



Civil Resolution Tribunal

Date Issued: August 8, 2023

File: SC-2022-008392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *White v. Bramble*, 2023 BCCRT 665

BETWEEN:

TIM WHITE

APPLICANT

AND:

ADAM BRAMBLE and ALEXANDRA KIMBERLY BRAMBLE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for an oil tank's removal. Together with another buyer who is not a party to this proceeding, in July 2021 the applicant, Tim White,

bought a house from the respondents, Adam Bramble and Alexandra Kimberly Bramble.

2. At issue is a May 17, 2021 Property Disclosure Statement (PDS). In it, Adam Bramble answered “no” to a question asking if they were “aware” of any past or present underground oil tank. The PDS was incorporated into the parties’ contract for the home’s purchase and sale. Mr. White later discovered an oil tank. He says the Brambles’ “no” answer was a negligent misrepresentation, as he says they should have responded “do not know”. Mr. White claims \$2,273.25 for the oil tank’s removal.
3. The Brambles undisputedly bought the house in 2016 and say they were never made aware of any underground oil tank, which as noted is undisputed. The Brambles say they accurately responded “no” to the oil tank question on the PDS, because they were not aware of there being one. They say they owe nothing.
4. The parties are each self-represented.

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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
7. CRTA section 42 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.
9. I note Mr. White says a PDS submitted by the Brambles was hard to read. I find this likely refers to either the 2016 PDS from the Brambles' purchase of the home or the Brambles' submission of the parties' PDS. The Brambles uploaded another copy of the 2016 PDS. It shows the previous seller indicated "no" to the oil tank question. In any event, nothing turns on this 2016 PDS, because Mr. White does not allege the Brambles were aware of the oil tank. Rather, as noted and discussed further below, he says they should have answered "do not know" rather than "no" to the PDS question about the oil tank.

ISSUE

10. The issue in this dispute is whether the Brambles misrepresented their awareness of an underground oil tank in the PDS and if so, whether Mr. White is entitled to the claimed \$2,273.25 for its removal.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. White must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context.
12. As noted above, Mr. White bought a house from the Brambles in 2021. During landscaping work in the summer of 2022, Mr. White discovered an underground oil tank on the property. He had it removed and claims the \$2,273.25 removal cost. None of this is disputed.

13. Before the house sale completed, in May 2021 Adam Bramble completed the PDS answering “no” to the question under section 1.C “Land”: “Are you aware of any past or present underground oil storage tank(s)” on the premises. The Brambles both signed the PDS and as noted it was incorporated into the parties’ contract. Mr. White had no pre-purchase inspection done to determine whether there was in fact an oil tank. Again, none of this is disputed.
14. Mr. White’s position is that the Brambles should have selected “do not know” as their answer to the PDS oil tank question, given they could not have known for sure that there was no oil tank. Mr. White notes that the PDS says accurate answers are the sellers’ responsibility.
15. In particular, Mr. White says by answering “no” on the PDS, the Brambles made a negligent misrepresentation that he relied on in purchasing the home. He says because the Brambles admittedly had never done any landscaping or excavation work, they would have had no reasonable ability to know if a tank was present or not. He also says the fact they had mostly rented out the property, rather than living on it, further supports his position that the Brambles had no reasonable basis to answer “no” to the oil tank question. Mr. White also says the Brambles’ own property inspection report from 2016 was silent about whether there is an oil tank or not. For all these reasons, Mr. White says that the Brambles should have answered “do not know” to the oil tank question.
16. In contrast, the Brambles say they answered the PDS questions honestly and to the best of their ability. They say it was true and accurate for them to answer “no” to the oil tank question, because they were not “aware” of any past or present oil tank before they sold the house to Mr. White. Notably, Mr. White does not allege they were in fact aware. Again, his allegation is that they were negligent in choosing the answer “no” instead of “do not know”. I note the PDS preamble says a seller should not answer “do not know” if in fact they know the answer. Yet, here there is no evidence or even argument that the Brambles did in fact know there was an oil tank.

17. The Brambles say “do not know” is not a reasonable answer to a question “Are you aware”. Either they were aware or not. I agree with the Brambles. I note the Brambles submitted a blank PDS in evidence, which has a different format than the one they completed and which has the “do not know” box shaded grey for the oil tank question. I find nothing turns on this blank PDS, as I agree with Mr. White that it was not something the parties contemplated. What matters here is the question the Brambles answered. Had the question been “was there an oil tank?” then “do not know” would have been the appropriate answer. However, that was not the question. The question asked was about the Brambles’ awareness of a past or present oil tank. Here, I find no evidence the Brambles were aware of the oil tank before the sale to Mr. White completed, which again Mr. White does not dispute. I find no basis to conclude the Brambles incorrectly answered the PDS question about the oil tank.
18. Generally, the principle of “buyer beware” applies to home sales. A buyer is required to make reasonable pre-purchase enquiries about the property. Exceptions include negligent or fraudulent misrepresentations and the seller’s duty to disclose known latent (hidden) defects. See *Nixon v. MacIver*, 2016 BCCA 8.
19. Here, I find there was no misrepresentation because I find the Brambles were not aware of the oil tank, which is what they accurately indicated on the PDS. For the same reason, while I accept the oil tank was a latent defect, I find the Brambles did not know about it. As the Brambles note, the PDS says the onus or responsibility rests with Mr. White as the buyer to make the appropriate inquiries. Specifically, the PDS says “each question and answer must be considered, keeping in mind the seller’s knowledge of the premises may be incomplete”. Again, Mr. White chose not to have his own inspection done, including an investigation of whether there was an oil tank or not.
20. Given my conclusions above, I find the Brambles are not responsible for the oil tank or its removal costs. I dismiss Mr. White’s claim and this dispute.
21. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related

expenses. As Mr. White was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. The Brambles did not pay CRT fees and no dispute-related expenses were claimed by any party.

ORDER

22. I dismiss Mr. White's claims and this dispute.

Shelley Lopez, Vice Chair