

File No: 08-22361
Registry: Vancouver

In the Provincial Court of British Columbia
(CIVIL DIVISION)

BETWEEN:

MURIEL ANN BOLTEZAR

CLAIMANT

AND:

DAVID ROBERT HUTCHINSON

DEFENDANT

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE LOW**

COPY

Appearing on her own behalf:

Muriel Boltezar

Counsel for the Defendant:

S. Larter

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

October 22, 2009

[1] THE COURT: Ms. Boltezar, I am going to give you a judgment now. I do not need to retire in order to consider the evidence, and I will tell you at the outset that I am dismissing your claim in its entirety and my reasons for doing that are on the following bases.

[2] First of all, so you understand something, I prefer the evidence that I have heard from Ms. Lee and Ms. Fuller over your version of the events, and I say this not because I think that you came to court and lied about anything. I accept without reservation that you genuinely believe in your version of events, but due to your incomplete recollection of the events and your uncertainty about many salient points, I ultimately have doubts about the accuracy of your recollection of the events and it is on that basis that I prefer the evidence of those two witnesses.

[3] And, as an example of that, and I do not want to belabour this point with you, but as an example of that, you could not recall Ms. Fuller who represented you in the sale of your property representing you in that capacity which I am not -- it is not a criticism of you, but it goes to your credibility in this matter because it seems to me that that would be a fundamental event at the time of these proceedings for you and for you not to have any specific recollection of that,

particularly, that you attended upon Ms. Fuller in her office, signed the conveyancing documents, affects the way that I can view your evidence.

[4] But leaving that aside, you, Ms. Lee, and Ms. Fuller all agreed that prior to the closing date on October the 22nd -- and how that date was arrived at, the evidence is completely uncertain, you do not have any recollection as to how you agreed to closing the matter on October the 22nd, but I am entirely satisfied that you agreed to take possession of the property on October the 14th because you said you did and I accept that you went in to Ms. Fuller's office on the 18th of October and signed the documents and paid the closing proceeds of the sale and the sale was closed on that basis on October the 22nd.

[5] Whether you initialled those changes in the documents or not, I have no idea. I appreciate the fact that you say you did not, but there is no evidence before me to suggest that anybody else initialled those changes, and it strikes me as entirely remarkable that those changes would have been made without your knowledge and, even if they were, you accepted those changes because you took possession of the property and you closed the transaction on the 22nd of October.

[6] The most salient point, though, out of all of that is

that on October the 18th when you went to Ms. Fuller's office, you were aware at that time, even on your own evidence, that that second bedroom was smaller than had been described in the initial disclosure statement. Ms. Lee testified about you measuring the room. You testified about measuring the room. Mr. Hutchinson testified about measuring the room. Everybody was aware that that bedroom was smaller than was represented in the initial disclosure.

[7] I note, as was brought to my attention by Ms. Larter, is that at the bottom of that initial disclosure statement it says, "The enclosed information while deemed to be correct is not guaranteed," and whether you are aware of that or not, Ms. Boltezar, is that when you are given pieces of paper like that, you are expected to read it all over and you are bound by what is set out in the document whether you understand it or not.

[8] And, if you do not understand it, the obligation is on you to go and find out what it does mean and if you choose not to, well, then, that is your affair. It is not something that you can later say, "Well, I did not understand it so that I am not somehow bound by it." You are bound by it.

[9] I also accept that on September the 28th, you signed a document in which you removed all of the subject-tos in the

initial contract of purchase and sale and that was very significant because, when you did that, you in writing specifically acknowledged that you had received the Form B which disclosed to you the actual amount of the maintenance fee which is another issue in this matter.

[10] The law is very plain on this, Ms. Boltezar, whether you looked at the Form B or not, whether you understand what the Form B said or not, it does not matter. You, in writing, said you had received it and you removed the subject to you receiving it. In other words, you accepted in writing that you had received it and you are bound by that.

[11] You cannot then later claim that, "I did not know that," or, "The document was not really in the package of documents that I received," or something else. When you said, "I have it," and you said so in writing, you were then bound by it and that is the end of it. That is what the law says. So, ultimately, when you decided to proceed with the sale, you ultimately accepted the condition of the condominium that you were prepared to buy from Ms. Harder, including the smaller size of the room.

