



# Civil Resolution Tribunal

Date Issued: June 18, 2018

File: SC-2017-002261

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rupp v. Saini*, 2018 BCCRT 264

**B E T W E E N :**

Gerald Rupp

**APPLICANT**

**A N D :**

Kathleen Saini

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. This dispute arises from an agreement to provide a boat charter for a stand up paddleboard (SUP) team crossing from Nanaimo to Vancouver on June 6, 2015.
2. The applicant Gerald Rupp says he provided the respondent Kathleen Saini with a safety vessel, a captain and related equipment to accompany a team of SUP

athletes during a fundraiser on June 6, 2015. As part of the fundraiser, the team completed a water crossing between Nanaimo and Vancouver.

3. The applicant says the respondent failed to pay for the use of the equipment, damaged a radio, and did not return the radio on time.
4. The applicant seeks orders for
  - a. \$1,200 in payment of his outstanding invoice for the boat charter,
  - b. \$382.82 reimbursement for a damaged radio,
  - c. \$12.97 reimbursement for a meal,
  - d. Interest of \$1,022.27 on the outstanding invoice, and
  - e. tribunal fees of \$125.00.
5. The respondent says there was no written contract. She says she made arrangements verbally on behalf of a team of paddlers, not for herself personally. She says the applicant failed to provide the equipment and services as promised, did not proceed safely, and failed to follow marine protocol or have waivers signed. She says the deposit was paid by the team, not by her personally. The respondent also says she wrote to the applicant to “close this matter out” and that the final payment cheque she made was cashed.
6. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. Under tribunal rule 126, 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**

11. The issues in this dispute are:
  - a) was there an agreement between the parties for the hire of the applicant and his boat for the 2015 SUP crossing from Nanaimo to Vancouver, and
  - b) if there was, were the services provided such that the respondent must pay the outstanding invoice?

## EVIDENCE AND ANALYSIS

12. In this civil claim, 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.
13. In May 2015, the respondent contacted the applicant asking for information about his boat, and asked to hire him for a charity event set for June 6, 2015.
14. On May 14, 2015, the respondent provided an email response describing himself as running a large fishing charter company in Nanaimo. He offered to provide the following, quoting from his email:
  1. Provide Captain, vessel and fuel for your trip from Nanaimo to Sunset Beach, Vancouver
  2. Vessel charter would be \$100.00/hour based on hours (last year it took 12 hours - \$1200.00)
  3. No tax
  4. Return costs to Nanaimo would be fuel only (+/- \$150.00)
  5. Deposit would be 50% with balance of funds due on morning of charter
  6. Return fuel costs would be submitted after charter
15. On May 20, 2015, Harry Saini, the respondent's spouse and the trip organizer for the crossing, emailed the applicant and indicated that he would pay the \$600 deposit.
16. The applicant sent a Paypal invoice for \$600. Harry Saini paid it on May 21, 2015.
17. Also on May 21, 2015, the respondent emailed the applicant saying "Harry informed me that you got the payment sorted out....I totally apologize as I should have followed up. Thank you for sorting it out with Harry and look forward to chatting soon."
18. The respondent argued there was no agreement between her and the applicant because she made the booking for a group of paddlers, rather than for herself. However, the respondent emailed the applicant on June 28, 2015, saying, in part "Since I was the one that Booked (sic) the charter and spoke with everyone about

the day Harry feels it best to talk to me to be able to get this resolved.” At another point, the respondent committed to paying the final invoice of the applicant, provided it addressed her concerns. Due to these communications, and the parties’ initial exchange that included a detailed email offer on May 14, 2015 and, I find, the respondent’s acceptance, I find that the respondent entered into an agreement with the applicant for a support boat and related services. The fact that the agreement was to benefit a team of paddlers is not determinative. What matters is that the respondent was the party who chose to make the agreement with the applicant. At no time did the respondent ever tell the applicant that she would not be the one responsible for the final bill. She communicated with him as though she was responsible for it.

