



# Civil Resolution Tribunal

Date Issued: May 19, 2020

File: SC-2019-009860

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tian v. Pacific Evergreen Realty Ltd.*, 2020 BCCRT 545

BETWEEN:

QI TIAN

**APPLICANT**

AND:

PACIFIC EVERGREEN REALTY LTD. and PACIFIC PLACE GROUP  
ENTERPRISES LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a realtor's brokerage agreement. The applicant realtor, Qi Tian (also known as Angela Tian), says the respondent brokerage, Pacific Evergreen

Realty Ltd. (PER), charged \$1,000.56 to her credit card for “open house” lawn signs and name cards, without her consent. The applicant says her brokerage agreement was unconditional, and that she never agreed to pay for signs and cards. She says she gave her credit card only for the monthly “desk fee”. The applicant claims reimbursement of the \$1,000.56.

2. PER says Ms. Tian left PER without fulfilling an alleged “one-year term written agreement” and so she was not entitled to receiving the signs and cards for free. The respondent Pacific Place Group Enterprises Ltd. (Pacific Place) says the applicant makes no claims against it and so the dispute should be dismissed against it.
3. The applicant is self-represented. PER and Pacific Place are both represented by LML, who is the “Managing Director/Broker” for both companies.

## **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. To some extent this dispute involves a “she said, they said” scenario. However, 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.

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. Where permitted by section 118 of the CRTA, 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.
8. I note PER filed in evidence a January 23, 2020 letter from LML titled "counterclaim", alleging Ms. Tian breached her fiduciary duty to her client when she acted improperly during an open house. LML wrote that PER's or Pacific Place's partner DY lost "as much as \$8,500" in time and business opportunities by having to deal with Ms. Tian's alleged conduct. There is an email from DY in evidence to similar effect, though I note his description of his loss is very general. While LML's letter starts out by saying it writes to "place a counterclaim" against Ms. Tian, the letter concludes that Pacific Place "has no intention to submit any counterclaim for financial loss". Neither PER nor Pacific Place filed an application for dispute resolution with the tribunal. DY did not file a claim either. In the absence of a counterclaim for damages, I find there is no basis for me to discuss the alleged misconduct further. Those allegations, even if proven, are not sufficiently connected to Ms. Tian's claim for reimbursement for lawn signs and cards to warrant any sort of set-off against an award to Ms. Tian. For clarity, for the purpose of this dispute, I find I do not need to address the reason why Ms. Tian left the respondent brokerage.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Ms. Tian's brokerage agreement require her to pay for lawn signs and business cards, or have a term that required payment for them if she left the brokerage in less than a year?
  - b. If not, is the applicant entitled to the claimed \$1,000.56 from either respondent?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The parties agree Ms. Tian worked for PER from October 2017 to May 2018. They also agree that PER charged Ms. Tian's credit card \$1,000.56 on May 25, 2018 for the cost of lawn signs and name cards. This followed Pacific Place's May 23, 2018 email to Ms. Tian that enclosed her "expense invoice" and that it would take the payment that day on her credit card on file.
12. At the outset, I dismiss Ms. Tian's claims against Pacific Place. As noted above, PER and Pacific Place appear to be somehow affiliated, since LML's letters indicate he represents both brokerages. However, Ms. Tian's submissions and evidence are all directed against PER, and she makes no specific claims against Pacific Place. For that reason, I dismiss her claims against Pacific Place.
13. LML wrote a December 23, 2019 letter addressed to the tribunal, in which he says, "it is a fair comment" that realtors joining the brokerage "will be provided with lawn-signs and name cards for free." However, LML adds that the condition is that those realtors will work with the brokerage for at least one year. In that letter, LML says this condition was communicated to Ms. Tian verbally through an in-person meeting

with one of the brokerage's partners, DY. LML wrote DY "has vowed that there was a verbal agreement of such condition". LML wrote that all realtors who leave before 12 months reimburse the expenses in question and have never raised an objection.