[12] You may have complained about it, you may have been unhappy about it, but nonetheless by going in to see Ms. Fuller and instructing her to proceed with the conveyance,

essentially, you decided at that point in time to waive those concerns and to say later, "Oh, I was concerned about them and now I will deal with those concerns with Mr. Hutchinson because I do not think he did a very good job for me," it is too late. You had made your decision and you are bound by the decision, and the same thing applies, as I said before to you, in the contract of purchase and sale.

[13] I am trying in the best possible way that I can to summarize the very complex law that counsel for Mr. Hutchinson has put before me, that those cases rely on law that has been developed over the last several hundreds of years and those are long judgments and they set out all of this law carefully and I am not attempting to do that, but I certainly accept the law in those cases and it is very well known law. It is not novel law or something that is unusual, and you are bound by it.

[14] So, essentially, when you removed the subject-tos, you gave up any problems or issues that you might have had about the maintenance fees. When you decided to proceed with the sale on October the 22nd, whether you were happy or unhappy about the size of the bedroom, you gave up your right of claim about that.

[15] And you also, I am satisfied, even if -- and I am not

necessarily making this finding, but even if Mr. Hutchinson had misrepresented the size of that bedroom to you long before the closing date, and I am satisfied from the evidence that certainly by September the 28th when Mr. Hutchinson attended at your house and you signed the removal of the subject-to, by that date, you were patently aware that that bedroom was not the size that you wanted it to be.

[16] I also accept the fact that from the outset, from the day that you walked into that property, you had full opportunity to examine the property. You did not take advantage of that opportunity on the initial date, but that is not necessarily critical to anything because indeed you did take steps to examine the property carefully after that by measuring the room carefully and indeed you moved into the place on the 14th of October well before the closing date.

[17] So any concerns that you had about the size of the apartment, you plainly had before you and that was the time to bring up the concerns about it and not afterwards.

[18] So essentially it is on that basis that you waived your concerns or, alternatively, you accepted that you had received the Form B and when you acknowledged that you had received the Form B, whether you read it or you did not read it is beside the point, you are bound by the notion that you had received

it and you are obliged to read it and if you did not or if you had not received it, I cannot resolve that for you.

[19] I cannot go and look at what you said in the agreement and then today, based on your evidence, say, "Well, she did not actually receive it." You acknowledged on September the 28th that you had received it and you are bound by that and I cannot somehow set that aside.

[20] There is nothing before me to suggest that you have -- it may be that you were not paying particular attention when Mr. Hutchinson came to see you. It may be that you just simply were prepared to sign any piece of paper he put in front of you, but the law does not give you a remedy in that regard. When you sign pieces of paper, you are bound by them.

[21] The only exception to that is if (a) you did not actually sign the pieces of paper and you acknowledged that you did sign those pieces of paper, leaving aside the business about the initials, and the only other exception -- well, there is actually two other exceptions to that, is if someone was forcing you to sign the documents, i.e., they had a gun to your head or something, to use a very dramatic example, and said, "Sign it or else," and there is no evidence of anything like that, or three, that you lacked the mental capacity at the time you signed the documents and when I say "lacked the

mental capacity," that means that you would have been under some impairment of your mental abilities and there is no evidence before me about that.

[22] And so, as I said before - and I am trying to give you this judgment in as an informal way as possible so you can understand why I am dismissing your claim - you waived those concerns and those issues and you accepted it as Ms. Larter said for Mr. Hutchinson.

[23] There is an old principle of law, I am sure you have heard of it, called *caveat emptor*. It means buyer beware, and the essence behind it is, that people are bound by their actions and they cannot later say, "Well, I did not really mean to do that." Once you commit yourself, you are bound by it and that is what the law says and that is really the essence of the situation that you find yourself in today and, so accordingly, I dismiss your claim in its entirety.

[24] Are you seeking costs?

[25] MS. LARTER: Well, Your Honour, no, I am not, but I should say we did file a formal offer to settle this and I could claim for the costs associated with that, but I am not going to do that.

[26] THE COURT: Well, that is very generous of Mr.

Hutchinson.

[27] MURIEL BOLTEZAR: Thank you.

[28] THE COURT: Thank you, counsel, and thank you, everyone,
for your assistance in this matter.

[REASONS FOR JUDGMENT CONCLUDED]