



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Miao v. Bouchard*, 2026 BCCRT 384

2026 BCCRT 384 (CanLII)

B E T W E E N :

XIAOLING MIAO

APPLICANT

A N D :

JUDITH BOUCHARD, RICHARD BOUCHARD, and LANCE LUNDY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Xiaoling Miao, purchased a residential property from the respondents, Judith Bouchard and Richard Bouchard. The respondent, Lance Lundy, was the Bouchards' real estate agent for the sale.

2. Ms. Miao says that the respondents failed to disclose that at the time of the sale, the property had an open building permit. Ms. Miao says she incurred expenses to arrange the necessary inspections and close the permit. She claims \$5,000 for these expenses and her time.
3. The respondents deny responsibility for Ms. Miao's claimed expenses. They say that they did not know that the permit remained open, and that Ms. Miao could have discovered it by making reasonable inquiries before purchasing the property. The respondents ask me to dismiss this dispute.
4. Ms. Miao represents herself. Richard Bouchard represents the Bouchards. Lance Lundy represents himself.
5. For the following reasons, I dismiss Ms. Miao's claims.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, including by telephone or videoconference. Here, I find I am able to fairly make a decision based on the evidence and submissions the parties provided. So, I decided to hear this dispute through written submissions.
8. 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.

Limitation period

9. The Bouchards argue that Ms. Miao filed her claim outside the applicable limitation period. CRTA section 13 says that the *Limitation Act* applies to CRT claims. Section 6 of the *Limitation Act* says that the basic limitation period to file a claim is two years after the claim is “discovered”, which means the applicant knew or reasonably ought to know that they had a claim for injury, loss, or damage caused by the respondent’s act or omission. At the end of the two-year limitation period, the right to bring a claim ends, even if the claim otherwise would have been successful.
10. Ms. Miao filed her CRT application on August 12, 2024. This means that if she discovered her claim before August 12, 2022, it is out of time under the *Limitation Act*.
11. Ms. Miao’s evidence shows that she first learned about the permit issue on May 28, 2024. The Bouchards say that she could have discovered it before the sale closed in August 2022. While I agree with this, as discussed below, it is not clear on the evidence before me that Ms. Miao would have known she had incurred injury, loss, or damage because of the open permit before the sale closed. In any event, nothing turns on this given my decision to dismiss Ms. Miao’s claims.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. Lundy owe Ms. Miao a duty of care?
 - b. Did the Bouchards breach their contract with Ms. Miao?
 - c. Did the Bouchards misrepresent the property?
 - d. Did the Bouchards fail to disclose a material latent defect?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Miao 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.
14. The background facts are undisputed. On May 31, 2022, the Bouchards accepted Ms. Miao's offer to purchase their property. I will return to the relevant terms of the parties' contract of purchase and sale below. The sale completed on August 18, 2022. Ms. Miao took possession of the property the following day.
15. In 2024, Ms. Miao applied to the Resort Municipality of Whistler (RMOW) for a business license so that she could use the property for short-term rentals. On May 28, 2024, the RMOW advised Ms. Miao that the property had an open expired building permit. The RMOW said that prior to completion of the permit, it required a final building inspection, a final plumbing inspection, and an electrical Notice of Permit.
16. Ms. Miao hired contractors to complete the required inspections. In November 2024, the RMOW confirmed that the permit deficiencies had been completed. Ms. Miao paid a permit fee, and I infer the RMOW closed the permit.
17. Ms. Miao claims \$834.45 for an electrical inspection, \$292.36 for a final building inspection fee, \$1,427.41 for a final plumbing inspection, \$175 in CRT fees, and \$2,270.78 for her time and effort in coordinating the required work. Her claims total \$5,000, the CRT's small claims monetary limit.

Claims against Mr. Lundy

18. I begin with Mr. Lundy's liability. Ms. Miao says that Mr. Lundy should have verified that the Bouchards' permits were closed. Although Ms. Miao acknowledges that she did not have a contract with Mr. Lundy, she says he is liable in negligence.

19. Mr. Lundy disagrees, and relies on *Gordon v. Krieg*, 2013 BCSC 842. In that decision, the court found that a listing real estate agent acting solely for the seller does not owe a duty of care to the buyer to inform them of defects. Following *Gordon*, because Mr. Lundy did not owe Ms. Miao a duty of care, I find he is not liable to her in negligence.
20. Ms. Miao also says that Mr. Lundy breached his duty under the BC Financial Services Authority Rules to act honestly and with reasonable care. I infer she refers to the *Real Estate Services Rules*, which are a regulation under the *Real Estate Services Act* (RESA). Ms. Miao also only raised this argument in her final reply submissions, so Mr. Lundy did not have an opportunity to respond to it.
21. In any event, the specific rule number that Ms. Miao cites does not exist, so I find it is likely a hallucination generated by artificial intelligence. While sections 33 and 34 of the rules do require licensees to act honestly and with reasonable care and skill, I find that alleged breaches of these rules are within the jurisdiction of the Superintendent of Real Estate under the RESA. So, I decline to address these arguments. I dismiss Ms. Miao's claims against Mr. Lundy.

Claims against the Bouchards

22. I turn to Ms. Miao's claims against the Bouchards. Generally, the general rule in real property sales is *caveat emptor*, which means "buyer beware". This means that the burden is on the buyer to inspect the property and inform themselves about any defects. However, there are some exceptions to this, including breach of contract, misrepresentation, and failure to disclose a latent defect. See *Nixon v. MacIver*, 2016 BCCA 8.
23. The Bouchards acknowledge that they obtained a building permit from the RMOW in 2016 while completing a bathroom renovation. However, they say that they hired a professional contractor to manage all aspects of the renovation, including the permit process. They say they did not know that the permit had not been closed

until they received notice of Ms. Miao's CRT dispute. So, they say they are not responsible for Ms. Miao's claimed expenses.