19. I find that there was an agreement that the applicant would provide a boat charter for \$100/hour including the captain, for the SUP crossing, charging for only fuel for the return.
20. On June 6, 2015 the SUP athletes successfully crossed between Nanaimo and Vancouver.
21. The respondent says she was unhappy with the respondent’s fulfilment of their agreement for several reasons. She offers these reasons to explain why she did not pay his final invoice. Specifically, she says the respondent did not:
  - i. file a float plan with the coast guard, leading to paddlers going into shipping lanes when it was unsafe to do so, without the benefit of a lead boat,
  - ii. recommend a safe route,
  - iii. provide a lead boat to physically lead the paddlers, rather than following them, despite being requested to do so,
  - iv. listen and respond to the needs of the paddlers,
  - v. keep track of all paddlers,

- vi. answer calls on the support boat,
- vii. take direction, resulting in a paddle board being damaged, and
- viii. obtain waivers from the paddlers.

**a. Failure to File a Float Plan**

- 22. By email on May 23, 2015, the applicant offered to file a float plan, if required. On May 24, 2015 Harry Saini e-mailed the applicant saying he had filed a float plan. He provided the applicant with a copy.
- 23. The float plan filed by Harry Saini refers to the support boat's role as to "...carry most of our equipment and ... make sure we stay on course." Harry Saini is listed as the trip organizer and the respondent is listed as the emergency contact.
- 24. Based on the evidence, I find that it was not a term of the agreement between the parties that the applicant file a float plan. Nor is there any evidence that the applicant was required to obtain waivers from the SUP athletes.

**b. Route Recommendation and Shipping Lane Concerns**

- 25. The respondent says the applicant made the crossing unsafe by recommending a route that included crossing a shipping lane near the Vancouver harbour. I find that it was not a term of the agreement that the applicant would provide the route for the SUP crossing or guarantee that there would be no need to cross a shipping lane.
- 26. I say this because there were lengthy discussions about which route to take among the team members, including by Harry Saini in his role as "trip organizer". The team could have opted for a different route. Similarly, they could have declined to meet at the Brechin Boat ramp (the applicant's suggested location) and asked the applicant to meet them at Pipers' Lagoon instead.

27. When they reached sight of the Vancouver harbour, the group encountered a busy shipping lane. The respondent says the applicant should have filed a float plan to avoid the shipping lane, and that this created a safety issue. I do not attribute this problem to the respondent, particularly given that Harry Saini filed the float plan.
28. As well, the respondent filed a document dated December 9, 2017, after this dispute was started, which shows a map of shipping lanes between the Nanaimo port and the Vancouver harbour. It shows a high volume of shipping traffic, with very limited routes, if any, that could guarantee against a shipping lane crossing.
29. The evidence from the SUP athletes is that the respondent recommended a particular route. Though they had misgivings after the fact, the team discussed the recommendation and agreed to the route, at the time. I therefore find that neither the route recommendation nor the shipping lane concerns eliminate the obligation by the respondent to pay the balance of the applicant's invoice.

**c. Lead Boat and Boat Position Concerns**

30. The respondent is upset that the applicant refused to be a lead boat for much of the crossing. The applicant says he led at the start of the crossing and I prefer his evidence on this point as the respondent was not present during the crossing.
31. The respondent filed a document prepared by the driver of a smaller boat, Jimmy, in which he provided a Recap of the 2015 crossing with suggestions for improvement. Jimmy was a volunteer who drove a smaller boat to assist with the crossing. He was not paid but some of his expenses were covered. Jimmy observed that the applicant's boat was often at the back, whereas the group had wanted more of a pilot or lead boat. He attributes this to a lack of communication between the team and the applicant. I agree.
32. The applicant submitted that he drove his boat at the back for a large part of the crossing because one paddler struck out on his own, and Jimmy drove off to follow

him. This left the applicant with only the option of following the group, so that he could keep the remaining paddlers in sight in case they needed help.

