

BETWEEN

EG
APPLICANT

AND

EGE
SECOND APPLICANT

AND

UT
RESPONDENT

AND

UTU
SECOND RESPONDENT

Date of Order:

21 April 2016

Referee:

Referee Roberts

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed against both respondents.

Facts

[1] EG and EGE (the applicants) purchased a property from UT and UTU (the respondents) in late 2014 and moved into the property in January 2015. A short time later, the applicants' neighbour informed them that a large amount of greywater was discharging onto his property.

[2] The applicants called in drainage engineers and it was discovered after investigation that water discharging from a shower, basins, laundry tub and washing machine was being diverted from the septic system into the stormwater system by means of a blocking plate in the pipes.

[3] When the blocking plate was removed, the septic system began overflowing within hours and the applicants have carried out extensive remedial and replacement work to the septic system at a cost of over \$20,000.00.

[4] They seek to recover \$15,000.00 from the respondents based on their non-disclosure of this issue.

Issues

[5] The issues to determine are:

- a) Are the respondents in breach of any of the terms and conditions of the sale and purchase agreement signed with the applicants?
- b) Is there any other basis for a claim against the respondents?

Are the respondents in breach of any of the terms and conditions of the sale and purchase agreement signed with the applicants?

[6] The respondents built the house on the property in the early 1970s and say that the diversion of the greywater was carried out by their plumber in about 1976 as a response to their neighbour building a fence which affected drainage and run-off. They say their plumber suggested it and it was considered normal and acceptable practice at that time. They state that they have never had any problems with the septic system, drainage or run-off since that time and the neighbour has at no time told them of any excess discharge onto his property.

[7] If the sale and purchase agreement between the applicants and the respondents had included the standard vendor's warranties (at clause 6.2(5)), this dispute would turn on whether or not the work done in the mid-1970s was lawful and compliant at that time. However, that clause was deleted by agreement of the parties in this case and therefore that question is not relevant (and no evidence was received on that point).

[8] The applicants' submissions refer also to clause 6.1(1)(d) which warrants that the vendor has not received any notice or demand and has no knowledge of any requisition or outstanding requirement from any 'other party' – they refer to what they believe to have been a neighbour's statement that he had previously told the respondents about run-off onto his property.

[9] However, the applicants acknowledged at the hearing that the neighbour denies he ever told the applicants such a thing and acknowledge that they may have misunderstood given that the respondents and the neighbour both say there had never previously been an issue. Whatever had been previously heard or understood, the applicants accept that there is no evidence to prove any problem prior to the one they experienced.

Is there any other basis for a claim against the respondents?

[10] The applicants say that they specifically asked UT whether or not there have been any problems with the septic system. They say this was before settlement but after the unconditional contract had been formed. UT recalls the conversation but believes it to have been after settlement. Even if it was at the earlier time recalled by the applicants, the fact that it occurred after the unconditional contract had been formed means that any questions or responses have no bearing on the terms of the contract.

[11] In any event, as noted above, the respondents' position is that they had had no issues with the septic system since the mid-1970s so had nothing to disclose when asked, and there is no evidence to the contrary.

Conclusion

[12] For all the reasons above, the claim is dismissed.