14. Yet, LML also submits that the one-year agreement was in writing, but submitted no such document. LML also provided a statement from DY, but in it he only addressed Ms. Tian's alleged misconduct and the time he spent addressing it. If DY had "vowed" there was a verbal agreement, I would have expected the respondents to produce a statement from him to that effect.
15. In support of its position that other realtors reimbursed the lawn signs and cards, LML provided an April 12, 2018 invoice addressed to another realtor, RK. I place no weight on this invoice as it does not address whether Ms. Tian agreed to pay for lawn signs and cards nor does it address LML's assertion that all realtors were aware of the "condition".
16. I turn then to Ms. Tian's evidence that her brokerage agreement was unconditional and that she never had a verbal agreement to pay for lawn signs or name cards if she left before a year. While it may be the parties had a written brokerage agreement, I do not have one in evidence. Again, as noted above, LML's evidence is inconsistent about whether the conditional agreement about lawn signs and name cards was verbal or written. I find this makes PER's evidence less reliable.
17. Next, Ms. Tian provided screenshots from other realtors saying PER had given free business cards and free lawn signs if a realtor joins the brokerage. One of these other realtors was MM, who Ms. Tian says introduced her to the brokerage and was present at her initial meeting with DY. In audio recordings of her conversation with MM, MM confirms he was never aware of a condition that sign and card expenses were chargeable if a realtor left before a year and he also says he did not hear that condition presented to Ms. Tian. The respondents do not address MM's comments.
18. Ms. Tian also submitted a January 16, 2020 screenshot from NK, who based on the content I find was a fellow realtor. NK explained the brokerage had similarly

charged him for lawn signs and cards after he left before a year, but that after a “little dispute” he got all his money back. The respondents do not address the evidence that NK was refunded the charges for lawn signs and cards.

19. Ms. Tian also submitted a May 24, 2018 email from LML, who wrote that the signs are “not free at all” and are only free when “agents make several deals in a year”. LML added that “there may be some agreement between you and [DY]”. I find this additional inconsistency in LML’s evidence, namely about the basis for the lawn signs and cards being free, further hurts PER’s credibility. In other words, LML now relies on the alleged verbal agreement that Ms. Tian would get free signs and cards but would have to repay those costs if she left before a year. Yet, in May 2018 he said the condition was based on the number of deals made. I find the unexplained discrepancy means I must place less weight on PER’s version of events.
20. Next, on July 11, 2018 LML wrote the applicant that he had “no idea of the verbal agreement”, and referred the matter to DY. Bearing in mind LML is PER’s managing director, I find LML’s stated lack of knowledge of the verbal agreement undermines PER’s position that it was routine for the lawn signs and cards to be chargeable expenses if the realtor left before a year.
21. I also agree with Ms. Tian that the email evidence shows the respondents obtained her credit card number for the purpose of billing her monthly “desk fees”. The respondents do not submit otherwise and the tone of Pacific Place’s May 23, 2018 email supports the conclusion that the credit card charge for the lawn signs and cards was not pre-authorized.
22. I find the weight of the evidence does not support the respondents’ position that there was any verbal agreement Ms. Tian would have to pay for lawn signs or name cards if she left before a year. The fact that DY’s statement did not address the alleged verbal conversation is particularly significant, but I also place weight on the evidence from other realtors who also say they were never aware of that condition.

23. On balance, I find Ms. Tian is entitled to reimbursement of the \$1,000.56 for the lawn sign and name card charges.
24. The *Court Order Interest Act* (COIA) applies to the tribunal. Ms. Tian is entitled to pre-judgment interest under the COIA on the \$1,000.56, from May 25, 2018, the date her credit card was charged. This COIA interest equals \$35.53.
25. Under section 49 of the CRTA and the tribunal's rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason not to follow that general rule here. I find Ms. Tian is entitled to reimbursement of the \$125 paid in tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

26. Within 14 days of this decision, I order the respondent PER to pay Ms. Tian a total of \$1,161.09, broken down as follows:
  - a. \$1,000.56 in debt for the lawn sign and name card charges,
  - b. \$35.53 in pre-judgment COIA interest, and
  - c. \$125 in tribunal fees.
27. The applicant is entitled to post-judgment interest as applicable. Ms. Tian's claims against the respondent Pacific Place are dismissed.
28. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the

declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

29. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair