



# Civil Resolution Tribunal

Date Issued: February 8, 2023

File: SC-2022-003471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bissoondatt v. Le Gal*, 2023 BCCRT 117

B E T W E E N :

DEBORAH BISSOONDATT

**APPLICANT**

A N D :

YVES MARCEL LE GAL and ANNE MARIE LE GAL

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Eric Regehr

## INTRODUCTION

1. Deborah Bissoondatt purchased a house from Yves Marcel Le Gal and Anne Marie Le Gal. Ms. Bissoondatt claims that there was a leaking water main when the sale completed. She says that the Le Gals failed to disclose the leak on the property disclosure statement (PDS) they filled out prior to the sale, even though she says

they knew about a potential leak. Ms. Bissoondatt claims \$4,725, the cost to repair the leak. She is self-represented.

2. The Le Gals admit that the municipality had warned them about high water consumption and a possible leak. However, they say this notice came shortly after they had had a toilet leak that partially flooded their basement. They attributed the high consumption to this flood and did not investigate further. They therefore deny knowing anything about the water main leak and deny responsibility for the repair cost. The Le Gals are represented by a family member.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Was there a water leak when the sale of the house completed?
  - b. If so, did the Le Gals make a misrepresentation on the PDS?
  - c. If so, are the Le Gals liable for a negligent misrepresentation?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, Ms. Bissoondatt as the applicant must prove her claim on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The facts are mostly undisputed. The parties entered into a contract of purchase and sale on July 16, 2021, with a completion date of September 15, 2021. The contract incorporated a property disclosure statement (PDS) dated June 24, 2021. In this original PDS, the Le Gals answered "no" to the questions "Are you aware of any problems with the water system?" and "Are you aware of any problems with the plumbing system?" The PDS said that the Le Gals were required to disclose any "important changes" to the information in the PDS prior to the sale's completion date.
10. On June 27, 2021, there was a leak in the Le Gals' upstairs bathroom, which caused a flood. The Le Gals say that the leak went on for several hours before they discovered it. The Le Gals disclosed the leak in a July 7, 2021 addendum to the PDS dated, stating "We recently had a toilet crack that caused a minor flood".

11. In August 2021, the Le Gals received a municipal water bill for the period April 27 to August 11, 2021. The bill was much higher than usual, with 811 cubic meters of water consumed compared to 251 cubic meters in the previous billing cycle. The bill contained the following statement: "High Consumption – Please check for a leak". The Le Gals say that they attributed the high bill to the bathroom flood. They say that Mrs. Le Gal spoke to a municipal employee, who seemed to accept the explanation.
12. Ms. Bissoondatt also provided an August 26, 2021 letter from the municipality addressed to the Le Gals. The Le Gals do not recall receiving or reading this letter, although they acknowledge that they had "a lot going on" around that time as they prepared to move. I ultimately find nothing turns on this letter because it simply reiterates the municipality's recommendation that the Le Gals check for a leak. So, I do not need to determine whether the Le Gals received this letter.
13. The Le Gals did not investigate the possibility of a leak or disclose the municipality's high water consumption warning to Ms. Bissoondatt by further amending the PDS.
14. The sale completed on September 15, 2021. The next water bill was December 21, 2021. Like the last bill, it recommended investigating the possibility of a leak because of high consumption. Ms. Bissoondatt hired a plumber, who determined that there was a water main leak. The plumber fixed the leak on March 24, 2022, for \$4,725. Again, other than the issue about the municipality's letter, none of the above is disputed.

***Was there a water leak when the sale of the house completed?***

15. The Le Gals say that Ms. Bissoondatt has not proven that the water main leak was present when the sale completed. Ms. Bissoondatt relies on an expert report from Robert Lupul, who is a red seal plumber who has managed Coastline Plumbing Ltd. since 2009. I accept that Robert Lupul is qualified to give expert evidence under the CRT's rules, which the Le Gals do not dispute.

16. Ms. Bissoondatt asked Robert Lupul whether a cracked toilet could leak 1,650 to 1,700 gallons per day (which was the approximate daily consumption in the August 2021 water bill). Robert Lupul answered no because that is “a lot of water” such that the house “would be a flood inside”. Ms. Bissoondatt says that this proves that the leak was present when the Le Gals received the August 2021 water bill.
17. The Le Gals argue that Robert Lupul’s opinion is mere speculation, noting that they never visited the home. While that is true, I find that Robert Lupul’s evidence about whether a toilet could leak enough to explain the increased water consumption does not depend on a visual inspection of the house. Rather, I find that it is based on their general knowledge about plumbing fixtures and water flows. I therefore accept his evidence that the toilet leak did not cause the excess water consumption. In any event, I find that expert evidence is not required. I find it obvious that a single toilet leaking for several hours cannot explain the 560 cubic meters (which is 560,000 liters) of excess water consumption simply because of the sheer volume of water at issue. I find that the water main was leaking during the April to August 2021 billing cycle, when the Le Gals still owned the house.

