Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

MICHAEL MAXIMILLIANUS HOWARD and LISA MARJORIE RAE

APPLICANTS

A N D :

GLORIA DAVIDSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about repair costs the applicants incurred after they purchased a home.

2. The applicants, Michael Maximillianus Howard and Lisa Marjorie Rae, purchased a home and property from the respondent, Gloria Davidson. The purchase included a golf cart and its charging system. After the applicants took possession of the home, they incurred costs to repair a door handle, plumbing, the irrigation system, the landscaping, and the golf cart and charging system.

3. The applicants say the respondent is responsible for their repair costs and claim $3,500. While the applicants' arguments claim $3,983.15, they did not amend their pleadings to claim a larger amount. Since I find the applicants are entitled to less than $3,500, this issue is moot (meaning "of no legal consequence.")

4. The respondent says she met her obligations under the parties' contract. She asks me to dismiss the applicants' claims.

5. The parties are all self-represented.

6. For the reasons that follow, I allow the applicants' claim in part.

JURISDICTION AND PROCEDURE

7. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

9. 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.

10. Where permitted by CRTA section 118, 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.

ISSUE

11. The issue in this dispute is whether the respondent must pay the applicants for some or all of their claimed repair costs.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. 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.

Buyer Beware and the Law of Defects

13. The general rule in the sale of real property (and chattel goods, like the golf cart) is *caveat emptor*, which means "buyer beware." This means that buyers must make reasonable inquiries about, and conduct a reasonable inspection of, the property they wish to purchase. Sellers have no obligation to actively inform themselves about the real property they are selling, including whether any defects exist.

14. Patent defects are those that a person can discover by conducting a reasonable inspection or inquiry about the property. A seller does not have to disclose patent defects to a buyer, but they must not actively conceal them.

15. A latent (or hidden) defect is one that a person cannot discover by observation or reasonable inspection. A seller must disclose any material latent defect if they know about it. A latent defect is material if it renders the house dangerous or uninhabitable.

Sellers will be considered to have knowledge of a material latent defect if they are actually aware of the defect, or where they are reckless as to whether the defect exists. The applicants must prove the respondent either knew about the issue or acted recklessly.

Contract of Purchase and Sale

16. On May 5, 2023, the parties entered a standard contract of purchase and sale for a home and property. The property's yard was professionally landscaped and included underground irrigation as well as hard-wired outdoor lighting.

17. In addition to a number of appliances, the contract also included a golf cart and its charging equipment. The parties also added a number of additional contract terms. Of those, I find the following terms are relevant to this dispute:

    a. The Sellers acknowledge that all included appliances and mechanical components of the property will be in good and proper working order at possession date. In the event that the appliances are not in good working order at possession date, the Seller will refund the Buyer the cost to have the appliances repaired and or replaced with a similar brand, make, and model.

    b. The Seller agrees to keep the yard and/or landscaping watered and maintained up to the Completion date. The Seller warrants that all irrigation will be in good and proper working order on Possession.

Golf Cart

18. In the home's listing, the respondent said the applicants had the option to purchase a golf cart. The applicants agreed and listed it in the contract. On taking possession of the home and golf cart, the applicants found the golf cart battery was not holding a charge and the cart would only run for 100 meters.

19. The applicants argue the contract's term that warranties all "appliances and mechanical components of the property" will be in good working order on the possession date includes the golf cart. The contract defines the "Property" on its first

page by the home and land's legal and residential identification. So, I find "property" does not include chattel goods, like the golf cart.

20. Instead, the parties list the golf cart as an included "item" in the contract. I find it is a chattel good. As noted above, the principle of buyer beware applies. To be entitled to compensation, the buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent defect.

21. There is no suggestion the respondent was aware of the charging issue and the evidence shows the golf cart was able to run for a short distance. Here, the applicants provided no explanation as to why they did not inspect the golf cart before closing the purchase. They included photos of the engine compartment that show corrosion to the battery cables. They understood they had the right to inspect the things they were buying, since, as I discuss below, they hired a home inspector to inspect the home and property. There is no suggestion the respondent refused to allow them to inspect the golf cart.

22. However, I find the sale includes the implied warranties from the *Sale of Goods Act* (SGA). SGA section 18 sets out 3 warranties implied into contracts for the sale of goods. Here, only the implied warranty of durability in section 18(c) applies. That section warranties that goods will be durable for a reasonable period with normal use, considering the sale's context and the surrounding circumstances. In determining whether they are durable for a reasonable period with normal use, I must consider all surrounding facts.

23. In the circumstances, I find that driving for only 100 meters before stopping use does not meet the commonly understood normal use of a golf cart. So, given its condition, I find the golf cart's sale breached SGA section 18(c) and the applicants are entitled to damages.

24. They provided an email from a golf cart shop representative who quoted $2,725.94 to repair the golf cart. I accept the quote is accurate, and I order $2,725.94 in damages for repair to the golf cart. I note the applicants installed a different, more

expensive battery on July 13, 2023, but limited their claim to the cost of replacing the same battery, and I order that amount.

