



Civil Resolution Tribunal

Date Issued: September 10, 2018

File: SC-2017-004615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Peever*, 2018 BCCRT 506

BETWEEN:

Krista Lee

APPLICANT

AND:

Shelley Peever

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Krista Lee, is a mortgage broker. She brokered 2 mortgages on the same property for the respondent, Shelley Peever, in 2015.
2. The applicant says the respondent agreed to pay mortgage broker fees for each mortgage in monthly installments for 6 months, but only made 4 payments. The applicant seeks an order that the respondent pay \$1,997 for outstanding broker fees, plus contractual interest.
3. The respondent says she does not owe the applicant any fees because the applicant said all fees would be included in the mortgage.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

Limitation Period

9. The respondent says the applicant's claim is barred under the *Limitation Act*. I do not agree.
10. The *Limitation Act* applies to disputes before the tribunal. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which the claim is discovered.
11. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person know or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
12. The dispute involves missed payments under 2 written contracts between the parties. The first contract says the first payment under that contract was due September 1, 2015. The second contract says the first payment under that contract was due October 1, 2015. Thus, the applicant's claim could not have been discovered before September 2, 2015.
13. Under section 14 of the Act, the limitation period stops when the tribunal's Dispute Notice is issued. In this case, the tribunal issued the Dispute Notice on September 1, 2017. Accordingly, I find that the applicant's dispute was filed within the applicable limitation period, and is not barred under the *Limitation Act*.

ISSUE

14. The issue in this dispute is whether the respondent must pay the applicant mortgage broker fees plus contractual interest.

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
16. The applicant provided copies of 2 mortgage broker agreements. These were signed by the respondent on July 21, 2015 and August 10, 2015. The parties listed on top of each brokerage agreement are the respondent and Mortgage Alliance.
17. The applicant is not named as a party to either mortgage broker agreement, although I accept that she signed the agreement “per” Mortgage Alliance.
18. The first agreement says the respondent will pay Mortgage Alliance a non-refundable brokerage commission of \$1,495. It says this fee would be paid in 6 consecutive monthly payments of \$249 each, starting on September 1, 2015.
19. The second agreement says the respondent will pay Mortgage Alliance a non-refundable brokerage commission of \$4,995. It says that \$2,995 of this fee would be paid on the mortgage closing day, and the remaining \$1,500 would be paid in 6 consecutive monthly payments of \$250 starting on October 1, 2015.
20. I accept that these are binding contracts between the respondent and Mortgage Alliance. However, even if I were to find a breach of these contracts, I find that the applicant is not entitled to an order stemming from that breach because she was not a party to either agreement.
21. There is no contract before me indicating that the respondent agreed to pay brokerage fees to the applicant personally. Rather, the contracts specifically state that the respondent owed the fees to Mortgage Alliance. This is confirmed by the

copies of payment cheques provided by the applicant and later marked “void”. These cheques were made out to Mortgage Alliance, not to the applicant. Also, in an October 2016 email to the respondent, the applicant said the respondent must make the payment cheques out to Mortgage Alliance, and courier them to Mortgage Alliance’s office in Toronto.

22. The onus of proving the claims is on the applicant, and I find the applicant has not proven that the respondent owed her brokerage fees. Rather, the evidence indicates that the respondent owed fees to Mortgage Alliance. Mortgage Alliance is not named as a party in this dispute. Although the evidence shows that the applicant is or was affiliated with Mortgage Alliance, there is no evidence that Mortgage Alliance assigned its contractual rights to her.
23. While it may be the case that Mortgage Alliance would have given the fees paid by the respondent to the applicant, the contract between the parties did not require the respondent to pay the applicant directly. Rather, as stated in the applicant’s October 2016 email, the respondent was required to pay Mortgage Alliance only.
24. For these reasons, I find the applicant is not entitled to an order that the respondent pay her for outstanding brokerage fees.
25. For the reasons set out above, I make no finding in this dispute about whether the respondent breached her contract to pay mortgage broker fees to Mortgage Alliance.
26. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

27. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member