



Civil Resolution Tribunal

Date Issued: April 17, 2023

File: SC-2022-003253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CCPR Park Residence GP Ltd. v. Houseman*, 2023 BCCRT 311

B E T W E E N :

CCPR PARK RESIDENCE GP LTD.

APPLICANT

A N D :

MARGARET HOUSEMAN, DHJL MANAGEMENT SERVICES INC.
(Doing Business As DINNING HUNTER JACKSON LAW), and
RONALD DUMONCEAUX

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a \$2,500 holdback for construction deficiencies. The applicant, CCPR Park Residence GP Ltd. (CCPR), sold a strata lot to the respondent, Margaret Houseman. The respondent, Ronald Dumonceaux, is the lawyer responsible for the

holdback. Mr. Dumonceaux works at the respondent law firm, DHJL Management Services Inc. (Doing Business As Dinning Hunter Jackson Law) (DHJL). The holdback is in DHJL's trust account.

2. CCPR says that it resolved the construction deficiencies and is entitled to the holdback. CCPR seeks an order for the respondents to release the trust funds to CCPR plus contractual interest. CCPR argues its claims are in time under the *Limitation Act* (LA).
3. Ms. Houseman says CCPR has not yet resolved the deficiencies. In particular, she says the flooring has an uneven finish. Mr. Dumonceaux and DHJL say they will pay out the money if ordered to do so and otherwise take no position. The respondents did not address whether CCPR's claims were out of time.
4. CCPR's owner, Marilyn Fleming, represents it. Ms. Houseman represents herself. Mr. Dumonceaux represents himself and DHJL.
5. For the reasons that follow, I find CCPR has proven its claim about the funds but not contractual interest.

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 "they said, she 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.

ISSUES

10. The issues in this dispute are as follows:

- a. Are CCPR's claims out of time?
- b. Is CCPR entitled to the holdback under the terms of its contract with Ms. Houseman?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant CCPR must prove its 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 argument that I find relevant to provide context for my decision.

12. CCPR and Ms. Houseman entered into a written contract of purchase and sale dated September 28, 2016. Ms. Houseman agreed to purchase strata lot 32 in a proposed land development from CCPR. The contract included an attached schedule "A". Section 13 of schedule A was about the procedure the parties would use for construction deficiencies. The parties amended it through an addendum in October 2016. The parties signed both schedule A and the addendum. I find these documents are binding and there is no suggestion otherwise.
13. In its amended form, section 13 said that CCPR and Ms. Houseman would inspect the strata lot at a reasonable time before or within 15 days after the completion date. After the inspection, CCPR and Ms. Houseman would prepare a conclusive list of any defects or deficiencies, including the dates by which corrections would occur. They would sign the list and Ms. Houseman would be deemed to accept the strata lot subject only to the listed deficiencies to be corrected.
14. The amendment, noted above, added terms about the holdback. In the event of any deficiencies, CCPR and Ms. Houseman would reasonably determine if the deficiencies cost \$2,500 or more to remedy. If they disagreed, a qualified builder chosen by CCPR would provide an estimate to determine the deficiencies' value. Then, Ms. Houseman could choose to require a deficiency holdback from the sale proceeds. CCPR's lawyer would then be placed on an undertaking to hold back the estimated value of the deficiencies. The holdback would be released when Ms. Houseman's lawyer confirmed to CCPR's lawyer that the deficiencies were remedied.
15. The correspondence, including emails and letters from November and December 2017, May 2018, February and March 2019, and May 2022 show the following. The parties conducted a deficiency inspection on November 25, 2017. They created a list of deficiencies. It is lengthy and I find it unnecessary to list it in full here.
16. As specified in the contract and shown in the correspondence, CCPR's lawyer at the time was Brock T. Emberton Law Corp. (Brock). Brock held back \$2,500 from the purchase price as a deficiency holdback. Mr. Dumonceaux and DHJL both say that

they now hold the \$2,500 in trust. I accept this is the case and find the specifics of how this came to be irrelevant.

