



# Civil Resolution Tribunal

Date Issued: February 7, 2018

File: SC-2017-004465

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Vuono v. Simpson*, 2018 BCCRT 33

**BETWEEN:**

Stefano De Vuono

**APPLICANT**

**AND:**

Sean Simpson

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

### INTRODUCTION

1. The applicant Stefano De Vuono bought an Infinity “sub” from Mr. Simpson, through a Kijiji ad. They agreed on a price of \$110, inclusive of shipping. Mr. De Vuono never received the sub and claimed a refund of the \$110, plus the tribunal fees he paid.

2. Prior to this file being assigned to me for adjudication, the parties agreed that Mr. Simpson would repay Mr. De Vuono \$110 and has done so. That substantial claim is considered resolved. Thus, the issue of who must pay Mr. De Vuono's claimed \$155, for tribunal fees and dispute-related expenses, is the sole issue remaining in this dispute.
3. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether Mr. Simpson should reimburse Mr. De Vuono the \$155 Mr. De Vuono paid in tribunal fees and dispute-related expenses.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The tribunal issued the Dispute Notice on August 25, 2017. On October 4, 2017, in his Dispute Response the respondent Mr. Simpson acknowledged he owed Mr. De Vuono the \$110 refund. However, Mr. Simpson submits that Mr. De Vuono “jumped the gun” by contacting the tribunal, because the parties were in touch and Mr. Simpson had asked for 2 extensions on the day he could provide the refund, totally about 2 weeks.
11. I turn to the relevant underlying chronology.
12. On July 20, 2017, the parties agreed that Mr. Simpson would ship the sub to Mr. De Vuono for \$110, inclusive of shipping costs. Mr. De Vuono paid by e-transfer and asked for tracking information.
13. Between August 11 and August 15, 2017, the parties exchanged emails about the sub’s whereabouts. Ultimately, on August 15, 2017 Mr. Simpson said the package could not be found and asked if Mr. De Vuono minded waiting “until Monday”, or August 21, 2017, as he would then send Mr. De Vuono’s cash back.
14. Later on August 15, 2017, Mr. De Vuono responded that he would rather not wait until Monday and “please send money ASAP. It’s been way too long”. Mr. Simpson did not reply and Mr. De Vuono sent a similar email on August 19, 2017 asking for repayment “Monday”. On August 22, 2017, Mr. Simpson sent a text saying “I’ll get your cash back to you this week. Just need to wait for payday”.

15. On August 25, 2017 Mr. De Vuono emailed at 9:38 am that he needed his money “today” and to please send ASAP. As Mr. Simpson did not reply, at 2:59 p.m. on August 25, 2017, Mr. De Vuono sent Mr. Simpson the tribunal Dispute Notice package.
16. I find Mr. De Vuono was not unreasonable in commencing his tribunal proceeding. That the substantive claim was only \$110 is not relevant to whether he can claim tribunal fees, as perhaps suggested by the respondent. To conclude otherwise would unreasonably burden applicants with the cost of pursuing reasonable claims. Instead, generally speaking, a successful party is entitled to reimbursement of their tribunal fees.
17. This is not a case of divided success. Mr. De Vuono was entirely successful in his substantive claim. Exceptions may exist where an applicant misled a party about settlement or perhaps if there were agreements about payments, but I see no applicable exceptions here. Mr. De Vuono never agreed to Mr. Simpson’s changing payment promises. I find there is no requirement for an applicant to delay pursuit of their rightful claims, and in particular there is no obligation to accept a payment deadline unilaterally imposed by a respondent.
18. I find the applicant is entitled to the \$155 claimed, as reimbursement of \$125 tribunal fees and \$30 in dispute-related expenses related to delivery of the Dispute Notice.

## **ORDER**

19. Within 14 days of the date of this decision, I order the respondent to pay the applicant \$155, as reimbursement of the applicant’s tribunal fees and dispute-related expenses.

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Shelley Lopez, Vice Chair