



Civil Resolution Tribunal

Date Issued: May 17, 2022

File: SC-2021-003569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *D'Acquigney v. Vidalin*, 2022 BCCRT 586

B E T W E E N :

DEBORAH HEATHER D'ACQUIGNEY

APPLICANT

A N D :

DAVID VIDALIN and RESTHAVEN RESIDENCES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about alleged breaches of a contract of purchase and sale (contract) of a strata lot. The applicant, Ms. Deborah Heather D'Acquigney, purchased the strata lot from the respondent, Resthaven Residences Ltd. (Resthaven). The other respondent, David Vidalin, is Resthaven's principal.

2. Ms. D'Acquigney says that the respondents breached the contract by failing to provide a screen door and undercounter lighting. She claims \$586.95 as reimbursement for installing a screen door and \$1,298.24 as the estimate to install the undercounter lighting. She also says the respondents provided her the wrong parking stall and she claims \$3,114.841 as damages for breach of contract.
3. The respondents disagree. Resthaven says it had no obligation to provide the screen door or undercounter lighting under the contract. It also says it provided the correct parking stall (stall 33) under the contract's terms. Mr. Vidalin says he is not liable because he never contracted with Ms. D'Acquigney in his personal capacity.
4. Ms. D'Acquigney represents herself. Mr. Vidalin represents both respondents.
5. For the reasons that follow, I refuse to resolve Ms. D'Acquigney's parking stall claims and dismiss her other claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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.

The Parties' Late Evidence

10. Ms. D'Acquigney provided pages from the parties' contract as late evidence. The respondents provided correspondence and disclosure statements I refer to below. The parties had the opportunity to view the evidence and provide submissions. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing their late evidence and consider it below.

The Human Rights Tribunal Proceeding

11. CRTA section 11(1)(a) says the CRT may refuse to resolve a claim within its jurisdiction if it considers the claim would be more appropriate for another legally binding process or dispute resolution process.
12. Before applying for dispute resolution with the CRT, Ms. D'Acquigney commenced a proceeding in the Human Rights Tribunal (HRT) numbered CS-002677 about the parking stall. I asked the parties to comment on whether Ms. D'Acquigney sought the

same or overlapping remedies in the HRT proceeding and whether or not I should refuse to resolve the claims about stall 33 in this dispute. Both parties provided submissions.

13. The respondents' undisputed submissions are as follows. The HRT proceeding remains ongoing. Ms. D'Acquigney seeks the "return of the original handicapped stall to me in accordance with the original contract of purchase" and "compensation for injury to dignity, feelings and self-respect".
14. I find that Ms. D'Acquigney claim for damages in this dispute is a different remedy than what she claims for in the HRT proceeding. However, both proceedings are about the correct interpretation of the contract of purchase and sale. So, I find that a key finding in the HRT proceeding, as well as this dispute, is whether Ms. D'Acquigney is legally entitled to a different parking stall. There is therefore a risk of inconsistent findings if I were to resolve this issue. I also find that resolving this claim in the HRT proceeding is more likely to bring finality to that issue. This is because she seeks the return of the proper parking stall in that proceeding and not here.
15. Given the risk of inconsistent findings, duplication of processes, and the desirability of finality for the parties, I find it is in the interests of justice for the parking claim to be resolved in the HRT proceeding. For these reasons, I find the HRT is the more appropriate forum to resolve the parking stall claim and I exercise my discretion to refuse to resolve this claim under CRTA section 11(1)(a)(i).

ISSUES

16. The issues in this dispute are as follows:
 - a. Did the respondents breach the contract by failing to provide the screen door or undercounter lighting?
 - b. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, Ms. D'Acquigney as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
18. I begin with the undisputed background. Under the terms of a May 11, 2019 contract, Ms. D'Acquigney agreed to buy a strata lot from Resthaven. The contract had a completion and possession date of June 28, 2019.
19. Under the contract's section 7, titled included items, the price included screen doors and windows and a "secure parking stall". Under section 8, the parties agreed that the strata lot and all included items would be in substantially the same condition as viewed by Ms. D'Acquigney on May 10 and the possession date of June 28, 2019.
20. Section 11 also said that the contract was the entire agreement between the parties and there were no other representations, warranties, conditions, or collateral agreements.

Did the respondents breach the contract by failing to provide the screen door or undercounter lighting?

21. Ms. D'Acquigney did not describe any claims against Mr. Vidalin in his personal capacity. He was not a party to the contract. So, I dismiss all claims against him.
22. Ms. D'Acquigney says Resthaven agreed to provide and install a door screen leading to the balcony but failed to do so. As noted above, section 7 says the sale included "any...screen doors and windows...as viewed by the Buyer at the date of inspection".
23. I find that Resthaven was not obligated to install the screen door. It was not viewed on the date of inspection as it did not exist. There are no contract terms that say Resthaven had to install a screen door. Given this, I dismiss this part of Ms. D'Acquigney's claim.

24. I next consider the undercounter lighting. Ms. D'Acquigney relies on Resthaven's promotional materials. They say that in the kitchen there would be "under counter lighting". It is undisputed that the kitchen did not include this lighting.
25. I find that the main difficulty with Ms. D'Acquigney's claim is section 7 of the signed May 11, 2019 addendum titled "ADDENDUM III". Section 7 said that the buyer was entitled to request an inspection with Resthaven's representative prior to the completion date. The parties would then prepare and sign a "conclusive list of any defects and deficiencies". Resthaven would then promptly repair or remedy the defects and deficiencies. In the event of any dispute, the architect for the development would make a final and binding determination. Finally, "In all other respects", Ms. D'Acquigney would be deemed to accept the physical condition of the property.
26. I find that the most reasonable interpretation of this term is that Ms. D'Acquigney was deemed to accept the condition of the property, subject to the list of defects and deficiencies. Here, there is no indication that Ms. D'Acquigney requested an inspection under section 7 or prepared a list of defects and deficiencies with Resthaven. So, I find that Ms. D'Acquigney was contractually deemed to accept the physical condition of the property. This included the lack of undercounter lighting.
27. Given the above, I find I must dismiss Ms. D'Acquigney claims for the undercounter lighting.
28. 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. I have refused to resolve Ms. D'Acquigney's claims for the parking stall and dismissed her other claims. So, I dismiss her claims for reimbursement.

ORDERS

29. I refuse to resolve Ms. D'Acquigney claims about the parking stall under CRTA section 11(1)(a)(i).

30. I dismiss Ms. D'Acquigney remaining claims against the respondents.

David Jiang, Tribunal Member