



Civil Resolution Tribunal

Date Issued: July 29, 2022

File: SC-2021-006510

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ramzan v. Multiple Realty Ltd.*, 2022 BCCRT 867

BETWEEN:

KEITH RAMZAN

APPLICANT

AND:

MULTIPLE REALTY LTD. and PATRICK LEUNG

RESPONDENTS

AND:

KEITH RAMZAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about real estate transaction fees.
2. The applicant and respondent by counterclaim, Keith Ramzan, worked as a contractor for the respondent real estate brokerage, Multiple Realty Ltd. (Multiple). Multiple is the applicant in the counterclaim.
3. Mr. Ramzan says that when he transferred to a new brokerage, Multiple improperly charged an additional \$1,000 fee on each of his outstanding commissions. In the Dispute Notice, Mr. Ramzan claimed \$3,000 for the extra fees charged on 3 of his commissions. During facilitation, Mr. Ramzan amended the Dispute Notice to increase his claim to \$5,000, as he says Multiple charged the extra \$1,000 fee on additional commissions Multiple owed to him.
4. The individual respondent, Patrick Leung, is the former managing broker for Multiple. The respondents say that Multiple's office policy entitled them to charge an extra \$1,000 fee on pending commissions earned by realtors who transferred to a new brokerage.
5. Multiple counterclaims \$3,000 to keep the fees it charged Mr. Ramzan on his commissions. Multiple chose not to amend the Dispute Notice for its counterclaim after Mr. Ramzan increased his claim to \$5,000.
6. Mr. Ramzan and Mr. Leung are each self-represented. Multiple is represented by its current managing broker, PK.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and

recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
9. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

11. The issue in this dispute is whether Multiple was entitled to charge an extra \$1,000 fee on Mr. Ramzan's outstanding commissions after he left Multiple for another brokerage.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Ramzan must prove his claims on a balance of probabilities (meaning "more likely than not"). Multiple bears the same burden to prove its counterclaim. I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
13. At the outset, I note that Mr. Ramzan provided no supporting evidence of the alleged fees Multiple charged on the commissions he says he was entitled to be paid after he

transferred to a new brokerage. He did not provide evidence of the sales on which the commissions were based, copies of the cheques Multiple provided to him, or any statements showing the fees Multiple charged, either before or after his transfer. Typically, I would consider this lack of evidence sufficient to dismiss Mr. Ramzan's claim for failure to prove his damages.

14. However, given the respondents admit they charged an additional \$1,000 on each commission paid to Mr. Ramzan after he left, and because Multiple filed a counterclaim to keep 3 of these extra fees, I will consider whether Multiple was entitled to apply the fees to Mr. Ramzan's commissions.
15. It is undisputed that Mr. Ramzan started working with Multiple in 2005. Their signed April 1, 2005 contract provides that Mr. Ramzan must pay Multiple a \$200 plus GST fee for every transaction. I find this supports Mr. Ramzan's submission that Multiple had always charged a \$210 deal fee on each commission he earned.
16. Paragraph 3(h) of the contract says that if the association between Multiple and Mr. Ramzan is severed, Multiple will only be liable to pay Mr. Ramzan commissions on property sales where he has obtained an offer with a deposit before the association is terminated, and the transaction is later completed. Mr. Ramzan says he left Multiple on July 1, 2021, but still had 7 deals that were scheduled to complete after he left. He says it was when he picked up 3 commission cheques on August 9, 2021, that he discovered Multiple had charged an additional \$1,000 fee on each commission.
17. The parties' contract does not specifically provide for any other fees payable to Multiple on commissions. However, paragraph 2(d) says Mr. Ramzan must perform his duties in accordance with specified rules, legislation, regulations, and the terms and conditions of the "Office Policy". Paragraph 2(e) says Mr. Ramzan acknowledges receiving a copy of the office policy, and that he agrees Multiple may amend the policy in its sole discretion, which amendments are binding on Mr. Ramzan. I find Multiple's office policy was incorporated by reference and formed part of the parties' contract.

18. Multiple provided a copy of page 11 of its office policy, which includes a section dealing with termination. This section says that when a salesperson ends their association with Multiple, for any closed transactions where the salesperson has not received their commission before leaving, Multiple will pay the commission less the deal fee and less an extra \$1,000 for required extra administration and record keeping. I note the date printed at the bottom of the page is April 2, 2004. The respondents say this termination policy has not changed since then. As there is no evidence to the contrary, I accept that this termination policy was part of Multiple's office policy when Mr. Ramzan signed the parties' agreement, and that it continues to remain in place.
19. Mr. Ramzan says he never received a copy of the office policy. However, I find his signature on the contract indicates that he did and that he agreed to be bound by it, including the extra \$1,000 fee on commissions payable after moving to a new brokerage.
20. Mr. Ramzan says it was only when Mr. Leung became the managing broker for Multiple, that Multiple started charging the extra \$1,000 fee. I find that Mr. Leung was acting as Multiple's agent when he authorized the charges on Mr. Ramzan's commissions, and so there is no basis for any claims against Mr. Leung personally. I dismiss Mr. Ramzan's claims against Mr. Leung.
21. While Mr. Ramzan says that previous realtors were not charged the extra \$1,000 fee on commissions paid after they left Multiple for another brokerage, he provided no supporting evidence of this, such as statements from these other realtors. In any event, I find whether Multiple was previously charging the extra \$1,000 fee to other realtors is not determinative. I find that under the parties' contract, Multiple was entitled to charge Mr. Ramzan an extra \$1,000 fee on each commission payable after he transferred to a new brokerage. Given that Multiple was entitled to charge the extra fee, I dismiss Mr. Ramzan's claims against Multiple.
22. As for Multiple's counterclaim, I find the parties' submissions suggest Multiple has charged and kept the disputed fees. As I have found Multiple was contractually

entitled charge these fees, I find no order is required to permit Multiple to keep the extra fees it collected. Further, I have no jurisdiction to grant such declaratory relief under CRTA section 118. So, I dismiss Multiple's counterclaim.

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Both parties were unsuccessful in their respective claims, and so I find it is appropriate for each party to bear their own CRT fees. Neither party claimed any dispute-related expenses.

ORDER

24. I dismiss Mr. Ramzan's claims, Multiple's counterclaims, and this dispute.

Kristin Gardner, Tribunal Member