 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.

Chad McCarthy, Tribunal Member