***Did the Le Gals make a misrepresentation on the PDS?***

18. Contrary to Ms. Bissoondatt’s submissions, the law does not require “full disclosure” when selling real property. The general rule in the sale of real property is *caveat emptor*, which means “buyer beware”. Sellers must disclose latent defects they know about, but only if they render the house dangerous or uninhabitable. See *Nixon v. MacIver*, 2016 BCCA 8. There is no suggestion that the leaking water pipe was this serious.
19. The PDS is another exception to the “buyer beware” principle, because as mentioned above, it was incorporated into the parties’ contract. Sellers must correctly and honestly disclose their actual knowledge of the property when completing a PDS. See *Nixon*, at paragraph 48. However, this obligation is based on the sellers’ subjective knowledge. There is no suggestion that the Le Gals were dishonest in how they filled out the original PDS or in how they described the June

27, 2021 leak. The question is whether their receipt of the August 2021 water bill was an important change to the information in the PDS that they were required to disclose, because the PDS required the Le Gals to disclose important changes.

20. I find that it was. The August 2021 water bill showed that the Le Gals had consumed more than triple the water as the previous billing cycle. Coupled with the municipality's explicit warning about a possible leak, I find that the Le Gals knew that there was a possible issue with the water and plumbing systems. I find that the potential of a water main leak is important information that any reasonable buyer would want to know. I find that it does not assist the Le Gals that they had an alternative explanation for the high water consumption. I find that after receiving the August 2021 water bill, they had actual knowledge of an issue with the water or plumbing systems. I find that the PDS required them to disclose this important change to Ms. Bissoondatt.

### ***Are the Le Gals liable for a negligent misrepresentation?***

21. When a seller misrepresents something in a PDS, it does not automatically make them liable to the buyer. Even though the parties' contract incorporated the PDS, this does not make the representations in the PDS contractual warranties. Instead, a misrepresentation in a PDS can form the basis of a negligent or fraudulent misrepresentation claim. See *Brunning v. Cummings*, 2020 BCSC 31, at paragraphs 87 to 93.

22. A negligent misrepresentation occurs when:

- a. The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,
- b. The seller acted negligently in making the representation, and
- c. The buyer reasonably relied on the representation to their detriment.

See *Queen v. Cognos*, 1993 CanLII 146 (SCC).

23. I have already concluded that the Le Gals misrepresented their actual knowledge about the state of the water or plumbing system. I find that the Le Gals were negligent in failing to disclose the high water consumption. I say this because, as mentioned above, it should have been obvious that the toilet leak did not explain the high water consumption. Given that and the explicit warning about a possible leak, I find that a reasonable homeowner would have realized that they needed to disclose the issue in the PDS.
24. Next, I find that it was reasonable for Ms. Bissoondatt to rely on the PDS because it explicitly required the Le Gals to give honest and complete answers. It was also incorporated into the parties' contract. Finally, I find that Ms. Bissoondatt suffered a loss because of the misrepresentation because she did not become aware of the leak until after she completed the purchase. I find that if Mr. Bissoondatt knew about the possible leak before the sale completed, she would have taken steps to ensure that the Le Gals had it repaired. I therefore find that the Le Gals are liable for a negligent misrepresentation.
25. I order the Le Gals to pay Ms. Bissoondatt \$4,725 for the leak repair cost.
26. The *Court Order Interest Act* (COIA) applies to the CRT. However, Ms. Bissoondatt waived her interest claim, so I award none.
27. 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 find Ms. Bissoondatt is entitled to reimbursement of \$175 in CRT fees. Ms. Bissoondatt claimed courier and registered mail expenses but provided no receipts or invoices to prove them. So, I dismiss her claim for dispute-related expenses.

## **ORDERS**

28. Within 30 days of the date of this order, I order the Le Gals to pay Ms. Bissoondatt a total of \$4,900, broken down as follows:

a. \$4,725 in damages, and

b. \$175 in CRT fees.

29. Ms. Bissoondatt is entitled to post-judgment interest, as applicable.

30. I dismiss Ms. Bissoondatt's claim for dispute-related expenses.

31. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Eric Regehr, Tribunal Member