



Civil Resolution Tribunal

Date Issued: May 9, 2024

File: SC-2023-006718

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. McGillis*, 2024 BCCRT 443

B E T W E E N :

MEGHAN SMITH

APPLICANT

A N D :

CHRISTOPHER THOMAS MCGILLIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Meghan Smith purchased a residential property from Christopher Thomas McGillis. Ms. Smith says that Mr. McGillis removed a storage shed from the property before she took possession. Ms. Smith says that the shed was included in the purchase contract, and should not have been removed. She claims \$2,000 to replace the shed.

2. Mr. McGillis says that he did not own the shed, and did not remove it. He says that the shed was owned and removed by a tenant on the property, and that it was not included in the contract. He denies owing Ms. Smith anything to replace the shed.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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 court.

ISSUE

7. The issue in this dispute is whether the shed was included in the property sale under the parties' contract, and if so, whether Mr. McGillis must pay Ms. Smith the claimed \$2,000 to replace it.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Smith 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.
9. Under the parties' February 2, 2023 contract of purchase and sale, Ms. Smith purchased a residential property from Mr. McGillis for \$615,000. The sale completed on May 1, 2023, and Ms. Smith took possession of the property the following day.
10. There was a storage shed in the property's yard before Ms. Smith purchased the property, which was undisputedly removed before Ms. Smith took possession. Ms. Smith says that the shed was included in the contract.
11. Clause 7 of the contract says that the purchase price includes "any buildings, improvements, fixtures, appurtenances and attachments thereto." These terms are not defined in the contract. The contract also lists specific appliances that are included, and explicitly excludes "upstairs tenant belongings."
12. Ms. Smith says that the shed is a building, fixture, appurtenance, or attachment. She relies on the Merriam-Webster dictionary, but does not identify the specific definition she says is applicable. So, I will consider whether each of these terms applies to the shed.
13. I begin with whether the shed is a "fixture". A fixture is something that is permanently attached to real property or land. Typically, fixtures are sold with the property, whereas "chattels", or personal property, are not. Whether an item is a fixture or chattel is a fact-specific analysis. In general, if an item is not attached to the land other than by its own weight, it is presumed to be personal property. However, if the item is attached to the land even slightly, it is presumed to be a fixture. In considering whether these presumptions should apply, the court (or CRT) may also consider how permanently attached the item is, and the purpose of the attachment.¹

¹ See *Zellstoff Celgar Limited v. British Columbia*, 2014 BCCA 279 and *Scott v. Filipovic*, 2015 BCCA 409.

14. Ms. Smith says that the shed was attached to a wooden platform in the backyard with screws. She provided photographs that she says show fresh screw holes in the platform. In contrast, Mr. McGillis says that the shed was not attached to the platform. He provided an April 25, 2023 email from his brother, TM, in which TM says that he examined the platform and there was no indication that the shed was fastened to it. Mr. McGillis also provided photographs of the platform, which do not show the holes Ms. Smith refers to.
15. I find I do not need to determine whether the shed was attached to the wooden platform, because whether it was or not, there is no evidence before me that the platform was attached to the land by anything other than its own weight. From the photographs in evidence, the platform appears to be sitting on the ground, with portions of it propped up on smaller pieces of wood. So, even if the shed was attached to the platform, I find there is no evidence that it was attached to the land in any way. In a BC Provincial Court decision,² the court found that a utility shed and greenhouse were not fixtures, because there was no evidence that they were attached to the land. Although this is not binding, I agree with this reasoning, and apply it here. I find Ms. Smith has not proven that the shed was attached to the land, and so she has not proven that it was a fixture under the parties' contract.
16. I turn to whether the shed is a "building". The Merriam-Webster online dictionary defines "building" as "a usually roofed and walled structure built for permanent use (as for a dwelling)." Similarly, the Oxford English Dictionary defines "building" as "a large, permanently standing structure with a roof and walls". There is no dispute that the shed in question had walls and a roof. However, the parties disagree about whether it was intended to be permanent.
17. Mr. McGillis says that he allowed one of the tenants who lived at the property, MH, to place a shed in the backyard to store his tools. Mr. McGillis said that MH purchased the shed, and agreed to remove it when his tenancy ended. Although Mr. McGillis did not provide a statement from MH confirming this, Ms. Smith does not dispute that MH

² *Manarin v. Stelmaschuk Doucette Realty Ltd. and Leckie*, 2010 BCPC 81.

removed the shed from the property. I find it unlikely that MH would have done so unless he owned the shed as Mr. McGillis describes.

18. While the parties agree that MH temporarily removed a portion of the property's fence in order to remove the shed, the shed itself appears to have been relatively portable. There is no indication that MH needed to use specialized equipment to disassemble or remove the shed. So, I find it unproven that the shed was built for permanent use. I conclude that the shed is not a building under the parties' contract.
19. Lastly, I turn to the meaning of "appurtenances and attachments thereto". On a plain reading, I find this phrase applies to the items listed before it (buildings, improvements, and fixtures). In other words, the purchase price includes appurtenances and attachments to existing buildings, improvements, and fixtures.
20. Neither party specifically addressed whether the shed is an "appurtenance". The Merriam-Webster online dictionary defines appurtenance as "an incidental right (such as a right-of-way) attached to a principal property right and passing in possession with it." As the shed is an object, not a right, I find it is not an appurtenance.
21. Finally, I find the shed is not an attachment to an existing building, improvement, or fixture. The platform the shed was on is plainly not a building, and as discussed above, there is no indication that it is a fixture either. Neither party argues that the platform is an "improvement" to the property, and I find it is not.
22. I note that Ms. Smith also argues that Mr. McGillis misrepresented that the shed was included in the contract, because it was in the listing photos and was present when she viewed the property. However, clause 18 of the contract says that there are no representations, warranties, guarantees, promises or agreements other than those set out in the contract. So, I find Ms. Smith cannot rely on alleged misrepresentation.
23. In summary, I find the shed is not included in the contract. So, I dismiss Ms. Smith's claim for the shed's replacement cost.

CRT FEES AND EXPENSES

24. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Smith was unsuccessful, so I dismiss her claim for CRT fees. Mr. McGillis did not pay any CRT fees, and neither party claimed dispute-related expenses.

ORDER

25. I dismiss Ms. Smith's claims and this dispute.

Alison Wake, Tribunal Member