



Civil Resolution Tribunal

Date Issued: August 12, 2019

File: SC-2019-001500

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cann et al v. West Coast Realty Ltd., dba Sutton Group-West Coast Realty et al*, 2019 BCCRT 959

B E T W E E N :

DAVID CANN and LAURA SMITH-CANN

APPLICANTS

A N D :

WEST COAST REALTY LTD., DOING BUSINESS AS SUTTON
GROUP-WEST COAST REALTY and STELLA PRICE PERSONAL
REAL ESTATE CORPORATION

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a contract for real estate services. The applicants, David Cann and Laura Smith-Cann, made an agreement with the respondents West Coast

Realty Ltd., Doing Business As Sutton Group-West Coast Realty (Sutton Group) as the listing brokerage and Stella Price Personal Real Estate Corporation (SPPREC) as the designated agent to sell their condominium. The agreement gave the respondents the exclusive right to list the applicants' property between April 10, 2018 and October 31, 2018. The applicants wished to terminate the agreement before the expiry of this time period as they felt the respondents were not acting in their best interests. The applicants paid the respondents \$5,000 as compensation for the early termination of the agreement.

2. In this dispute, the applicants say the respondents breached their agreement and then extorted money from them. They ask for an order that the respondents return the \$5,000. The respondents deny that they extorted money from the applicants or that they engaged in any improper conduct.
3. The applicants are represented by David Cann. Sutton Group is represented by an employee. SPPREC is represented by Stella Price.

JURISDICTION AND PROCEDURE

4. 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* (CRTA). 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.
5. 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.

6. 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.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondents must return the \$5,000 paid to them by the applicants.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of probabilities. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
10. In 2018, the applicants decided to sell a condominium they owned. They say they wished to obtain their desired price of \$1 million and, if this was not achieved, they intended to keep their condominium and rent it out.
11. On April 9, 2018, the applicants entered into a Multiple Listing Contract with the respondents. This agreement contemplated a listing price of \$918,888 in an apparent attempt to generate interest in the property and multiple offers. This strategy was not as effective as the parties had hoped, and the property received

only one offer of \$925,000. The applicants decided not to make a counter-offer, and instead rejected that offer as it was below their target price.

12. On April 18, 2018, the parties increased the listing price to \$980,000. On April 30, 2018, the listing price was reduced to \$950,000. These price adjustments did not result in any additional offers on the condominium.
13. Based on the evidence before me, the parties had a series of disagreements and misunderstandings about pricing, painting the property, communication with other agents and appointing a new listing agent on the property. The applicants report that Ms. Price bullied them, called them “difficult”, and stated that it was a “bad idea” to work together. On the basis of what they felt was poor treatment, the applicants wanted to terminate their agreement prior to the expiry of the 3-month exclusive period. The respondents declined to terminate the agreement without compensation. Although the parties explored the possibility of transferring the listing to Mr. B, another agent related to Sutton Group, this did not proceed.
14. The applicants discussed the termination of the agreement with SPPREC and a representative from Sutton Group. The respondents presented the applicants with 3 options: remain under contract for the term of the agreement, pay \$2,000 to terminate the agreement with a 60-day hold which would prevent the immediate re-listing of the property with another agent, or pay \$5,000 for the immediate termination of the agreement. The applicants chose the 3rd option, and paid \$5,000 to the respondents. The respondents released the applicants from the agreement on June 29, 2018.
15. The applicants’ position is that the respondents should not have charged them to terminate the agreement. They say that the respondents breached the original agreement and used the real estate system against them by forcing them to pay a fee to terminate it. According to the applicants, the respondents acted unprofessionally, did not provide expertise on an offer situation, and did not act in their best interests. They say that the respondents were aware that they expected to receive \$1 million for their home and agreed to take the listing on that basis.

16. The respondents say that there was no provision in the agreement to allow the applicants to terminate it early. The respondents say SPPREC spent time on and incurred expenses related to the applicants' listings, and the applicants wished to terminate the agreement before the respondents could earn their commission. They say that the payment of \$5,000 was compensation for the time and expenses, not extortion.
17. The parties' agreement lists the applicants' property for sale exclusively with the respondents between April 10, 2018 and October 31, 2018. It requires the listing brokerage (Sutton Group) to monitor and supervise the activities of the designated agent (SPPREC). The agreement provides that SPPREC will, among other things, use reasonable commercial efforts to market the property and promote the interests of the seller, fulfill the duties set out in *Real Estate Services Act* Rule 3-3 (which includes acting in the best interests of the client), and exercise reasonable care and skill in performance under the agreement. The agreement contains an additional term that SPPREC "will to the best of my ability, sell your property for the highest price in the shortest amount of time".
18. The applicants' position is that the respondents breached the agreement by "not meeting the standards of a realtor" and damaged their trust by "no longer wanting to work within [their] expectations" around the sale price. While the respondents were aware of the applicants' desired sale price, I find that they did not provide any guarantee that an offer in the \$1 million range would be received. I also find that the evidence does not establish that the respondents were pressuring the applicants to sell at a low price in order to profit from the situation, as suggested by the applicants.
19. I accept that there was a disagreement between the applicants and SPPREC about strategy in shifting market conditions, and that the applicants did not appreciate a SPPREC agent's manner of speaking or suggestion that they should have accepted or countered the offer they received. While perhaps not ideal, I do not find that this conduct amounted to a failure to act in the applicants' best interests. Although the

applicants found some of the SPPREC agents' conduct to be unprofessional, SPPREC remained willing to work with the applicants to sell their condominium. I find that the evidence does not establish that the respondents breached the terms of the agreement with the applicants.

20. The next consideration is whether the respondents were entitled to compensation for the early termination of the agreement. It is not disputed that the agreement gave the respondents the exclusive listing of the applicants' condominium during the specified time period and the applicants terminated the agreement before the expiry of that period. The applicants noted that the agreement did not contain a term about compensation to the respondents if the condominium did not sell. Email exchanges in evidence show that SPPREC employees did state that, if a home does not sell, they do not get compensated for their expenses. However, this statement was made in the context of a listing that expires at the end of the specified period rather than a listing agreement that is terminated early. I find that there was nothing in the agreement that prevented the respondents from seeking compensation for an early termination.
21. As noted above, the respondents gave the applicants 3 options for terminating the agreement early, 2 with and 1 without payment to the respondents. The applicants chose to terminate the agreement and pay the \$5,000 in order to pursue a sale with another agent. They now characterize that payment as extortion.
22. A helpful discussion of the definition of extortion is found in *R. v. Jardine*, 2005 BCPC 0328 at paragraph 18 as "obtain by violence, intimidation, persistent demands, etcetera", "extract forcibly" or "unlawfully take through preventing or overcoming the victim's resistance".
23. I find that the circumstances of this case do not amount to extortion and that the respondents did not hold the condominium "hostage" as suggested by the applicants. There was no violence, intimidation or force involved and, as noted above, the respondents were not acting contrary to the terms of the agreement between the parties. Although the applicants were unhappy with the situation, they

could have left the condominium on the market in accordance with the binding agreement they signed, and allowed the listing to expire. They would have incurred no expense, and would have been able to rent out the condominium as they had contemplated prior to putting it up for sale. Instead, the applicants elected an option that involved payment.

24. In summary, I find that the applicants have not established that the respondents breached the agreement, were not entitled to payment upon early termination of the agreement, or engaged in extortion in procuring the payment from the applicants. As the applicants' claims have not been proven, I dismiss their request for an order that the respondents repay the \$5,000.

25. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicants were not successful, I dismiss their claim for reimbursement of tribunal fees.

ORDER

26. I dismiss the applicants' claims and this dispute.

Lynn Scrivener, Tribunal Member