



Civil Resolution Tribunal

Date Issued: March 27, 2018

File: SC-2017-003297

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Basic v. Radovic et al*, 2018 BCCRT 97

B E T W E E N :

ZVONKO BASIC

APPLICANT

A N D :

VUCIDAR RADOVIC and METRO TRAVEL (2011) LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

1. The applicant, Zvonko Basic and his wife purchased a travel package to Mexico from the respondents Vucidar Radovic and Metro Travel (2011) Ltd. (Metro Travel).

2. This dispute is about whether the respondents misrepresented the quality of the travel package. The applicant claims \$2,177.28 as a refund for the travel package, and \$800.00 for illness related expenses. The respondents each claim \$350.00 for time spent defending this dispute.
3. The parties are self-represented.
4. A third party travel company provided the holiday package in dispute. The applicant declined to add any third parties to this claim. As a result, this decision makes no findings with respect to any third parties.
5. For the reasons that follow, I find that the respondents did not misrepresent the holiday package sold to the applicants. I dismiss the applicant's claim for refund and damages. I also dismiss the respondents' claim for expenses preparing to defend this claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. No one requested an oral hearing.
8. 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.

9. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issue in this dispute are:
 - (a) Did the respondents negligently misrepresent the quality of a vacation package that it sold?
 - (b) If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all of the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.

Background

12. The essential facts of this claim are not in dispute. The applicant purchased a travel package from the respondents in December 2015 that was booked with a third party holiday provider. The applicant was unhappy with the travel package, and submitted photographs of what they say was an inadequate room, letters of

complaint to the third party holiday provider and hotel in Mexico, and evidence of medication taken in Mexico.

13. The respondents do not dispute that the applicant was unhappy with its travel package, but say they are not responsible. They provided evidence of the travel package brochure including terms and conditions for the travel package with the third party travel provider, and 4 reviews of the holiday package from other travellers. They say these demonstrate that they met their obligations to the applicant.
14. The applicant says the respondents failed to take the care required of travel agents in booking the applicant's travel package, telling them that they would obtain a certain quality of room and overall package. The applicant says these promises caused them to book the package with a room in poor condition and for the applicant's wife, who is not a named applicant, to become ill due to food consumed in one of the resort's restaurants.
15. The applicant says the respondents breached the contract between them. The applicant's claim is essentially that the respondents made promises about the vacation package that led to their misfortune on the trip. By law, this is a claim about negligent misrepresentation.

Negligent Misrepresentation

16. A negligent misrepresentation occurs when: (1) there is a duty of care based on a "special relationship" between the seller making the representation and the buyer, (2) the representation in question was untrue, inaccurate, or misleading, (3) the seller acted negligently in making the representation, (4) the buyer relied in a reasonable manner on the negligent representation, and (5) the reliance must have been detrimental to the buyer (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).

17. I accept that the applicant and respondents were in a special relationship. The respondent owed the applicant a duty of care to provide the appropriate level of skill and diligence of a travel agent booking a travel package.
18. I also accept that the applicants purchased the travel package believing that they would receive a certain quality vacation package.
19. The issue here is whether the respondents failed to meet the required standard of care by providing untrue, inaccurate or misleading information about the travel package. In other words, the applicant must prove the respondents were negligent in representing the quality of the travel package and that the applicants relied upon this causing what they say were the unfortunate events of the holiday.
20. I find that the respondents provided the applicant with multiple options of packages to consider, and that the respondents booked the package that the applicant requested.
21. I find that the respondents exercised the appropriate level of diligence and care expected of travel agents in booking packages for clients. The respondent booked the 4 star Mexican resort in the travel brochure provided to the applicant. There is insufficient evidence that the respondents made promises that were untrue, inaccurate or misleading.
22. I find the respondents made no promise to the applicant about an assigned room. Rather, the respondents advised the applicant of who they should contact if they were unhappy with their assigned room. The applicants did this, and had their concerns addressed during the holiday. I find the respondents are not responsible for the room assignment.
23. I also find the respondents made no promise about the health and welfare of the applicant or his wife during the holiday. I make no findings on how or whether the applicant's wife became sick on holidays. Whether it was due to food consumed, or some other cause, I find the respondents are not responsible for it.

24. Given my conclusions above, I find the applicant has not proven on a balance of probabilities that the respondents negligently misrepresented the quality of the vacation package sold. I dismiss the applicant's claim for a refund of the travel package and for illness related expenses.
25. In accordance with section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of its tribunal fees because he was unsuccessful in this dispute.
26. The respondents each asked for \$350 for preparing to defend this claim. The respondents have not provided details explaining how they came to either the numbers of hours spent preparing for this claim or its hourly rate. In any event, I see no reason to deviate from the tribunal's rule 129 and its general practice in not making awards for a party's time spent in bringing or defending a dispute. No other expenses were requested.

ORDERS

27. I order that the applicant's claims are dismissed.
28. I dismiss the respondents' requests for compensation for their time spent dealing with this dispute.

Samuel A. Hyman, Tribunal Member