17. Ms. Houseman became the registered owner of her strata lot in December 2017. At the time, Ms. Houseman complained that there were scuff marks on the luxury vinyl plank (LVP) flooring. She also said some flooring was loose in the living room and bedroom. These issues were not added to the list of deficiencies in November 2017 because delivered appliances initially obscured the flooring. In any event, I find CCPR and Ms. Houseman agreed to add these issues to the deficiency list. This is because CCPR conducted repairs on March 7, 2018 that included replacing the scuffed LVP flooring. Pictures show the workers removed and replaced many planks, but not all of them. There is no indication that they agreed on a date to remedy the deficiencies by.
18. In a May 2018 email, Ms. Houseman said that the replaced planks 1) did not match the original colour of the LVP flooring and 2) all the LVP flooring had a dull finish. CCPR asked its architectural firm, Jensen Group Architects (Jensen), to examine the flooring. In a December 4, 2018 letter, Jensen wrote that it investigated the LVP flooring and found the colour and finish were not defects. Jensen said that the flooring's finish would become glossier from further washing.
19. There is no indication that CCPR made any further repairs after the December 2018 letter. The correspondence, including CCPR's subsequent May 12, 2022 letter to Ms. Houseman, indicate the only remaining deficiencies were about the appearance of the LVP flooring. On February 28, 2019, Ms. Houseman emailed CCPR and said she would only consent to the release of the \$2,500 holdback once the LVP flooring issues were addressed. On March 4, 2019, Ms. Houseman emailed CCPR and said that she had washed the floors at least 50 times since March 2018, and the floors still looked the same. She reiterated that she wanted the flooring fixed.
20. There is a lack of subsequent correspondence in evidence, until a May 12, 2022 letter. In it, CCPR said that it concluded Ms. Houseman would never be satisfied and demanded that she release the holdback. It wrote that it reached this conclusion in

part because Ms. Houseman raised a new concern about the inadequate size of a mirror. Ms. Houseman does not deny raising this new complaint.

Issue #1. Are CCPR's claims out of time?

21. In submissions, CCPR raised the issue of whether its claims were within the limitation period and said that they were. Under section 13 of the CRTA, the LA applies to disputes before the CRT. A limitation period is a time period within which a person may bring a claim. The current LA came into force on June 1, 2013. This dispute is about a contract signed in September 2016, so I find the current LA applies.
22. Section 6 of the LA says the basic limitation period is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. Section 8 says that a person discovered a claim when they knew or reasonably ought to have known that they had a claim against the respondent and that a court or CRT proceeding was an appropriate means to seek a remedy.
23. CCPR submitted its application for dispute resolution on May 26, 2022. So, I find that CCPR's claims are out of time if it discovered its claims before May 26, 2020, unless the time was extended as discussed below.
24. CCPR says that Ms. Houseman acknowledged its claim in a May 17, 2022 letter. Under LA section 24, a limitation period may be extended if a person acknowledges liability before the claim expires. So, I find the May 17, 2022 letter does not assist CCPR if it discovered its holdback claim before May 26, 2020.
25. I turn to the discovery date. CCPR says that it continued to try to fulfill its contractual obligations until May 22, 2022. It argues that it discovered its holdback claim at that time. Inconsistently, it says in the Dispute Notice that it has been trying to collect the funds since 2019. I find this means that CCPR was still attempting to persuade Ms. Houseman at the time. I reach this conclusion in part because Ms. Houseman did not say when CCPR discovered its claims or argue that CCPR's claims were out of time.

26. As noted above, the contract says that CCPR's lawyer would release the holdback once Ms. Houseman's lawyer confirmed to CCPR that the deficiencies were remedied. I find CCPR would have discovered its claim once this occurred. However, Ms. Houseman's lawyer never sent such a letter.
27. I find the earliest discovery date was likely within the month of December 2021. This is because Ms. Houseman says Mr. Dumonceaux and DHJL demanded the release of the holdback at that time. The parties did not provide a copy of this letter, but as Ms. Houseman's submission is undisputed, I accept it occurred. By then, I find the facts show that CCPR had decided not to take any further steps to repair the LVP flooring. As December 2021 is after May 26, 2020, I find CCPR's claims are in time.
28. I considered concluding that CCPR discovered its claim on March 4, 2019, when Ms. Houseman said that the LVP flooring issues persisted after washing it. However, I am not satisfied on a balance of probabilities that it knew or reasonably knew it would take no further repair action and should sue. This is because CCPR had not yet demanded the release of the holdback. Further, despite demanding payment in December 2021, CCPR continued to speak to Ms. Houseman about the flooring and sent a representative on May 21, 2022. This visit is referenced in the May 22, 2022 letter and Ms. Houseman's submissions.

