



DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTION 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT
LRB FILE NO. 081-15

Jordan Grant
Represented by Randy Armitage
Labour Standards Officer

COMPLAINANT

-AND-

Optasia Construction Inc., Carol Tuplin,
Jade Tuplin and Dale Tuplin

RESPONDENT

DATE OF HEARING: July 3, 2015

PLACE OF HEARING: Conference Room 1
110 Ominica Street W
Moose Jaw, SK

I. INTRODUCTION

This matter was heard before me on July 3rd, 2015 in Moose Jaw, Saskatchewan. Mr. Randy Armitage, Labour Standards Officer represented the Complainant, Jordan Grant. Mr. Dale Tuplin represented the Respondents, Optasia Construction Inc., Carol Tuplin and Jade Tuplin.

The Wage Assessment prepared pursuant to the Saskatchewan Employment Act is for \$11,144.65.

The Assessment was amended by consent of the parties to include vacation pay in the amount of \$439.35, making the Wage Assessment \$11,584.00.

The hearing commenced at 9:30 a.m. The above noted parties were present and sworn testimony was heard from Jordan Grant and Dale Tuplin.

II. PRELIMINARY MATTERS

There were no preliminary objections from any of the parties.

The Wage Assessment was amended by consent to \$11,584.00 to include vacation pay on wages already paid to Mr. Jordan Grant from June 2014 to August 2014.

III. THE DISPUTE

The only issue raised in this matter was the inclusion of a commission of \$5,000.00 in the Wage Assessment and the vacation pay on it of \$288.46.

The \$5,000.00 included in the Assessment was claimed by Mr. Grant as a commission payable under his terms of employment.

The payment of this \$5,000.00 is disputed by the Respondents, represented by Mr. Dale Tuplin.

Mr. Tuplin agreed that the balance of the Wage Assessment is owing to Mr. Jordan Grant.

IV. FACTS

i. AGREED FACTS

- a. The Respondent, Optasia Construction Inc. employed Mr. Grant for the period of June 6th, 2014 to the date of his resignation on December 5th, 2014.
- b. The parties agreed that the employment was governed by an Employment Agreement executed by both of the parties and entered

as Employer Exhibit "1". Such agreement was executed on June 6th, 2014.

EVIDENCE OF EMPLOYER

Oral testimony was heard from Mr. Dale Tuplin. Mr. Dale Tuplin, his wife, Carol and son Jade operate the Corporation known as Optasia Construction Inc. which sells modular building homes. The sales for the Corporation were handled by Mr. Dale Tuplin who in mid 2014 decided he needed a sales person and hired Mr. Jordan Grant for that purpose.

The parties entered into an employment contract, Employer Exhibit "1".

The employment contract sets out the remuneration that Mr. Grant was to receive during course of his employment as an Account Manager for Optasia Construction Inc.

The particular clause at issue is paragraph 1.6 which states, "the employee shall also receive a \$5,000.00 commission on each finished manufactured and modular home". During Mr. Grant's employment with Optasia Construction Inc. there were two manufactured modular homes sold by the Corporation.

- a) There was the Coppicus Sale that was closed by way of Agreement on June 16th, 2014. At that time the Agreement for Sale was executed by the parties including signatures from Mr. Jordan Grant

and Mr. Dale Tuplin on behalf of the Corporation. A deposit of \$50,000.00 was received by the Corporation.

Later in the fall, the modular home was delivered to the purchaser in Balgonie, Saskatchewan.

Mr. Tuplin, on behalf of the Corporation, takes the position that Mr. Grant is not entitled to commission on this sale in as much as he, Mr. Dale Tuplin, had done all of the work with the purchaser up to the date of execution of the contract on June 16th, 2014 and that Mr. Grant's involvement at that stage was merely as a training exercise and, as a result, no commission is payable to Mr. Grant for this sale.

- b) Jones Sale – The other sale in dispute is the Jones Sale in which a contract for sale was executed on July 18th, 2014. Such contract is entered as Employee Exhibit "5".

Mr. Dale Tuplin gave Mr. Jordan Grant a lead with respect to Mr. Jones. Mr. Grant subsequently followed up on the lead resulting in the sales contract being executed on July 18th, 2014 by Mr. & Mrs. Jones and the Corporation by Mr. Grant and Mr. Tuplin.

A deposit in the amount of \$38,000.00 was received from Mr. & Mrs. Jones.

Before the Jones Contract could be completed Mr. Grant submitted his letter of resignation to the Corporation and Mr. Tuplin by way of letter dated December 5th, 2014. Such letter is Employee Exhibit "4".

Subsequent to Mr. Grant resigning, Mr. & Mrs. Jones contacted Optasia Construction Inc. and advised them that they did not wish to proceed with the purchase and requested their deposit of \$38,000.00 be returned to them.

The Modular home was not delivered to the Jones and the Corporation was subjected to a Court action in the Saskatchewan Court of Queen's Bench wherein the Jones's obtained a Judgement for the return of their deposit.

Mr. Tuplin's position on behalf of the Corporation is that the commission on this sale is not owing as it was not "finished" as required by section 1.6 of the Employment Contact.

The definition of "finished" is not set out in the contact; however, Mr. Tuplin said that what the contact means by "finished" is that the product has been delivered to the customer and they have accepted the same by signing off.

Mr. Tuplin's evidence is that, at the time of execution of the contract between him and Mr. Grant on June 6th, 2014', this particular matter

was discussed and this definition of "finished" was communicated to Mr. Grant at that time.

