
CANADA / JUDGMENT

Macdonald Realty Ltd. v. Metro Edge Holdings Ltd.

2020 BCCA 272

COURT

British Columbia Court of Appeal

DECIDED

28 September 2020

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2020 BCCA 272 Macdonald Realty Ltd. v. Metro Edge Holdings Ltd.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Macdonald Realty Ltd. v. Metro Edge Holdings Ltd.,

2020 BCCA 272

Date: 20200928

Docket: CA46446

Between:

Macdonald Realty Ltd.

Respondent

(Petitioner)

And

Metro Edge Holdings Ltd.

Appellant

(Respondent)

Before:

The Honourable Madam Justice Fenlon

The Honourable Madam Justice Griffin

The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated October 11, 2019 (Macdonald Realty Ltd. v. Metro Edge Holdings Ltd., Vancouver Docket S196073).

Oral Reasons for Judgment

Representative for the Appellant Company, appearing in person (via videoconference):

L. Jin

Counsel for the Respondent (via videoconference):

D.J. Taylor

C. Holloway

Place and Date of Hearing:

Vancouver, British Columbia

September 28, 2020

Place and Date of Judgment:

Vancouver, British Columbia

September 28, 2020

Summary:

A dispute over real estate commission was determined against the appellant and in favour of the respondent by an arbitration panel under the rules of the British Columbia Real Estate Association. The respondent sought and obtained an order of the British Columbia Supreme Court enforcing the award as though a judgment of the court, pursuant to s. 29 of the former Arbitration Act. The appellant appeals that decision. Held: Appeal dismissed. The approach by the appellant of challenging the facts surrounding the commission dispute is not the correct approach. An application to enforce an arbitration award is not a hearing of the merits of the dispute. The appellant has not established that the judge made any error. The respondent's application to introduce fresh evidence is granted. The evidence establishes that the arbitration panel used a short-form for the respondent's name in making the award. While the respondent made an error in not adducing this evidence in support of its application to enforce the award, it is in the interests of justice to admit the documents, which are much like pleadings, proving it initiated the arbitration claim.

[1] GRIFFIN J.A.: This matter originates from a dispute between competing realtors over the payment of real estate commission. The dispute was determined by a three-member arbitration panel on July 5, 2018.

- [2] Macdonald Realty Ltd., the respondent, and Metro Edge, the appellant, are members of real estate boards, which are members of the British Columbia Real Estate Association (the "Association"). The Association has written rules and procedures to facilitate the arbitration of commission disputes between members.
- [3] The arbitration result required Metro Edge Realty to pay \$19,592.35 to Macdonald Realty.
- [4] There is evidence in the record that Metro Edge Realty is registered as a sole proprietorship, owned by Metro Edge Holdings Ltd., the appellant. For ease of reference, I will refer to the appellant as Metro Edge.
- [5] Metro Edge did not bring proceedings seeking to appeal or set aside the arbitral award.
- [6] When Metro Edge did not pay the arbitral award, the respondent brought a petition in the Supreme Court of British Columbia seeking leave to enforce the arbitration award as though a judgment of the court, together with interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79.
- [7] The petition was granted in Supreme Court chambers by Justice Iyer on October 11, 2019. Metro Edge now appeals that order.

Legal Principles

- [8] Section 29 of the former Arbitration Act, R.S.B.C. 1996, c. 55, provides:

29(1) With leave of the court, an award may be enforced in the same manner as a judgment or order of the court to the same effect, and judgment may be entered in the terms of the award.

- [9] The proper approach to s. 29 was succinctly stated by Justice Adair in *MSI Methylation Sciences, Inc. v. Quark Ventures Inc.*, 2019 BCSC 440, *aff'd* 2019 BCCA 448:
- [85] The fact that leave is required makes it clear that an award is not entitled to automatic status as a judgment of the court. Rather, the court must exercise its supervisory power in determining whether it is appropriate to permit an award to be enforced as a judgment of the court. See *Bekar v. TD Evergreen*, 2006 BCCA 266, at paras. 37-38. The application for leave may be adjourned, or leave may be refused, if: the award is not "perfected," such as where there are outstanding issues between the parties that the arbitrator had indicated he or she will or must address; if proper processes were not followed in obtaining the award; or where the award is still subject to appeal. See *Bekar*, at para. 38; and *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd.*, 2014 BCSC 2276, at para. 96.
- [86] An application under s. 29 is not a hearing of the merits of the arbitrated dispute. See: J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure*, 3rd ed. (New York: JurisNet, 2017), at p. 534.

- [10] An arbitral award must be clear and unambiguous if it is to be enforceable as an order of the court: *Hassall v. Children's & Women's Health Centre and UBC*, 2001 BCSC 1399 at para. 2; *The Owners, Strata Plan BCS 3165 v. KBK No. 11 Ventures Ltd.*, 2014 BCSC 2276, at para. 96.

