



Civil Resolution Tribunal

Date Issued: March 1, 2023

File: SC-2022-004278

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheung v. Yuen*, 2023 BCCRT 170

BETWEEN:

CRYSTAL H. CHEUNG

APPLICANT

AND:

MAN KIT YUEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. In 2013, the applicant, Crystal H. Cheung, purchased a strata lot (condo) in British Columbia. The respondent, Man Kit Yuen, was Ms. Cheung's real estate agent for

the condo purchase. The seller, the seller's real estate agent, and the strata corporation (strata) are not named as parties in this dispute.

2. Ms. Cheung says in 2022 she discovered that the storage locker assigned to her condo was not the locker identified in the contract of purchase and sale (CPS) that she had been using since her purchase. Ms. Cheung was required to move her belongings to a different locker, which she says was smaller. Ms. Cheung says she relied on information Mr. Yuen entered in the CPS. She claims \$5,000 for Mr. Yuen's alleged negligence and misrepresentation.
3. Mr. Yuen says he took reasonable steps to verify the locker assignment with the strata manager. He says he made no misrepresentations and did not breach the standard of care applicable to buyer's agents. Mr. Yuen further says Ms. Cheung has not shown any loss.
4. Each party is self-represented. As I explain below, I dismiss Ms. Cheung'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.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Yuen negligently misrepresent the storage locker assigned to Ms. Cheung's condo?
 - b. Was Mr. Yuen negligent as Ms. Cheung's real estate agent?
 - c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Cheung must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Most of the facts are undisputed. As noted, Mr. Yuen acted as Ms. Cheung's real estate agent in her 2013 condo purchase. The seller was represented by a different real estate agent. Mr. Yuen prepared the July 19, 2013 CPS with a completion date of October 15, 2013. The seller provided a property disclosure statement (PDS) that said locker 12 was associated with the condo.

12. After the purchase, Ms. Cheung began using locker 12, and did so until May 2022 when the strata manager told that her locker was actually locker 57. Ms. Cheung then moved her stored belongings from locker 12 to locker 57. She says locker 57 has a “much smaller” volume, although she provided no photos, measurements, or other evidence in support.
13. Ms. Cheung makes 2 arguments about why Mr. Yuen is liable. The first is that Mr. Yuen negligently misrepresented information about the locker. As summarized in *Hanslo v. Barry*, 2011 BCSC 1624, Ms. Cheung must establish 5 things to prove negligent misrepresentation:
 - a. Mr. Yuen owed Ms. Cheung duty of care.
 - b. The representation in question was untrue, inaccurate, or misleading.
 - c. Mr. Yuen acted negligently in making the misrepresentation.
 - d. Ms. Cheung reasonably relied on the negligent misrepresentation.
 - e. The reliance resulted in damages.
14. Ms. Cheung’s second argument is that Mr. Yuen negligently failed to confirm the locker assigned to the condo, in breach of his professional duties as her real estate agent. As set out in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, the test for negligence requires Ms. Cheung to establish 4 things:
 - a. Mr. Yuen owed Ms. Cheung a duty of care.
 - b. Mr. Yuen breached the standard of care.
 - c. Ms. Cheung sustained a loss.
 - d. The loss was caused by Mr. Yuen’s breach.
15. There is some overlap between the tests, including the existence of a duty of care, which Mr. Yuen does not dispute.

16. I begin by considering whether Mr. Yuen's representation that locker 12 was assigned to the condo was untrue. Ms. Cheung says that locker 12 was never assigned to her condo. I accept that this is what the strata told her, but the only evidence before me is the strata manager's assertion in a May 31, 2022 email. The strata manager said that the locker assignment was stated in strata bylaw 67 and had not changed since before the building was occupied.
17. There is no copy of bylaw 67 in evidence. In 2013, Mr. Yuen obtained a copy of the bylaws in existence at that time and provided them to Ms. Cheung. Those bylaws stopped at bylaw 10.1 and did not describe locker assignments. Given that bylaw 67 did not exist at the time of the 2013 purchase, it is possible the strata changed the locker assignments when it passed bylaw 67. However, even if I were to accept that Ms. Cheung's condo was always assigned locker 57, I would not find Mr. Yuen made a liable. This is because, as I explain below, I find he did not act negligently in representing that locker 12 was assigned to the condo.
18. The PDS said the condo was assigned locker 12. Mr. Yuen included a condition in the CPS in favour of Ms. Cheung that she had until August 1, 2013 to verify the locker assignment. Emails from late July 2013 show that Mr. Yuen emailed and called the strata manager to verify this information. The strata manager confirmed that all lockers were common property and were assigned by the strata corporation. When the strata manager advised that the strata corporation could reassign lockers at any time, Mr. Yuen emailed that information to Ms. Cheung. She did not express any concern about that information and continued with her purchase.
19. I find that by confirming with the strata manager that locker 12 was assigned to the condo, Mr. Yuen did what a reasonable real estate agent in his position would have done. Ms. Cheung implies that Mr. Yuen should have done more, but it is not apparent what else he should have done. In general, expert evidence is required to prove that the conduct of a professional, such as a real estate agent, fell below a reasonably competent standard. This is because the ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule

are when conduct is obviously substandard or about something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112). I find that Mr. Yuen's conduct was not obviously substandard. I find he did not act negligently as Ms. Yuen's real estate agent, including when making the representations he made about the locker.

20. Another element common to both negligence and negligent misrepresentation is proof of damage or loss. Ms. Cheung does not explain her claimed \$5,000 in damages. In cases of negligence or negligent misrepresentation against a real estate agent, damages are typically assessed as the difference in value, if any, between the property at the time of purchase with its true attributes and what was actually paid (see *San-Co Holdings Ltd. v. Kerr*, 2009 BCSC 1747, at paragraphs 44-49). Ms. Cheung has not provided any evidence about how differences in locker volume would affect the value of her \$348,000 condo. Further, I find the lockers' status as common property that can be reassigned at any time limits the potential value difference between assigned lockers. I find Ms. Cheung has not established any damages.

21. For all these reasons, I dismiss Ms. Cheung's claim.

22. 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. Mr. Yuen was successful but did not pay CRT fees or claim expenses. I dismiss Ms. Cheung's claim for reimbursement of CRT fees and expenses, including legal fees. I would not have awarded the claimed \$910 legal fees in any event because the dispute was not extraordinary and Ms. Cheung did not support the claim with an invoice or receipt.

ORDER

23. I dismiss Ms. Cheung's claims and this dispute.

Micah Carmody, Tribunal Member