



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1399

APPLICANT KC

RESPONDENT BS

The Tribunal hereby orders:

The claim is dismissed.

Reasons

1. KC purchased a house from BS in 2015, with ongoing repayments due to the Local Council under a S programme attached to the property rates, and therefore payable by the new owner.
2. KC 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. KC claims \$4375.42 from BS, being the amount that was owing to the Local Council at settlement in October 2015, some of which has since been paid to the Local Council and some of which is not yet due.
4. The issues to determine are:
 - Was the S Programme information disclosed to KC prior to the contract being formed?
 - Is BS in breach of the vendor's warranty at clause 6.2(3) of the sale and purchase agreement?
 - Is BS in breach of the vendor's warranty at clause 6.1(1) of the sale and purchase agreement?

Was the S Programme information disclosed to KC prior to the contract being formed?

5. I find that the S Programme information was disclosed in writing prior to the contract being formed. The sale and purchase agreement was entered into on 28 July 2015. BS has provided evidence to show that his real estate agent, NR, sent an email to KC's wife, DE, 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 S Programme, it states "This property is subject to a targeted rate under the Local Council's S 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 S Programme specifically – there was a reasonable expectation that reading the short amount of information provided would convey that information clearly.

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

10. KC contends that BS 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. BS 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 S 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 BS in breach of the vendor’s warranty at clause 6.1(1) of the sale and purchase agreement?

12. I have also considered whether BS 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 S Programme repayments were disclosed within the LIM report provided to KC prior to the contract being formed.

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

Referee: J Perfect
Date: 17 May 2019



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available or a mistake was made.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 28 days of the decision having been made. If you are outside of time, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, and serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.