Issues on Appeal

- [11] It is clear that the thrust of Metro Edge's appeal is that it ought not to have lost the arbitration on the facts of the dispute. The factum does not identify any errors of law and does not allege there was any error in any determination made by the chambers judge.
- [12] The opening statement in Metro Edge's factum is that it does not owe any money to Macdonald Realty. The factum goes on to rely on Metro Edge's version of the facts surrounding the underlying commission dispute from the sale of real property.
- [13] Very briefly, a realtor from Metro Edge represented the seller, and a realtor from Macdonald Realty Ltd. represented the buyers. There was an attempt by the seller to get out of the contract, but that was ultimately resolved and the property was sold to the buyers. The seller apparently refused to pay the commission. The respondent initiated the arbitration to recover from Metro Edge the real estate commission, which the respondent says was owed to it as the buyers' agent.
- [14] Metro Edge appears to be of the view that the respondent ought to have sued the seller or seller's agent directly for the commission, or the respondent ought to have taken the commission out of the deposit paid on the purchase that it held in its trust account. Metro Edge says that since it did not receive any commission from the seller, it ought not to be required to pay the commission to the respondent.
- [15] Metro Edge claims that it has "started to sue" the individual realtors involved and that they should be the ones who have to pay the commission. Metro Edge advises it has a trial date in late November 2020 in respect of this claim. Metro Edge asks this court to wait until they have the disputed money collected from the relevant party before Metro Edge has to pay Macdonald Realty. Metro Edge also refers to political influence that individuals in Macdonald Realty may have in the Association.
- [16] What Metro Edge fails to appreciate is that its approach of contesting the facts surrounding the commission dispute is not the correct approach on appeal and was not the correct approach before the chambers judge. As the judge correctly noted, an application under s. 29 of the former Arbitration Act to enforce an arbitration award is not a hearing of the merits of the arbitrated dispute.
- [17] The application below was not a review or appeal of the arbitration result, so the judge cannot be criticized for not accepting the arguments of Metro Edge that were framed as an appeal of the findings of fact of the arbitration panel.

- [18] Likewise, other proceedings that Metro Edge may have commenced against the individual realtors, whom it blames for the commission dispute, are not relevant to the issue in this proceeding.
- [19] I cannot discern from Metro Edge's factum or oral argument any basis for interfering with the decision of the chambers judge enforcing the arbitration award.
- [20] The factum of Metro Edge does not challenge the jurisdiction of the arbitration panel nor the status of the respondent. There was no objection during the arbitration to the arbitration process or jurisdiction of the arbitration panel to decide the commission dispute.
- [21] One issue has required clarification on appeal. There was no evidence before the chambers judge as to the relationship between the entity "Macdonald Realty" (the party named in the arbitration award) and the respondent Macdonald Realty Ltd. (my emphasis), the party that sought to enforce the arbitration award. However, Metro Edge took no issue in the court below with the respondent being one and the same as the party to the arbitration.
- [22] In response to a query from this Court as to the relationship between Macdonald Realty and Macdonald Realty Ltd., the respondent has brought an application for leave to introduce fresh evidence on appeal. The respondent seeks to put before the Court fresh evidence including documents to prove that it was the respondent, Macdonald Realty Ltd., who initiated the arbitration claim, using its proper corporate name. There was no second entity involved in the arbitration by the name "Macdonald Realty" only. Somewhere along the way in the arbitration proceeding, the party's proper name was referred to as a short-form, Macdonald Realty, presumably for ease of reference. The arbitration award, as mentioned, refers to Macdonald Realty, not to Macdonald Realty Ltd.
- [23] The respondents rely on the criteria in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, for the introduction of fresh evidence. Although this evidence could have been adduced in the proceeding below, the respondent did not do so as a matter of simple mistake and not due to strategic choice. Again, Metro Edge did not take the position that the respondent was not the proper party in the court below. Metro Edge also raised no issue in this regard in its factum on appeal. In oral argument, Metro Edge objected to the new evidence, but could not point to any prejudice in admitting it.
- [24] Putting before this Court the documents that initiated the arbitration claim is much like putting pleadings before the Court. There is no controversy about the evidence and it simply clarifies the procedural history of the matter. Similar to the analysis and conclusion reached in *Petrelli v. Lindell Beach Holiday Resort Ltd.*, 2011 BCCA 367 at paras. 49-61, I am satisfied it is in the interests of justice to admit the fresh evidence.
- [25] While an available option is to send the matter back to arbitration to clarify the name of the winning party, I am of the view this would be an unnecessary expense to the parties and would not change the result. I am satisfied that the fact that the arbitration award referred to Macdonald Realty was simply a short-form reference meant to be Macdonald Realty Ltd. It

was clear on the documents initiating the arbitration and clear to Metro Edge that Macdonald Realty Ltd. was the party that initiated the arbitration and was the winning party. There is no ambiguity in this regard.

[26] I therefore do not see any basis for a complaint that the court below approved a judgment in the name of Macdonald Realty Ltd.

[27] The appellant has not established that the judge made any error and I would therefore dismiss the appeal.

[28] FENLON J.A.: I agree.

[29] BUTLER J.A.: I agree.

[30] FENLON J.A.: The appeal is dismissed.

"The Honourable Madam Justice Griffin"

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Prepared on 27 October 2026 · Esheria