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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0732**

Burnet Realty, Inc.,
d/b/a Coldwell Banker Burnet,
Respondent,

vs.

Sohan Uppal,
Appellant.

**Filed April 22, 2008
Reversed and remanded
Crippen, Judge***

Hennepin County District Court
File No. 27-CV-06-7225

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Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Sohan Uppal contends that the district court erred in denying his motion for summary judgment and granting summary judgment to respondent Burnet Realty, Inc. Respondent contends that the district court was correct in concluding that respondent's claim for real estate commissions was not sufficiently mature to permit pleading the claim in a previous action between the parties, and thus was not subject to the compulsory-counterclaim requirement of Minn. R. Civ. P. 13.01.

Because respondent's claim arose out of the same transaction as the subject matter of the previous litigation and all pertinent evidence to the claim was available at the time respondent served its pleading in the previous litigation, respondent's claim was a compulsory counterclaim under rule 13.01, and the district court erred in denying appellant's motion for summary judgment. We reverse and remand for entry of a corrected judgment.

FACTS

In October 2002, appellant entered into a One Time Showing Contract with respondent for the sale of certain real property owned by appellant. The showing contract provides in part that if appellant agrees to sell the property, he will pay a commission to respondent equal to seven percent of the purchase price of the property upon the happening of either of the following: "(1) [T]he closing of the sale, (2) [Uppal]'s refusal to close the sale."

Subsequently, respondent located a buyer for the property, KGS, LLC, and appellant and KGS executed a purchase agreement in April 2003. Respondent claims it had fiduciary duties to both appellant and KGS in this transaction. The purchase agreement set a closing date of February 27, 2004. Separately, KGS executed a purchase agreement with Principal Realty Holdings, Inc. for the property. KGS planned to conduct a single closing on both transactions, whereby appellant would convey the property to KGS, which would then convey the property to Principal. But appellant refused to close on the property, and in March 2004, Principal brought suit against KGS and appellant, seeking to obtain title to the property through specific performance of the two purchase agreements.

Appellant filed a third-party complaint against respondent in response to Principal's complaint. In this third-party action, appellant asserted that respondent should forfeit fees and pay legal expenses because it had breached fiduciary duties to appellant in the course of the real estate sale transaction. Respondent interjected an answer to appellant's third-party complaint that denied appellant's allegations but did not plead a claim for the commission that was due to respondent under the showing contract. The district court eventually entered summary judgment on all of the claims in that suit and ordered specific performance of the purchase agreements.

Respondent then initiated these proceedings under a separate complaint, claiming that appellant owes respondent a sales commission under the showing contract. The parties filed cross motions for summary judgment, with appellant arguing that respondent's claim is barred by the doctrine of res judicata and the compulsory-

counterclaim provision of Minn. R. Civ. P. 13.01. The district court entered judgment in favor of respondent, concluding that the claim was not barred by either res judicata or rule 13.

DECISION

On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Here, neither party asserts that there are any genuine issues of material fact. We review de novo a district court's grant of summary judgment on undisputed facts. *City of Morris v. Sax Investments, Inc.*, 730 N.W.2d 551, 554 (Minn. App. 2007).

Appellant argues that the district court erred in its application of the law by concluding that respondent's claim for a commission is not barred under rule 13. The rule provides in part: "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim." Minn. R. Civ. P. 13.01.¹ The pleading of such counterclaims is compulsory. *G.A.W., III v. D.M.V.*, 596 N.W.2d 284, 288 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). But the rule applies "only if the claim is ripe, i.e., if the claim is mature in the sense that a cause of action exists for which a lawsuit may properly be commenced." *Leiendecker v. Asian*

¹ Under Minn. R. Civ. P. 14.01, the mandate of rule 13.01 applies to the defendant in third-party practice—respondent's party status when appellant brought a third-party complaint in the 2004 specific performance suit.

Women United of Minn., 731 N.W.2d 836, 841 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007).

A. *Ripeness/Maturity*

The district court concluded that rule 13.01 does not apply here because respondent's claim for a commission was not ripe at the time it answered appellant's third-party complaint in the prior litigation, adopting respondent's argument that the claim matured after the time that the third-party action was commenced.

A party's right to recover under a contract requires three elements: "(a) the formation of the contract; (b) performance by plaintiff of any conditions precedent to his right to demand performance by defendant; and (c) a breach of the contract by defendant." *Indus. Rubber Applicators, Inc. v. Eaton Metal Prods. Co.*, 285 Minn. 511, 513, 171 N.W.2d 728, 730-31 (1969), *overruled on other grounds by Standslast v. Reid*, 304 Minn. 358, 231 N.W.2d 98 (1975). It is undisputed that the showing contract was formed in October 2002. Respondent located a buyer, and a purchase agreement between KGS and appellant was executed. Thus, respondent had performed its obligations, and the showing contract provided that respondent was entitled to its commission upon either "(1) the closing of the sale," or "(2) [appellant's] refusal to close the sale." Appellant's refusal to close the sale in March 2004 triggered appellant's right to claim its commission.

Thus, when respondent filed its answer to appellant's third-party complaint in August 2004, respondent could have commenced a cause of action to recover the commission at that time. The claim was ripe and pleading the claim was compulsory.

