



Civil Resolution Tribunal

Date Issued: March 11, 2019

File: SC-2018-007060

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *491246 B.C. Ltd. v. Brock*, 2019 BCCRT 293

B E T W E E N :

491246 B.C. Ltd.

APPLICANT

A N D :

Marilyn Brock

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment of an alleged debt.
2. The applicant, 491246 B.C. Ltd. (491246) is a business that loans money to realtors. The applicant says it has a revolving line of credit with NM, a real estate

salesperson who is not a party to this dispute. The respondent, Marilyn Brock, was NM's real estate broker, and co-owned a real estate agency with NM.

3. The applicant says the respondent signed an "order to pay" agreement to secure NM's line of credit with the applicant, and under that agreement the respondent would repay NM's credit balance by deducting 25% from NM's earned gross sales commissions and forwarding this money to the applicant. The applicant says the respondent made such deductions in the past, but failed to remit the full payment owed after a sale by NM closed on June 29, 2018, leaving a shortfall. The applicant seeks an order that the respondent pay \$3,465.70.
4. The respondent says her real estate business with NM has ended, and NM now works for another brokerage. The respondent says she is not personally liable for the debt claimed by the applicant, and that it is a matter solely between the applicant and NM. The respondent says the order to pay agreement was only for a maximum debt of \$25,000, but NM's loan had increased to \$70,000, so the agreement is null and void. The respondent also says her brokerage received no payments from NM's last real estate deal.
5. The applicant is represented by its principal, Bruce Stone. The respondent is self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
8. 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.
9. 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.

ISSUES

10. The issue in this dispute is whether the respondent must pay the applicant \$3,765.70.

EVIDENCE AND ANALYSIS

11. 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.
12. For the following reasons, I find the applicant has not met the burden of proving its claim.

13. First, I find the applicant has not provided evidence to confirm that NM owes the claimed amount of \$3,765.70. The respondent says NM already paid \$3,000 towards this debt, and the applicant did not provide contrary evidence. Rather, in his submissions to the tribunal on behalf of the applicant, Mr. Stone wrote that he “assumed” \$3,465.70 was the correct amount based on a memorandum from the respondent. There is no such memorandum in evidence before me, and Mr. Stone provided no records to confirm amounts loaned to or repaid by NM. For these reasons, I find he has not established the applicant’s debt claim.
14. Second, I find that the respondent is not personally liable for any debt owed by NM or by her former real estate business. The applicant asserts that the respondent is liable under the terms of 2 written agreements: an “order to pay” agreement dated July 13, 2016, and a “sale of a specific debt” agreement signed in 2018 (the actual signing date is disputed, and is not relevant to my determination).
15. The respondent says she signed these 2 agreements as an agent for the real estate business, and not in her personal capacity. I agree. On the 2018 agreement, the respondent signed above a line stating “Real Estate Company Signing Authority”. On the 2016 agreement, the line under the respondent’s signature reads, “Authorized signatory of Century 21 Real Mountain Living Inc.” Neither agreement specifies that the respondent is liable to pay or make any transfers in her personal capacity. Rather, the parties to both agreements were the applicant, NM, and the real estate company. Since the real estate business was an incorporated company, this further confirms that the respondent is not personally liable. I therefore do not order the respondent to pay.
16. Third, even if the respondent were personally liable, I find the applicant has not proved that the real estate company received commissions on behalf of NM for which it failed to remit deductions. The respondent says NM’s final sale resulted in no commission paid to the real estate company, possibly due to a personal agreement between NM and the seller. The applicant has not met the burden of proving otherwise.

17. For these reasons, I dismiss the applicant's claim, and this dispute.

18. 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 its claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

19. I dismiss the applicant's claim, and this dispute.

Kate Campbell, Tribunal Member