



Civil Resolution Tribunal

Date Issued: November 2, 2023

File: SC-2022-008450

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sutter v. Williams*, 2023 BCCRT 944

BETWEEN:

DARRIN SUTTER

APPLICANT

AND:

ANGELA WILLIAMS and SARAH WILLIAMS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This small claims dispute is about a goods and services tax (GST) payment made following the completion of an assignment of a contract of purchase and sale (CPS) for real property. The applicant, Darrin Sutter, assigned his rights under a CPS to the respondents, Angela Williams and Sarah Williams. The applicant says the respondents failed to pay GST on the assignment amount, contrary to the terms of

the parties' contract. The applicant undisputedly remitted \$2,380 in GST to the Canada Revenue Agency (CRA) and claims a \$2,000 reimbursement from the respondents for the GST remittance. The applicant is represented by his real estate agent, KM, who also represented him in the transaction.

2. The respondents say that they have satisfied all of their obligations under the parties' agreement. So, they say they owe the applicant nothing and ask that I dismiss this dispute. The respondents 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 and that an oral hearing is not necessary.
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.

ISSUES

6. The issues in this dispute are:
 - a. Did the respondents fail to pay GST as required under the parties' agreement?
 - b. If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

7. In a civil proceeding like this one, the applicant must prove his 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. I note the applicant did not provide any reply argument, despite having the opportunity to do so.
8. The following facts are undisputed. On April 15, 2021, the applicant entered into a CPS with a builder of a new development to purchase a developing strata lot. On August 22, 2022, the parties entered into an assignment of contract of purchase and sale agreement (assignment agreement) under which the applicant agreed to assign his rights and obligations under the CPS to the respondents. The parties used a standard form assignment agreement with some terms added and amended. I discuss the relevant terms below.
9. In consideration of the applicant assigning the CPS to the respondents, the respondents agreed to pay the applicant \$84,240, defined as the “assignment amount” in clause 5.1 of the assignment agreement. Clause 5.1 says the \$84,240 was made up of a \$36,640 reimbursement of deposits the applicant paid under the CPS to the builder and \$47,600 as the “balance of assignment amount”.
10. In clause 5.3, the parties added a term to the standard form agreement that “any and all GST applicable shall be paid in full by the assignee”. Clause 5.18 of the standard form agreement says that the assignment amount is inclusive of any GST payable with respect to the assignment agreement and the assignor shall remit any GST payable. However, in clause 5.18 of the signed assignment agreement, the parties crossed out the word “assignor”, inserted “assignees” and initialed the change making the assignees responsible for remitting any GST payable.
11. On November 1, 2022, the applicant signed a GST certificate, certifying to the respondents that the applicant was not registered for GST purposes and would self-assess the tax and remit it to the CRA as required. The respondents say that by

signing this GST certificate, the applicant agreed to revert responsibility for remitting GST back to himself.

12. After the November 3, 2022 completion date, the applicant's lawyer sent a \$2,380 trust cheque to the CRA representing the GST the applicant says was payable under the assignment agreement.
13. It is undisputed that the \$36,640 deposit reimbursement the respondents paid under the assignment agreement was not subject to GST. The applicant says that the remaining \$47,600 of the assignment amount was subject to GST, equaling the \$2,380 he remitted. The applicant says the respondents should have paid this amount on top of the \$84,240 assignment amount and remitted it to the CRA.
14. The respondents, on the other hand, say the applicant miscalculated the GST payable and remitted the wrong amount. They say that based on clause 5.18, the \$84,240 assignment amount included all applicable GST. The respondents say that if it was the applicant's intention for GST to be payable in addition to the assignment amount, this intention was not communicated to them. They say that had KM informed them of the applicant's alleged intention and suggested changing clause 5.18 to say GST was not included in the assignment amount, they would not have agreed to this change. So, they say that clause 5.18, as written, sets out the parties' agreement that the assignment amount included GST. Accordingly, the respondents say the \$84,240 they undisputedly paid included all GST payable under the assignment agreement and they owe the applicant nothing further.
15. The applicant says that the changes and additions the parties made to clauses 5.3 and 5.18 made the respondents responsible for all GST payable and the respondents must now reimburse the applicant the \$2,380 he remitted to the CRA for GST. In support, the applicant relies on an August 21, 2022 email between PW, the respondents' family member and their representative in this dispute, to KM. In this email, PW said that the respondent, Sarah Williams, should be exempt from GST but said that if the respondents have to pay the GST upfront and claim it back later, that was fine. The applicant argues that by saying that the respondents would pay the

GST upfront, the respondents understood that they would be responsible for paying all of the GST.

16. I find the August 21 email does not assist the applicant. This is because I find clause 5.18 of the assignment agreement unequivocally says that the assignment amount of \$84,240 is inclusive of any GST payable. Contrary to the applicant's assertions, I do not find that the assignment agreement's terms making the respondents responsible for paying and remitting any GST payable, or any statements made by PW in the August 21 email about GST, changed the amount of GST that was payable under the assignment agreement. I also find the evidence before me does not show that when the parties entered into the assignment agreement, they intended for GST to be payable on the assignment amount, as opposed to being included as set out in clause 5.18. So, I find it more likely than not that clause 5.18 accurately sets out the parties' intended agreement about how GST would be calculated.
17. Since the assignment agreement specified that the \$84,240 assignment amount included GST, and the respondents undisputedly paid this amount, I find the applicant is not entitled to reimbursement of the claimed \$2,380.
18. To the extent the applicant argues that the respondents breached the assignment agreement by failing to remit the GST payment to the CRA themselves, I note the applicant does not suggest he suffered any damages other than the \$2,380 GST payment he made. So, even if the respondents did breach the agreement by paying the GST amount to the applicant instead of remitting it to the CRA, I find the applicant has proven no loss resulting from that breach. In conclusion, I find the applicant is not entitled to any further amounts from the respondents under the assignment agreement and I dismiss his claims accordingly.
19. 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. Since the applicant was unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees. The respondents did not pay any CRT fees

and none of the parties claim any dispute-related expenses, so I award no reimbursement.

ORDER

20. I dismiss the applicant's claims, and this dispute.

Nav Shukla, Tribunal Member