Irrigation

25. The applicants say after they took possession, they noticed some landscaped plants were dead or dying. The respondent confirmed the irrigation system was on and had been working. So, on July 14, the applicants hired an irrigation specialist to inspect the irrigation system and determine the problem.

26. The irrigation specialist found one of the irrigation lines had been completely severed and needed repair. They also reprogrammed the irrigation system's computer.

27. The respondent provided evidence that in April, she hired an irrigation company to check the system in preparation for turning it on. She argues this proves it was in good working order on purchase. However, her emails to the company express her own dissatisfaction with the care from the technician. She asks how he "properly" checked her system given that it was still off. The company only confirms that its technician had programmed the timer. I find this is not enough to prove the irrigation system was in good and proper working order as required by the contract.

28. So, I allow the applicants' claim for the irrigation system's repair cost. However, I find that the matter of reprogramming is separate and does not show the system was not in working order. Since the applicants' evidence does not distinguish between the cost of repairs and programming, on a judgement basis, I allow $241.27, which is 2/3rd of the claimed $361.73.

29. The applicants also claimed they needed to replace a tree on the property that had died since the irrigation system was not working. They claim $195.32 for the cost of a new tree, which they purchased on September 2, 2023. Photos show the new tree is roughly the same size as the dead tree. Other than claiming the irrigation system was in good working order and which I have found it was not, and saying she was not aware of any damage to the plants in the yard, the respondent did not address this

allegation. I accept the applicants' allegation that the tree died due to lack of watering, and allow the applicants' claim for $195.32 to replace the tree.

Minor Repairs

30. After signing the contract, the applicants hired a home inspector. The inspector attended on May 9 and then prepared an inspection report. The report sets out a number of minor issues with the home. While I have not listed them all here, by way of example, the inspector noted cracks in the garage floor, UV damage to rubber vent flashing on the roof, and a loose rear door handle.

31. The applicants' realtor sent the inspection report to the respondent along with an email from the applicant. The email reads:

> The inspector found the house to be well built and maintained with a few minor items that require attention. The minor maintenance items should be addressed as part of the [respondent's] on-going maintenance program prior to handover.

32. The applicants' realtor's email does not include any specific requests about what maintenance the applicants considered necessary or as part of the respondent's "on-going maintenance." The contract's section 8 requires the property and included items to be in "substantially the same condition" on the possession date (July 5) as they were on the viewing date (May 5).

33. In this dispute, the applicants claim $78.75 to repair a door handle and $354.90 to repair hot water tank and kitchen faucet issues. The inspector flagged those issues in their report. The applicants argue that since the inspection report raised these issues, the respondent should have addressed them prior to the possession date. I disagree.

34. The applicants' home inspection came after they viewed and agreed to purchase the property. The respondent did not agree to those repairs. Since those issues were discovered on the inspection date, which was only a few days after the viewing date,

I find they were in substantially the same condition on the possession date. The respondent did not have any obligation in the parties' contract to perform additional repairs. The applicants chose to proceed with the purchase and did not amend the purchase contract. So, I dismiss these elements of the applicants' claim.

Lighting

35. After taking possession, the applicants could not figure out how to turn on the landscape lights. They contacted the respondent to ask for information on how to turn them on. The respondent, through her realtor, gave them the information she believed to be true. The applicants later hired an electrician who found the lights were operated by a different switch and had been mislabeled on the electrical panel.

36. The applicants claim $266.51 for the electrician's costs and argue they incurred this cost due to the respondent's error. There is no contractual basis for the applicants' claim, so I find they are arguing the respondent was negligent in providing information on their request.

37. To prove negligence, the applicants must first establish the respondent owed them a duty of care. Since the parties had completed their contract, I find she did not. Title to the house had transferred and the respondent had no ongoing obligation to the applicants. Despite that, I find she attempted to answer their question in good faith. In any event, given the absence of any duty of care the respondent owed the applicants, I dismiss this element of their claim.

Conclusion

38. In summary, I have allowed the applicants' claim for golf cart repairs, irrigation repairs, and a new tree. Damages for these items total $3,282.99.

39. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgement interest on each successful element of their claim. They are entitled to $127.28 for the golf cart repairs, $10.84 for the irrigation repairs, and $7.77 for the new tree. This totals $145.89.

40. 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. I see no reason in this case not to follow that general rule. Since the applicants were substantially successful, I find they are entitled to reimbursement of $175 in CRT fees. They also provided evidence of a $12.27 cost to send the respondent the dispute by registered mail. I allow this amount a dispute-related expense.

ORDERS

41. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $3,616.15, broken down as follows:

    a. $3,282.99 in damages,

    b. $145.89 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $187.27, for $175 in CRT fees and $12.27 for dispute-related expenses.

42. The applicants are entitled to post-judgment interest, as applicable.

43. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member