

CITATION: Ojohome Canada Ltd. v. The Canadian Real Estate Association et al,
2025 ONSC 1601
COURT FILE NO.: CV-24-98308
DATE: 2025 03 11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: OJOHOME CANADA LTD. o/a HOUSEFUL, Plaintiff

AND:

THE CANADIAN REAL ESTATE ASSOCIATION, THE TORONTO
REGIONAL REAL ESTATE BOARD and PROPTX INNOVATIONS INC.,
Defendant

BEFORE: C. MacLeod RSJ

COUNSEL: Michael Wilson & Carlie Fox for the Counsel, for the Plaintiff (Moving Party)

Kevin W. Fisher & Eli Bordman, for the Defendant TRREB (Responding Party)

Natalia Rodriguez & Emma Williams, for the Defendant CREA (Responding
Party)

HEARD: March 5, 2025

REASONS FOR DECISION

[1] This was a motion for an interlocutory injunction or mandatory order restoring the plaintiff's access to live feed data from the Toronto Region MLS service provided by TRREB. At the conclusion of the hearing, I gave oral reasons for denying the relief, but I indicated I would release a written version. Those reasons are as follows.

Background and Issue

[2] The plaintiff is a licenced real estate brokerage based in Toronto. It is a member in good standing of both the Toronto Regional Real Estate Board (TRREB) and the Canadian Real Estate Association (CREA).¹ The broker of record is Natalka Falcomer who is an experienced real estate broker and also a lawyer. Richard Argals is the former broker of record with TRREB and is still the broker of record in other provinces and with CREA.

¹ Registration of real estate brokers, brokerages and salespersons in Ontario is governed by the *Trust in Real Estate Services Act*, 2002, S.O. 2002, c. 30, Sched. C, "TRESA". Every brokerage must have a "broker of record" pursuant to s. 12. The regulator under the Act is The Real Estate Council of Ontario (RECO).

[3] In 2023 the brokerage was acquired by the Royal Bank of Canada (RBC). The current CEO is Karen Starns who resides in Kirkland, in the State of Washington.

[4] The plaintiff has agreements with both TRREB and CREA pursuant to which it normally obtains data feeds in relation to home listings. These consist of a Toronto Region data feed (“IDX”) emanating from TRREB and a national data feed (“DDF”) which is provided by CREA.

[5] These data feeds allow the plaintiff to draw current data from the Toronto Region and Canada Wide Multiple Listing Services (MLS) and in turn to permit interested home buyers to conduct searches for properties on the plaintiff’s web site. The plaintiff regards the provision of accurate, reliable, comprehensive and searchable listings on its own web site as critical to its business model.

[6] That business model does not include directly listing or selling homes. Instead, it makes referrals to a network of approximately 600 real estate agents who have signed agreements with the plaintiff. Consumers visiting the web site and who are interested in purchasing a home will be assisted in various ways then referred to an agent when they are ready to make an offer. The agent pays a fee of 25% of its commission to the plaintiff on a successfully completed sale. There is no fee to the consumer or the agent if a sale is not completed.

[7] The plaintiff also provides referrals for mortgage financing, primarily but not exclusively to RBC, and it provides agents and consumers with what it describes as concierge services. According to the evidence, the plaintiff generates 80% of its revenue from sales referrals and 20% of its revenue from mortgage referrals.

[8] It is the position of TRREB that this business model is not compliant with the IDX agreement because the plaintiff is not contributing data to the IDX and is seeking to monetize the data feed. TRREB takes the position that this is not compliant with the IDX agreement requiring that the IDX data may only be used for the purpose of carrying on the business “of a bona fide trade in real estate in Ontario” for a consumer with whom the subscribing member has a “lawful broker-consumer relationship” and for the brokerage that employs the subscriber.

[9] According to the defendant’s evidence, this issue was originally raised in 2021 when Richard Argals was the subscriber. The plaintiff (or its predecessor) was denied access to the IDX at that time. The defendant also contends that access to the IDX was restored through subterfuge because Nataalka Falcomer subscribed in her name using a different web address and failed to advise staff at TRREB of the prior dispute or the involvement of TRREB outside counsel.

[10] In addition, TRREB submits that in-house counsel for the plaintiff advised it in 2021 that the plaintiff intended to become compliant but has never done so.

[11] These facts are highly contested. The plaintiff denies that its business model is non compliant. It denies any subterfuge. It argues that its services are value added to consumers and sales agents alike. It disagrees with the interpretation of the TRREB by-laws and IDX agreement or that the termination of Mr. Argles access in 2021 was due to a breach of the IDX agreement.

[12] The events giving rise to the current motion took place in October of 2024. At that time counsel for TRREB became aware that the IDX subscriber agreement signed by Ms. Falcomer was for the purpose of providing the data feed to the plaintiff's web site. TRREB then acted to unilaterally terminate that access by blocking the data feed. It also advised that Ms. Falcomer was being referred to a TRREB discipline process.