24. I begin with the contract of purchase and sale (CPS). As the Bouchards note, Ms. Miao made her purchase offer without subjects. Under clause 3, the CPS stated, in part, "The Buyer has done all their due diligence in regard to the property and is satisfied with the results. The Buyer acknowledges and accepts that they have elected on their own to sign this contract of purchase and sale without any 'subject' conditions."
25. I agree with Ms. Miao that this does not mean that the Bouchards had no obligation to disclose defects, which I will return to below. However, the CPS does not contain any terms or warranties about the status of any building permits.
26. I pause to note that Ms. Miao says that the Bouchards did not provide a property disclosure statement (PDS). Clause 18 of the CPS said that there were no representations, warranties, guarantees, promises, or agreements other than those set out in the contract or in a PDS if incorporated into the CPS.
27. Mr. Lundy says that the Bouchards provided a PDS in response to an earlier offer from Ms. Miao, but that they crossed out each page rather than responding to the questions. I accept Mr. Lundy's submission that this is common practice when a seller does not wish to make any representations regarding a property.
28. Ms. Miao says that the PDS in evidence is misleading, because it shows the wrong address for the property. Again, Ms. Miao raised this argument in final reply submissions, so the respondents did not have an opportunity to respond to it. I find the incorrect address is likely an error. There is no evidence that the Bouchards completed a different PDS with the correct address. In any event, the CPS does not include a term incorporating any PDS. So, I find the PDS, or lack thereof, has no bearing on Ms. Miao's claims under the contract.
29. In the absence of any warranties or contractual terms about the building permit, I find there is no basis for Ms. Miao's claim under her contract with the Bouchards.

30. I turn to misrepresentation. There are two kinds of misrepresentation, fraudulent and negligent misrepresentation. In the real estate context, both require that a seller makes a representation of fact to the buyer that is untrue, inaccurate, or misleading.
31. As discussed above, the contract does not include any terms about building permits. Clause 18 says that there are no representations or warranties other than those included in the contract, and there is no evidence before me that the Bouchards made any representation about the building permit outside of the contract in any event. So, I find Ms. Miao has not proved that the Bouchards made any representation to her about the status of any building permits.
32. Finally, Ms. Miao argues that the Bouchards failed to disclose the fact that the permit was still open. As noted in *Nixon*, buyer beware does not apply where a seller fails to disclose a material latent defect.
33. A latent defect is a defect that cannot be discovered by a reasonable inspection. In *Davis v. Lasuta*, 2023 BCSC 1060, the court found at paragraph 103 that zoning bylaws and limitations were not a latent defect, because they could easily be found by prospective purchasers. I find the same principle applies to the open building permit, which could have been discovered by Ms. Miao or her real estate agent by making reasonable inquiries with the RMOW.
34. In any event, the material latent defect exception only applies where the defect renders the property dangerous or unfit for habitation. Here, there is no evidence that the open building permit meant that the property was dangerous or unfit for habitation. So, even if the open building permit was a latent defect, I would have found that the Bouchards were not obligated to disclose it.
35. While Ms. Miao says that the Bouchards should have contacted the RMOW to confirm that the building permit was closed before listing the property for sale, I find there was no legal requirement for them to do so. Further, I accept the Bouchards' submission that they believed their contractor had closed the permit, as it is

supported by their renovation invoice in evidence, which includes a charge for arranging and submitting the necessary permits.

36. In summary, I find Ms. Miao has not proved any legal basis to hold the Bouchards liable for the costs she incurred to close the building permit, or for her time and effort to do so. So, I dismiss Ms. Miao's claims against the Bouchards.

CRT FEES AND EXPENSES

37. Under CRTA section 49 and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Miao was unsuccessful, so I dismiss her claim for CRT fees. None of the respondents paid CRT fees.
38. Mr. Bouchard claims \$6,084.18 for his time and effort responding to Ms. Miao's claims. He says this is based on his hourly rate at work. CRT rule 9.5, as written at the time the parties provided their submissions, says that the CRT will not order a party to pay another party for time spent dealing with a CRT proceeding except in extraordinary circumstances.
39. Mr. Bouchard acknowledges this rule, but asks me to award compensation for his time to discourage similar claims, which he characterizes as "meritless and opportunistic." I disagree. Although Ms. Miao's claims did not succeed, I do not find that they were obviously meritless or that she had improper motivation for making them. I find there are no extraordinary circumstances that would justify awarding Mr. Bouchard compensation for his time spent responding to this dispute, and I dismiss this claim. I note that I would have dismissed this claim as unproven in any event, as Mr. Bouchard did not provide any documentary evidence of the time he spent dealing with the dispute or his hourly rate.
40. Mr. Bouchard also claims \$1,000 for distress and mental anguish. I find this is not properly characterized as a dispute-related expense, which the CRT's rules describe as reasonable expenses and charges that the CRT considers directly

related to the CRT process. In any event, Mr. Bouchard provided no evidence in support of this claim either. So, I dismiss it as well. None of the other parties claimed dispute-related expenses, so I make no order for them.

ORDERS

41. I dismiss Ms. Miao's claims.

42. I dismiss Mr. Bouchard's claim for dispute-related expenses.

Alison Wake, Tribunal Member