



Civil Resolution Tribunal

Date Issued: April 8, 2024

File: SC-2023-002003

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Watson v. Buksh*, 2024 BCCRT 338

BETWEEN:

JOHN ADAM WATSON

APPLICANT

AND:

MUSTAK AHMED GANI BUKSH, HABIBUR RAHMAN AHMED GANI
BUKSH, and SHARIFA BEGUM GANI BUKSH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, John Adam Watson, is a mortgage broker. Mr. Watson says he arranged a private mortgage refinancing for the respondents, Habibur Rahman Ahmed Gani Buksh and Sharifa Begum Gani Buksh (together, the Bukshes). He

seeks \$3,600 in commission for that work. Mr. Watson says he primarily dealt with Habibur Buksh's brother, Mustak Ahmed Gani Buksh, who is also a mortgage broker and is the other respondent in this dispute. In this decision I use first names to distinguish between the Buksh brothers. Mr. Watson says he agreed to split \$7,200 in commissions with Mustak, who referred the Bukshes to him.

2. The Bukshes say they never spoke or directly dealt with Mr. Watson and they are not sure why they are named in the dispute. They say Mustak was their mortgage broker, and this dispute is between him and Mr. Watson.
3. Mustak says he was only a "helper" in the Bukshes' refinancing process, and did not receive a commission for his work. Mustak also says Mr. Watson did not fulfill his commitments and did not actually complete the transaction.
4. Mr. Watson represents himself. Mustak represents himself. The Bukshes are represented by Habibur.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that

includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. 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 court.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether any respondents must pay Mr. Watson \$3,600 in commission.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Watson must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. As noted, Mustak is Habibur's brother. There is some history involving loans from Habibur to Mustak, and the Bukshes say Mustak lied and caused them "financial ruin." It is not necessary, nor possible on the limited evidence before me, to describe that history here. The important thing is that the Bukshes say Mustak was their mortgage broker and was representing them in the refinancing process at issue in this dispute.
12. There is no written agreement between Mustak and the Bukshes. As noted, Mustak says he was "only the helper." However, as I explain below, I find that he was acting as the Bukshes' mortgage broker and agent.

13. As documented in emails, Mustak reached out to Mr. Watson in August 2021. Mr. Watson says at that time he began working on securing a private mortgage for the Bukshes. Mr. Watson says he and Mustak agreed to a \$7,200 commission, which they would split. Mustak does not explicitly dispute that he agreed to share the \$7,200 commission with Mr. Watson, but says Mr. Watson did not fulfill his commitments.
14. On the evidence before me, I find Mr. Watson earned his commission. I accept his evidence that he completed and submitted the mortgage application, wrote the disclosure document, and negotiated with existing lenders to ensure that they would not proceed with a foreclosure. A December 28, 2022 disclosure statement noted that a \$7,200 broker fee would be split between Mr. Watson and “a referring broker”, which I infer was Mustak. The Bukshes signed this document, so I find they were aware of the commission-splitting arrangement.
15. On January 16, 2023, Mustak emailed Mr. Watson asking to remove the broker fee from the mortgage transaction. He said, “We are going to be short here on funds and I do not want to give the lawyer anything more [...] Why do you not just invoice for the amount of the broker fee but we are going to split it and then I can send you an email transfer after the deal closes immediately after and that will be for your portion. You can trust me on this.” Mr. Watson agreed but insisted that Mustak sign an “Invoice and Contract for Payment”, which I return to below.
16. The January 18, 2023 reconciliation statement showed no mortgage broker commission, consistent with Mustak’s request. It is undisputed that neither Mustak nor the Bukshes ever paid Mr. Watson any commission. The Bukshes also do not dispute Mustak’s assertion that he did not receive a commission on this transaction.
17. The law of agency applies when a principal (the Bukshes) gives authority to an agent (Mustak) to enter into a contract with a third party (Mr. Watson). The Bukshes say they had no direct dealings with Mr. Watson, but that does not matter. A principal is liable to a third party when their agent acts within their authority. That authority may be express, implied, or apparent. Here, I find that as the Bukshes’ mortgage broker,

Mustak had implied authority to hire Mr. Watson to secure a mortgage for the Bukshes. The Bukshes do not argue otherwise.

18. Under the law of agency and the doctrine of alternative liability, an applicant may sue both the agent and principal. However, it may only obtain a judgment against one or the other, and not both (see *Dan Gamache Trucking Inc. v. Encore Metals Inc.*, 2008 BCSC 343 at paragraphs 21 to 22).
19. I find the Bukshes were a disclosed principal, meaning Mr. Watson was aware of their identity. The law says that an agent generally cannot be held liable in contract to the third party where there is a disclosed principal (see *Lang Transport Ltd. v. Plus Factor International Trucking Ltd.*, 1997 CanLII 1904 (ON CA)). This is because the contract is the Bukshes' contract, and at common law only the contracting parties can sue and be sued under the contract.
20. An agent may be liable under contract if there are indications that they intended to be personally liable. Here, there is some evidence that Mustak intended to be personally liable. He said he would send Mr. Watson an e-transfer, and he signed the invoice and contract for payment without explicitly indicating he was doing so as the Bukshes' agent. However, overall I find the invoice and contract for payment simply restated the Bukshes' previous agreement, made through Mustak, to pay Mr. Watson a \$3,600 commission despite removing the broker fee from the mortgage transaction.
21. So, I find the Bukshes must pay Mr. Watson his \$3,600 commission. As I have found the Bukshes liable for the commission, I find the claim against Mustak must be dismissed based on the alternative liability doctrine.
22. The *Court Order Interest Act* applies to the CRT. Mr. Watson is entitled to pre-judgment interest on the \$3,600 commission from January 19, 2023 the date it should have been paid, to the date of this decision. This equals \$212.15.
23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Watson was successful, so I find he is entitled to reimbursement of \$175 in paid CRT

fees. I dismiss his claim for registered mail expenses because it is not clear what he mailed and he provided no receipts in support.

ORDERS

24. Within 21 days of the date of this order, I order the Bukshes to pay Mr. Watson a total of \$3,987.15, broken down as follows:

- a. \$3,600 in debt,
- b. \$212.15 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

25. Mr. Watson is entitled to post-judgment interest, as applicable.

26. I dismiss Mr. Watson's claims against Mustak.

27. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member