Civil Resolution Tribunal

Date Issued: July 5, 2022

File: SC-2021-007420

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sugii v. McAllister*, 2022 BCCRT 770

B E T W E E N :

NINA SUGII

APPLICANT

A N D :

SYDNEY MCALLISTER, GLENN WARREN, CITY REALTY LTD., and SUNSHINE COAST ASSOCIATION FOR COMMUNITY LIVING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. This is a small claims dispute about a parking stall. The applicant, Nina Sugii, says the respondents, Sydney McAllister, Glenn Warren, City Realty Ltd. (CRL) (real estate respondents), and Sunshine Coast Association for Community Living (SCACL), negligently misrepresented that a specific and desirable parking spot was

allocated to her strata lot when she purchased the strata lot in May 2018. She also says that as a first-time home buyer, she relied on the real estate respondents' expertise and they failed to notice alleged errors in the Property Disclosure Statement (PDS) and *Strata Property Act* Form B Information Certificate (Form B). Ms. Sugii also says that SCACL should have known that the Form B it provided was outdated. Ms. Sugii claims $5,000 in damages for the alleged misrepresentations, negligence, and associated stress and humiliation she says she has endured.

2. The real estate respondents deny that they were negligent, breached any contractual duty of care, or made any misrepresentations to Ms. Sugii. The respondent SCACL also denies making any misrepresentations and says it was unaware of any alleged issues with the Form B it provided in May 2018.

3. Ms. Sugii and Ms. McAllister are self-represented. Mr. Warren represents himself and CRL. SCACL is represented by its executive director. For the reasons that follow, I dismiss Ms. Sugii's claims.

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). 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.

ISSUES

8. The issues in this dispute are:

    a. Are Ms. Sugii's claims out of time under the *Limitation Act*?

    b. If not, has Ms. Sugii proven that the respondents made the alleged misrepresentations or were otherwise negligent?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Ms. Sugii must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

Background Facts

10. The undisputed facts are as follows. In May 2018, Ms. Sugii purchased a strata lot in Sechelt, British Columbia. The completion date for the sale was May 28, 2018. In the sale, Ms. Sugii was represented by Ms. McAllister, her real estate agent, as well as CRL, the real estate brokerage. Mr. Warren was CRL's managing broker.

11. The PDS, which was completed by the strata lot's sellers on May 5, 2018, said that 1 parking stall, specifically number 213, was included and that it was common property. The strata lot's sellers are not parties in this dispute.

12. In her email dated May 2, 2018, Ms. McAllister provided some answers to questions Ms. Sugii had about the sale. Ms. McAllister said that this information was coming from the seller who was also the strata council's chair and noted that the PDS indicated that one parking stall is allocated per unit, and that stall 213 was allocated to the subject strata lot. Ms. Sugii says that by way of this email, as well as during their conversations, Ms. McAllister misrepresented to her that parking stall 213 was assigned to her strata lot which she says has turned out not to be the case.

13. Ms. Sugii also says that Ms. McAllister was negligent in not advising Ms. Sugii that the PDS said the parking stall was common property. She further says that Ms. McAllister was negligent in not noticing that the Form B provided by SCACL was allegedly outdated. She says that the respondents had the expertise to know the Form B was inadequate and that had SCACL used the updated Form B, it would have made it clear that parking was not assigned and was common property. I find that Ms. Sugii's claims against the respondents are essentially in negligent misrepresentation and professional negligence.

Limitation Act

14. First, I consider whether Ms. Sugii's claims are out of time given that the alleged misrepresentations and alleged professional negligence took place in 2018. Since the parties did not address the issue of whether Ms. Sugii's claims were out of time under the *Limitation Act* (LA), I requested submissions from the parties about the applicable limitation periods in this dispute. SCACL did not provide any submissions on this issue.

15. The LA applies to disputes before the CRT. The LA sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.

16. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is discovered. Under section 8 of the LA, a claim is discovered when Ms. Sugii knew or reasonably ought to have known that she had a claim against the respondents and that a court or tribunal proceeding was an appropriate way to seek a remedy.

17. Ms. Sugii submitted her CRT dispute application on November 16, 2021. So, in order for her claims to be on time, she must have discovered them on or after November 16, 2019.

18. Ms. Sugii says that the applicable limitation period has not expired because it was unclear if parking at her strata was assigned or shared until it was confirmed in May 2021. The real estate respondents say that there is no evidence showing that the subject parking stall was not assigned to Ms. Sugii's strata lot. In the alternative, they say that if the parking stall was not assigned at the time Ms. Sugii purchased the strata lot, she knew or ought to have known in or around May or June 2018 that she had a plausible claim against them.

19. The real estate respondents refer to and rely on the Supreme Court of Canada's decision in *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31. In *Grant Thornton*, the court confirmed that a claim is discovered when a plaintiff has actual or constructive knowledge of the material facts on which a plausible inference of liability can be drawn. The court said that a plaintiff will have constructive knowledge if they should have discovered the material facts by exercising reasonable diligence. Further, the court said that while a plaintiff needs more than mere suspicion or speculation to have "discovered" a claim, they do not need to know the exact extent or type of harm, or the precise cause of their injury, in order for a limitation period to run.

20. With that, I turn to the relevant evidence. On May 30, 2018, 2 days after Ms. Sugii's strata lot's sale had completed, Ms. McAllister emailed the strata manager and said that she had received a text message from Ms. Sugii that someone had spray painted

over the number “213” on the disputed parking stall. The email included a picture showing the spray paint.

21. In February 2019, Ms. Sugii continued to have issues with the parking stall. On February 14, 2019, Ms. Sugii emailed Ms. McAllister and asked if she had any information about whether the parking stall was shared or owned by Ms. Sugii. Ms. Sugii said she had received a note from someone who had parked in the parking stall. The note said that there had been no assigned parking at this strata property for over 7 years and that they all share parking together. On February 15, 2019, Ms. McAllister responded and referred Ms. Sugii to the developer’s disclosure statement which stated that the developer would allocate 1 parking space per strata lot as well as the PDS which, as noted, said that parking stall 213 was for Ms. Sugii’s strata lot.

22. On February 19, 2019, Ms. Sugii wrote to Ms. McAllister again and noted that the PDS had checked off “common property” for the parking stall. Ms. Sugii said that she was not sure if that meant that anyone could park in the parking stall. She questioned whether she had been misinformed. The next day, Ms. McAllister responded and told Ms. Sugii to contact a lawyer or notary to see if the parking stall was registered to Ms. Sugii when she bought the strata lot.

23. The evidence also includes emails between April and May 2021 from Ms. Sugii and her friend SB to Mr. Warren. On April 27, 2021, SB wrote to Mr. Warren and said that the strata claimed that parking was not assigned and that it was instead shared, and that Ms. Sugii had been fighting for over 2 years to fix this. Ms. Sugii also provided a May 13, 2021 email from her to the strata manager as part of her submissions on the limitation issue. In this email, Ms. Sugii said that shortly after she purchased the strata lot in May 2018, someone spray painted over the numbers on the subject parking stall, the strata management company changed, and Ms. Sugii was told that parking is now shared.

24. On balance, I find that the evidence shows that by February 2019, Ms. Sugii either knew or should have known the necessary facts that would have led her to believe she had a plausible case against the real estate respondents in negligent

misrepresentation and in professional negligence about the PDS. By this time, Ms. Sugii had dealt with other residents parking in the parking stall, the numbers “213” on the parking stall being spray painted over, and she had received a note from a resident that stated that parking was shared and not assigned. Further, the PDS had been available to Ms. Sugii since early May 2018 and she knew since at least February 19, 2019 that the PDS indicated that parking stalls were common property. I find that Ms. Sugii could have reasonably discovered her negligent misrepresentation claim and her claim about the PDS against the real estate respondents by the end of February 2019, had she exercised due diligence. So, I dismiss Ms. Sugii’s negligent representation claim as well as her professional negligence claim about the PDS against the real estate respondents for being out of time under the LA.

25. With respect to Ms. Sugii’s claims against SCACL, I note that there is no evidence before me of any representation made by SCACL about the parking stall at the time of Ms. Sugii’s purchase. So, I dismiss Ms. Sugii’s negligent representation claim against SCACL since she has failed to prove that SCACL made any representations about the parking stall. This leaves Ms. Sugii’s professional negligence claim against the respondents about the allegedly outdated Form B which I consider below.

Was the Form B provided by SCACL outdated?

26. As mentioned, Ms. Sugii says that SCACL should have known to use the most current Form B and that if they had, the form would have clarified that parking was not assigned and that it was common property. She also says that the real estate respondents were negligent in not noticing that the Form B SCACL provided during the sale was outdated. In support of her claim, Ms. Sugii relies on a May 17, 2021 Form B completed by the current strata manager. I find that the evidence does not establish that SCACL had provided an outdated Form B at the time of Ms. Sugii’s purchase. This is because there is no evidence to prove that this new updated version of the Form B that Ms. Sugii relies on was available in May 2018. Since I have found that Ms. Sugii has failed to prove that the Form B provided by SCACL was the wrong

form, I also find that Ms. Sugii's claim that the real estate respondents, due to their expertise, should have known the Form B was outdated must also fail. So, I dismiss Ms. Sugii's professional negligence claims about the Form B against the respondents.

Failure to prove damages

27. Even if I am wrong about the application of the LA to this dispute, I would have dismissed Ms. Sugii's claims in any event because I find that Ms. Sugii failed to prove any entitlement to damages. In her submissions, Ms. Sugii says that her $5,000 claim is an estimate for the parking stall's value. In support, she relies on a news article and website postings about the price of purchasing a parking stall in Vancouver. Ms. Sugii essentially says that since there is allegedly no parking stall allocated to her strata lot, she overpaid for her home. I find that the news articles and website postings are not a reliable indicator of how much the subject parking stall, which is located in Sechelt and not Vancouver, is worth. Further, I find there is no evidence before me that proves Ms. Sugii overpaid for her strata lot. Also, although in her Dispute Notice Ms. Sugii's $5,000 damages claim includes damages for stress and humiliation she has allegedly experienced, she has presented no objective evidence to prove her entitlement to these damages. For those reasons, I dismiss Ms. Sugii's claims and this dispute.

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. Since Ms. Sugii was unsuccessful, I dismiss her claim for paid CRT fees. Ms. Sugii did not claim any dispute-related expenses. The successful respondents did not pay any CRT fees. Ms. McAllister and CRL originally claimed $8,000 in dispute-related expenses but have since abandoned that claim. So, I dismiss their claim for dispute-related expenses as well.

ORDER

29. I dismiss Ms. Sugii's claims and this dispute.

Nav Shukla, Tribunal Member