Resultantly, the Respondent Corporation and Mr. Dale Tuplin take the position that the Complainant, Mr. Jordan Grant, is not entitled to commission on either of the above sales.

iii. EVIDENCE OF EMPLOYEE

Mr. Jordan Grant was sworn in and gave evidence on both sales and the execution of the contact.

Mr. Grant's evidence was that he met with Mr. Dale Tuplin to execute the Employment Contract; however, does not recall any discussions relating to the contract.

Regarding the Coppicus Sale he said that his understanding with respect to pending prospective sales was that all of them would be assigned to him, including the Coppicus Sale.

Mr. Grant relies on an email discussion that he had with Mr. Jade Tuplin, who is the CEO of Optasia Construction Inc., on April 29th, 2014, entered as Employee Exhibit "6".

Mr. Grant said, that as a result of this email, he was under the understanding that he would be paid a commission for the Coppicus sale

as, when he commenced employment on June 6th, 2014, it was a pending or prospective sale inside the Corporation and he interpreted the email and employment contract that this sale would be a commissionable sale for him. Mr. Dale Tuplin, in his evidence, said that he had not seen the email until it was presented at the hearing.

Jones Sale – Mr. Grant gave evidence that he received a tip relating to Mr. & Mrs. Jones from Mr. Dale Tuplin and pursued this tip to the point of executing a sale contract with them for a modular home, Employee Exhibit "5" and received a deposit of \$38,000.00 on July 18th, 2014.

Mr. Grant takes the position that the term "finished" within clause 1.6 of the Employment Contract means when the sale contract is signed and the deposit received and order placed with manufacturer.

The contract was signed, the deposit was received by the Corporation and Mr. Grant placed the order with the manufacturer.

Mr. Grant's position is that he should be paid a commission relating to this sale whether or not the sale subsequently collapsed or otherwise.

It is Mr. Grant's position that he should be paid a commission with respect to both sales; however, he is only claiming for one sale in the Wage Assessment.

V. ANALYSIS/DECISION

Jones Sale – The liability of the Corporation for the commission to Mr. Grant turns on the definition of "finished" in paragraph 1.6 of the Employment Contract.

Mr. Grant takes the position that "finished" means when the Sale Contract is signed, deposit is received and the order has been placed with the Manufacturer.

Mr. Tuplin takes the position that "finished" means the sale has been completed by way of the completed modular home or building being delivered and the customer is satisfied and has "signed off".

Mr. Grant's position is that he is to be paid the commission whether the sale is completed or not.

It is the evidence of Mr. Tuplin that his definition of "finished" was explained to Mr. Grant at the time of executing the Employment Contract.

Unfortunately Mr. Grant does not recall any of the conversation with Mr. Tuplin surrounding the execution of the Employment Contract.

Resultantly where the evidence is in conflict I prefer the evidence of the Respondent, Mr. Tuplin, and find that his definition of "finished" to be the definition intended by the parties when the contract was executed. As the Jones Sale was subsequently not completed, commission is not payable to Mr. Grant on the Jones sale.

Coppicus Sale – Mr. Dale Tuplin takes the position that commission is not payable to Mr. Grant as this sale was basically completed by he, Mr. Tuplin, before Mr. Grant come on as an employee and that Mr. Grant's involvement with the sale was that of a learning nature and it was never intended that a commission should be paid.

Mr. Grant's position is that he should be paid a commission as he viewed that to be the intention of the Corporation resulting from his email conversation with Jade Tuplin on April 29, 2014. He relied on the statement that "all current prospective deals" would be assigned to Mr. Grant, of which the Coppicus Sale would have been one.

I am influenced by the fact that Mr. Dale Tuplin had not seen the email between Jade Tuplin, CEO of Optasia Construction Inc., and Mr. Jordan

Grant. He was unaware of the representations made by Jade Tuplin, the CEO of the Corporation, to the prospective employee, Mr. Grant until the hearing.

Consequently the statement of "all current prospective deals would be assigned to you" made by Mr. Jade Tuplin to Mr. Jordan Grant would have been an inducement to enter into the Employment Contract.

Resultantly, I find that the commission, and the vacation pay on the Coppicus sale, is payable to Mr. Grant under the terms of his employment contract.

VI. CONCLUSION

The appeal is dismissed and the Wage Assessment in the amended amount of \$11,584.00 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 15th of July, 2015.

"original signed by"
Clifford B. Wheatley
Adjudicator

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at <http://www.saskatchewan.ca/>.

Right to appeal adjudicator's decision to board

- 4-8**(1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.
- (3) A person who intends to appeal pursuant to this section shall:
- (a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and
 - (b) serve the notice of appeal on all persons mentioned in clause 4-4(1)(b) who received the notice setting the appeal or hearing.
- (4) The record of an appeal is to consist of the following:
- (a) in the case of an appeal pursuant to Part II, the wage assessment or the notice of hearing;
 - (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
 - (d) any exhibits filed before the adjudicator;
 - (e) the written decision of the adjudicator;
 - (f) the notice of appeal to the board;
 - (g) any other material that the board may require to properly consider the appeal.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.
- (6) The board may:
- (a) affirm, amend or cancel the decision or order of the adjudicator; or
 - (b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board

Appeal to Court of Appeal

- 4-9**(1) With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.
- (2) A person, including the director of employment standards, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.
- (3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

Right of director to appeal

- 4-10** The director of employment standards has the right:
- (a) to appear and make representations on:
 - (i) any appeal or hearing heard by an adjudicator; and
 - (ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and
 - (b) to appeal any decision of an adjudicator or the board.