

IN THE DISPUTES TRIBUNAL

[2019] NZDT 1215

BETWEEN

HX
APPLICANT

AND

RC
RESPONDENT

Date of Order:

17 May 2019

Referee:

Referee: J Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] Mr HX purchased a house from Mr RC in 2015, with ongoing repayments due to City Council under a “Home” programme attached to the property rates, and therefore payable by the new owner.

[2] Mr HX says this obligation was not disclosed to him during negotiations and was not included as a condition in the sale and purchase agreement, in breach of vendor warranties in that agreement.

[3] Mr HX claims \$4375.42 from Mr RC, being the amount that was owing to City Council at settlement in October 2015, some of which has since been paid to City Council and some of which is not yet due.

Issues

[4] The issues to determine are:

- Was the Home Programme information disclosed to Mr HX prior to the contract being formed?
- Is Mr RC in breach of the vendor’s warranty at clause 6.2(3) of the sale and purchase agreement?
- Is Mr RC in breach of the vendor’s warranty at clause 6.1(1) of the sale and purchase agreement?

Was the Home Programme information disclosed to Mr HX prior to the contract being formed?

[5] I find that the Home Programme information was disclosed in writing prior to the contract being formed. The sale and purchase agreement was entered into on 28 July 2015. Mr RC has provided evidence to show that his real estate agent, CB, sent an email to Mr RC’s wife, HM, on 25 July 2015, to which was attached a copy of the LIM report for the property.

[6] Page 2 of the LIM report contains rating information and under the heading ‘Home Your Home Programme’, it states “This property is subject to a targeted rate under City Council’s Home Programme”. The section goes on to explain that a new home owner will be

liable to pay the targeted rate and gives information about how to find out the total amount owing and the ongoing annual repayment amounts for the property.

[7] This information was prominent on page 2 of 8 pages of written information within the LIM. It was not in small print or otherwise obscured and was contained within a document of primary importance, the LIM report.

[8] Further, the information within the LIM was not worded as general information, that is, it did not say “This property may be subject to a targeted rate...” – it was clearly stated that there was a financial liability on the new owner additional to rates.

[9] For these reasons I find that there was no obligation on the real estate agent to bring the purchaser’s attention to the point about the Home Programme specifically – there was a reasonable expectation that reading the short amount of information provided would convey that information clearly.

Is Mr RC in breach of the vendor’s warranty at clause 6.2(3) of the sale and purchase agreement?

[10] Mr HX contends that Mr RC is in breach of the vendor’s warranty at clause 6.2(3) which states that “The vendor warrants and undertakes that at settlement there are no arrears of rates, water rates or charges outstanding on the property”.

[11] Mr RC points out that there is no breach of warranty because there were no arrears at settlement – all rates payments, including the additional targeted rates for the Home items, were up-to-date. I accept that view, because an ongoing future obligation to make repayments is not the same as arrears, and therefore clause 6.2(3) does not apply to the situation that is the subject of this claim, and there is no breach of vendor’s warranty 6.2(3).

Is Mr RC in breach of the vendor’s warranty at clause 6.1(1) of the sale and purchase agreement?

[12] I have also considered whether Mr RC is in breach of the vendor’s warranty at clause 6.1(1) because that clause uses the wording “vendor... has no knowledge of any... outstanding requirement... from any local authority...”.

[13] An ongoing obligation to make targeted rates repayments arguably falls under the meaning of such an “outstanding requirement”. However that clause only comes into effect

when the outstanding requirement “has not been disclosed in writing to the purchaser”, and as per my finding above, the Home Programme repayments were disclosed within the LIM report provided to Mr HX prior to the contract being formed.

For all the reasons above, I find that Mr RC has no liability to pay damages to Mr HX and the claim is therefore dismissed.