Issue #2. Is CCPR entitled to the holdback under the terms of its contract with Ms. Houseman?

29. I find that under the contract, CCPR is entitled to the holdback if it can show that the LVP flooring is not deficient. CCPR relies on Jensen's December 2018 letter. Jensen wrote that 1) there were no dye deficiencies and the LVP colour variation it observed was normal, and 2) the LVP flooring had a residue on it giving a matt finish that would wash off after a number of cleanings.
30. Ms. Houseman relies on various photos to show the LVP flooring is deficient. She says the photos show that the replacement planks installed in March 2018 had a different appearance and finish than the originally installed planks. The photos show

the flooring resembles hardwood. I find that the photos dated March 2018 show that some planks have a different finish than others. For example, this is readily apparent in photos labelled 1.17 and 1.20. However, I find the photos dated August 2022 lack the same stark difference. I had difficulty concluding which panels were replacement panels in the newer photos. I find the most likely explanation is that the LVP flooring had a residue that washed off, as discussed by Jensen.

31. Further, CCPR's undisputed submission is that in May 2022, Ms. Houseman refused its offer to have a contractor treat the flooring with a product to further smooth out the differences in finish. I find this supports a finding that the issue is 1) no longer serious, or 2) that Ms. Houseman is breaching the contract by preventing CCPR from further repairs. In either event, I find that CCPR has fulfilled its obligations and is entitled to the return of the holdback.
32. Ms. Houseman also says floor planks in the kitchen under the appliances and cabinets are damaged. I find this unproven by evidence. I also find these allegations inconsistent with the correspondence, which supports a finding that the appearance of the LVP flooring was the sole remaining issue.
33. For all those reasons, I order Mr. Dumonceaux and DHJL to release and pay the \$2,500 held in trust to CCPR.
34. CCPR asks for 10% annual contractual interest. Section 6 of the contract says that the purchase price must be received by CCPR's lawyer on the completion date, otherwise Ms. Houseman agreed to pay interest at the rate of 10% per year. I find that Ms. Houseman did provide the total purchase price to CCPR's lawyer and that an amount was merely held back by the lawyer in trust. So, I find section 6 inapplicable.
35. In the absence of an applicable agreement about interest, the *Court Order Interest Act* applies. I find that CCPR is entitled to pre-judgment interest on the \$2,500 award from December 1, 2021, the approximate date CCPR discovered its claim, to the date of this decision. This equals \$60.57. I find only Ms. Houseman is liable for this amount

and not the other respondents, as they were legally bound to hold the funds at the time.

36. 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 find Ms. Houseman must reimburse CCPR \$175 in CRT fees and \$12.27 in dispute-related expenses. CCPR supported the latter amount with receipts for registered mail. CCPR also claimed \$15.63 for mileage to file the dispute at a Service BC location. I decline to award this amount as I find CCPR could have reasonably avoided this expense by filing its claim online.

ORDERS

37. I order that within 30 days of the date of this order, Mr. Dumonceaux and DHJL release and pay to CCPR the \$2,500 funds held in trust.
38. I order that within 30 days of the date of this order, Ms. Houseman pay to CCPR a total of \$247.84, broken down as follows:
- a. \$60.57 in pre-judgment interest under the *Court Order Interest Act*, and
 - b. \$187.27, for \$175 in CRT fees and \$12.27 for dispute-related expenses.
39. CCRP is entitled to post-judgment interest, as applicable.
40. 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.

David Jiang, Tribunal Member