33. While I accept that some athletes were dissatisfied with the applicant's refusal to drive as a lead boat, I recognize that where a group of paddlers has only one boat, that boat must act as a chase boat in order to put safety first.
34. As the applicant put it "...the only safe course of action was to provide support from the back." There was no requirement of the contract about how much time the applicant had to spend as a lead boat.
35. The applicant says that, contrary to the respondent's submission, he was driving the larger of the two boats and carrying all of the supplies, except when the smaller boat came to pick up supplies from him.
36. With respect to whether he led for enough of the time, I find the applicant fulfilled his role pursuant to the agreement between the parties in a satisfactory way.
37. The applicant agrees that he asked paddlers to access his boat from windward, so that they would not run the risk of being swept under the boat. I accept his evidence that he directed athletes to one side of his boat. This may have caused extra delay, but makes sense from a safety perspective.

#### **d. Lost Paddler**

38. During their email exchange, the respondent accused the applicant of losing one of the paddlers during the event. She then tried to rely on this as evidence that the applicant failed in his duties as a safety boat.
39. The applicant says one of the athletes decided to break off on his own, and this prompted the smaller boat to follow him. In the recap from Jimmy, filed by the respondent, Jimmy wrote "...Not sure if you saw but I was racing a boat similar to Lyle's that he used in 2014 between 1 and 2 pm while Chasing (sic) Dave towards Wreck beach."



40. I accept the applicant's evidence that Dave took off on his own route and was followed by Jimmy. The parties agree that Jimmy then left to go fishing for a period of time. This evidence also suggests that the team would have been without a second boat when entering Vancouver harbour, just as the shipping lane navigation would have been top of mind. This supports my conclusion that it was appropriate for the applicant to stay with the main group, and to follow them.
41. I find that no paddler was "lost" by the applicant.

**e. Alleged Theft**

42. The respondent says False Creek Fuels had provided gift cards as a donation to be used for fuel during the event.
43. The respondent says the applicant took some of these funds and tried to purchase boating equipment and food, contrary to the intended use for that money.
44. The applicant says that Jimmy, the driver of the other boat, told him he could buy some food with the donated gift card. The applicant did so, purchasing a submarine sandwich and two Clamatos for a total of \$13.97, to eat on his return trip. Jimmy also bought some food and was the only person to buy fishing equipment.
45. The respondent then heard from the donor, False Creek Fuels, with concerns that the donation was supposed to be used for fuel only. The respondent communicated these concerns to the applicant, indelicately, accusing him of "theft" and describing that he had "failed" the team as "a person". The applicant itemized the food he purchased, and offered to reduce his invoice by that amount. He apologized and said Jimmy told him that buying the sandwich was permitted.
46. Upon learning that most of the food had been purchased by Jimmy, on June 10, 2015, Harry Saini wrote an email to the applicant saying, in part "We sorted out what happened at FCF and apologies for that but I understand you want to clear

the other issues so will discuss that without in (sic) the phone as the entire team is in agreement that it was not a positive experience at all.”

47. The next day, Harry Saini wrote to the applicant and said “Now that our team has recovered I do also want to let you know not all was negative. There were some positive experiences as well.” This communication suggests respondent’s characterization that the applicant failed to provide anything required under the contract was inaccurate.
48. I find that the purchase of the sandwich and Clamato arose out of a misunderstanding and was resolved between the parties through the offer by the applicant to reduce his invoice. Given that food was not covered by the contract, this resolution is suitable. I will make no order about the sandwich and drinks. I do not consider it evidence of any failure by the applicant to perform his obligations under the contract.