See Leiendecker, 731 N.W.2d at 841 (stating that claim is ripe, and thus compulsory, when “a cause of action exists for which a lawsuit may properly be commenced”).

Respondent argues that the claim was not ripe at the time it answered appellant’s third-party complaint because “it was unclear whether the disputed Purchase Agreement between KGS and [appellant] was enforceable.” This argument rests on the assumption that respondent’s commission claim would be questionable if the sale agreement it secured with KGS proved to be unenforceable. But this pending dispute constituted no barrier to the commencement of a suit to recover on the commission claim. *See id.* (tying ripeness to an existing cause of action “for which a lawsuit may properly be commenced”). As appellant observes, all of the evidence was available to determine the good-cause questions and to determine respondent’s right to a commission.

Moreover, the issue of enforceability of the appellant-KGS Purchase Agreement was to be determined in the 2004 specific performance proceeding (Principal vs. KGS), the proceedings in which respondent had the occasion to assert its claim.² The fact that overlapping issues are central to the resolution of both suits strengthens the conclusion that respondent was compelled to assert the claim in the prior litigation. *See State ex rel. Hierl v. Dist. Court*, 237 Minn. 456, 458, 54 N.W.2d 5, 7 (1952) (“The present trend is to follow procedures which will simplify litigation and avoid a multiplicity of suits, particularly where actions arise out of one occurrence, accident, or transaction, and to

² Respondent does not assert, and it does not otherwise appear in the record, that there was any prospect in the 2004 specific performance suit for a determination against enforcement of the KGS-Principal sale contract, without a determination on the enforceability of the sale agreement between appellant and KGS.

dispose of all questions, both of law and fact, in one suit for such purpose. Rule 13.01.”). Respondent would have been entitled to recover its commission if the district court determined that appellant refused to perform on an enforceable purchase agreement.

Finally, respondent argues that it could not assert a claim against appellant in a dispute between KGS and appellant because respondent acted as an agent for both parties and its fiduciary duty of loyalty prevented it from taking sides. Respondent provides no authority to support this argument, and we are unable to determine that respondent would have breached its duty of loyalty by asserting a legitimate claim for the commission owed by one of its principals.

B. Same Transaction

Respondent argues that the present claim is not barred by rule 13 because it arises out of a transaction different from the subject matter of the previous litigation. Rule 13 provides that a counterclaim is compulsory only if it “arises out of the transaction that is the subject matter of the opposing party’s claim.” Minn. R. Civ. P. 13.01. “The most widely accepted test of this is whether the counterclaim is logically related to the claim being asserted by the opposing party.” *Fox Chemical Co. v. Amsoil, Inc.*, 445 F. Supp. 1355, 1361 (D. Minn. 1978).³ Claims are logically related if the same aggregate of operative facts serve as the basis of both claims. *Id.*

³ Fed. R. Civ. P. 13(a) addresses a claim that “arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim,” whereas Minn. R. Civ. P. 13.01 addresses a claim that “arises out of the transaction that is the subject matter of the opposing party’s claim.” Although the language of the rules is not identical and there is no supreme court decision either finding that federal decisions are binding or otherwise stating a test to determine whether a claim arises out of the prior-pled subject, we view

Appellant's third-party complaint essentially alleges that he had good cause to refuse to close the sale with KGS because of an alleged conflict of interest and self-dealing on the part of respondent. Respondent's right to recover a commission was triggered by appellant's refusal to close the sale. There is an aggregate of operative facts common to both claims.

C. Equitable Concerns

Finally, respondent argues that the district court "properly examined and balanced the relevant equitable factors when it concluded that [respondent's breach of] contract claim was not a compulsory counterclaim." But the district court's order does not purport to conduct a balancing of equitable factors; it merely concludes that respondent's claim was not barred by rule 13 because the claim was not mature at the time respondent filed its third-party answer in the previous action. Even if we were to apply equitable principles on appeal, respondent's equity interest is in its substantive claim, which is barred under the rule on procedural grounds. But this is the result contemplated by rule 13 in order to induce parties to bring all claims in a single action. *See House v. Hanson*, 245 Minn. 466, 470, 72 N.W.2d 874, 877 (1955) (stating that the bar created by rule 13.01 "aris[es] from the culpable conduct of a litigant in failing to assert a proper counterclaim"); *see also Martino v. McDonald's Sys., Inc.*, 598 F.2d 1079, 1082 (7th Cir. 1979) ("Rule 13(a) is in some ways a harsh rule. It forces parties to raise certain claims at the time and place chosen by their opponents, or to lose them.").

the federal "logical relationship" test as persuasive. *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990) (stating the value of cases interpreting the federal rule in understanding the purpose and application of the comparable state rule).

Respondent's claim for a commission was a compulsory counterclaim in the previous litigation between the parties and is thus barred under Minn. R. Civ. P. 13.01. Accordingly, appellant is entitled to judgment as a matter of law, and we need not address his alternative contention that respondent's claim is also barred by the doctrine of res judicata. We reverse and remand for entry of judgment in favor of appellant.

Reversed and remanded.