[13] In December of 2024 TRREB advised CREA that it withdrew permission for the plaintiff to access the TRREB data contained in the DDF. On receiving that direction from TRREB, CREA took steps to restrict the DDF feed to the plaintiff so as to exclude the TRREB data.

[14] The consequence of these actions by TRREB was to reduce the listings on the plaintiff's web site from around 54,000 homes to something closer to 11,500 postings derived from other real estate boards outside of the Toronto region. The plaintiff has been blocked from displaying data relating to most listings in the GTA

[15] The plaintiff seeks an order to restore its access to the IDX data until the matter can be adjudicated. It argues that restoration of the data feed is a simple low cost matter which imposes little or no burden on TRREB. By contrast, the plaintiff argues that the damage inflicted on its business will be irreparable.

[16] For its part, TRREB argues that this is a mandatory order requiring the plaintiff to show a strong *prima facie* case and this is not such a case because of the clear wording of the agreements, and the fact that TRREB is not obligated to provide access to this data except on the terms it sets. It also argues that for the benefit of its members and the other participants in the IDX data program, it must protect the integrity of the system, that damages would be an adequate remedy in any event, and the balance of convenience favours TRREB.

[17] CREA takes no position on the merits but argues that it should not be subject to a mandatory order. If the court orders TRREB to restore the data feed, it would also restore the TRREB data in the DDF.

Decision and Reasons

[18] Although TRREB is a private and non governmental organization, the issue before the court is justiciable. It is clearly rooted in contract and it affects the plaintiff's commercial interests.² None of the parties suggest the matter is not properly before the court.

[19] In Ontario, the power to grant interlocutory injunctions or mandatory orders is encapsulated in s. 101 of the *Courts of Justice Act*.³ Since 1994, the test to be applied in Canada

² *Senez v. Montreal Real Estate Board*, [1980] 2 SCR 555 and see *Hannan v. Scouts Canada*, 2024 ONSC 5361 @ paras 29 - 35

³ *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended

has been the *RJR MacDonald* test.⁴ I need not set out the application of that test in detail. The test itself is not in dispute. I adopt the analysis of Justice Perrell in *LivingArt Kitchens*.⁵

[20] I did not call on counsel for CREA because no order is necessary against the national body. The plaintiff still has access to the data feed from CREA except for the subset of data originating from TRREB. There are no circumstances in which an order would be made against CREA without an order being made against TRREB and if TRREB is ordered to restore the data, an order against CREA would be superfluous.

[21] The issue is whether the interlocutory order sought by the plaintiff against TRREB is appropriate. I denied the motion for the following reasons:

- a. I agree that a mandatory order requiring TRREB to restore service should require a strong *prima facie* case (almost certain to succeed) and I do not believe this hurdle is met on the evidence.⁶ If I am in error on this point and only a genuine issue is required (not frivolous or vexatious) then the motion for an injunction fails on the second branch of the test.
- b. On the question of irreparable harm, both the plaintiff and TRREB claim irreparable harm to reputation and business model. Neither are persuasive. These are commercial entities engaged in a commercial contract. Dealing specifically with the plaintiff, damages would appear to be an adequate remedy if TRREB is found to be in breach of contract. Difficulty in calculating damages for lost business does not mean that a damages remedy is not appropriate.⁷ Furthermore, there are steps the plaintiff may be able to take to mitigate its damages or to come into compliance with the TRREB rules.
- c. The balance of convenience would favour the plaintiff to the extent that restoring the data feed would impose little burden on the defendant but that alone does not justify injunctive relief.

[22] The motion for interlocutory relief was therefore dismissed.

[23] I understand from counsel that there is no reason to continue against CREA in those circumstances and it is only because CREA is headquartered in Ottawa that the proceeding was brought here. Counsel should consider transferring the proceeding to Toronto and might usefully discuss moving it to the Commercial List.

[24] In the event the action remains in Ottawa, since the issue in question is the interpretation of a contract and the rules and regulations established by TRREB, it may be appropriate to convert

⁴ *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311

⁵ *LivingArt Kitchens Inc. v. Merenich*, 2024 ONSC 3088 (CanLii) @ paras 74 - 85

⁶ *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLii), [2018] 1 SCR 196 @ para 15

⁷ *Barton-Reid Canada Ltd. V. Alfresh Beverages Canada Corp.*, 2002 CanLII 34862 (ON SC) @ para 18

the action to an application or to proceed by summary judgment. There has been much affidavit evidence and cross examination already. If counsel require further procedural direction or an order to expedite the proceeding, they may request a case conference.

[25] If counsel are unable to agree on costs, I will accept written submissions within 45 days on a timetable to be agreed upon between counsel.

Justice C. MacLeod

Date: March 11, 2025