**f. Other Issues**

49. Based on a SUP team member’s witness statement, the applicant shared the fact of his inexperience with SUP during the initial team briefing. Thus, I find the respondent knew of the applicant’s scope of experience prior to the crossing. There is no indication in the evidence before me that the applicant ever suggested he had any particular SUP expertise or that the respondent ever required it.
50. Any dissatisfaction arising from the applicant’s lack of knowledge specific to paddling events cannot be relied upon as an excuse for failing to pay him. The applicant provided a boat and captain as agreed, fulfilled the functions of carrying equipment and a photographer during a 12-hour crossing (using the respondent’s timing of 5:16 a.m. to 5:08 p.m.), and, the evidence shows, provided assistance to some of the athletes as needed.
51. I agree that the crossing had several problems. Some of these arose from weather and some from a lack of communication and resources. Even if there was

a lack of radio contact at one point, I do not find it determinative since the respondent referred to being able to reach another occupant of the applicant's boat, by cell phone.

52. While the evidence indicates the applicant's boat was underpowered for its size, there was no requirement that the applicant run his boat using the larger motor or at a particular speed.

**g. Radio**

53. Based on the evidence, I find that the applicant provided a marine radio to the respondent on June 6, 2015. She returned the radio more than a month later, by courier. The applicant says that on its return the radio was damaged.
54. The respondent says the radio did not work properly to begin with, and that the respondent failed to pick up his radio on time and to properly instruct her to turn it off to avoid battery damage.
55. Given that the radio was not returned to the applicant in a timely way, I prefer the applicant's evidence that it was not functioning when it returned. This is consistent with the respondent's equivocal account of whether she turned the radio off during the intervening month. The applicant has provided an invoice that shows damage to the battery pack.
56. I accept the applicant's claim for repairs and a new battery pack in the amount of \$382.82, which is less than the full replacement cost for a marine radio.

**h. Did a Settlement Occur?**

57. The respondent says she determined, along with the YWCA who was the charity that benefitted from the event, an amount that should be paid to the applicant. She says she sent that payment and it was cashed on April 13, 2016. She says the applicant has been paid for his fuel.

58. For a settlement to occur, both parties must have reached an agreement on all essential terms (see *Lacroix v. Loewen*, 2010 BCCA 224 at paragraph 28).
59. On February 1, 2016, the respondent provided a \$65.23 cheque to the applicant for “the cost of gas for your return back” to Nanaimo. She then wrote “I consider this case closed from my viewpoint as for reasons previously expressed.”
60. The respondent relies on this letter as evidence that this dispute had been settled. I do not agree. One party asserting that a dispute has been settled does not create a settlement. I therefore find this dispute was never settled. I have addressed the \$65.23 payment below.

**i. Remedy**

61. I find there was an agreement between the parties and the applicant substantially completed his part of that agreement.
62. I find that the agreement was for \$100 per hour for boat travel from Nanaimo to Vancouver. Setting up and meeting beforehand were not included at this rate.
63. The invoice the applicant issued notes the time to leave the paddleboard centre as 5:00 a.m. I therefore accept that the trip took 12 hours (approximately 5 am – 5pm), not 14 hours as listed on the December 20, 2015 invoice. I award the applicant \$1,200 for the charter charge, less the \$600 deposit that was already paid.
64. As well, the applicant is entitled to fuel for the return journey only, which I award in the amount of \$78.20, since he paid for the first \$71.80 of fuel at False Creek Fuels using the donated gift card. From this amount, I subtract the \$65.23 for return fuel that was already paid to him.
65. I have found that the respondent must pay the applicant \$382.82 for the damage to the radio.

66. The applicant has been successful in this dispute and accordingly I award his tribunal fees in the amount of \$125.00 against the respondent.
67. The applicant is entitled to pre-judgement and post-judgment interest.

## **ORDER**

68. I order that, within 30 days of this decision, the respondent pay the applicant a total of \$1,298.12 broken down as:
- a. \$600 in payment of the balance of his invoice for the boat charter,
  - b. \$382.82 reimbursement for the damaged radio,
  - c. \$6.57 for the remaining fuel balance for his return trip from Vancouver to Nanaimo,
  - d. pre-judgment interest on the \$989.39 owing at the rate set by the *Court Order Interest Act* (COIA) of \$183.73, and
  - e. tribunal fees of \$125.00.
69. The applicant is entitled to post-judgment interest, as set out in the COIA.

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Julie K. Gibson, Tribunal Member