Civil Resolution Tribunal

Date Issued: June 22, 2018

File: SC-2017-007478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vancouver Extended Stay Ltd.* v. *Schiavi et al*, 2018 BCCRT 278

B E T W E E N :

Vancouver Extended Stay Ltd.

**APPLICANT**

A ND :

Pietro Domenico Schiavi, Rebecca Dugas and Kimberly Uribe

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member: Julie K. Gibson

## INTRODUCTION AND JURISDICTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) on a jurisdictional question that arose during the tribunal proceeding. Only evidence and submissions relevant to the decision are referenced below.

2. This matter came before me as an application for default judgment by the applicant Vancouver Extended Stay Ltd. against the respondent Pietro Domenico Schiavi (the respondent Schiavi) only.

3. The Dispute Notice was not served on the either the respondent Uribe or the respondent Dugas. Rule 69 provides that a Dispute Notice is invalid unless the tribunal extends the deadline. As a result, I find that the Dispute Notice is invalid as against the respondents Uribe and Dugas. The applicant agreed to withdraw the claim against the respondents Uribe and Dugas.

4. In the applicant's submissions and evidence on the application for default judgement, I noted that the claim against the respondent Schiavi appeared to have been resolved through arbitration.

5. Section 11(1)(a) of the *Civil Resolution Tribunal Act* (*Act*) gives the tribunal the authority to refuse to resolve a claim within its jurisdiction where the claim or dispute has been resolved through a legally binding process or other dispute resolution process. I am therefore deciding whether this dispute has been resolved through another process as contemplated in section 11(1)(a) of the *Act*.

6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

7. Under tribunal rule 126, 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.

8. For the reasons that follow, I dismiss the applicant's claim against the respondent Schiavi.

## ISSUES

9. The issue in this decision is whether the tribunal has jurisdiction to resolve this dispute against the respondent Schiavi if I find that the claim against him has been resolved in another legally binding process.

## EVIDENCE & ANALYSIS

10. The applicant provided evidence that the respondent Schiavi was served with the Dispute Notice by regular mail. I accept this evidence that notice was provided. The respondent Schiavi did not file a Response Notice. I therefore find that he is in default.

11. While liability is generally assumed on a default application, an applicant's claim must still be within the tribunal's jurisdiction.

12. The claim against the respondent Schiavi is that he was one of three people who booked accommodation at a Vancouver apartment through the applicant. The applicant says that he stayed at the apartment for six nights in January 2017. The total charges of $1,386.43 were prepaid on the respondent Schiavi's credit card, as required by the applicant's deposit policies.

13. After the stay, the applicant says the respondent Schiavi disputed the credit card charge through his financial services provider, claiming the charge was fraudulent. The financial services provider reversed the charge to his credit card and refused the applicant's request to reinstate it. The applicant says it appealed the decision by requesting arbitration through its financial institution.

14. On March 3, 2017, the Dispute Resolution Department at Elavon (a financial services provider for businesses) issued a Pre-Arbitration Notification to the applicant. On that Notification, the applicant's authorized representative signed an agreement to have the case filed with the Card Association for a "…final review and decision by the Arbitration Committee." The Notification states that "If the Arbitration Committee rules in favour of the cardholder, the merchant will be

responsible for the amount of the chargeback, as well as, [sic] any fees assessed by the Card Association." It goes on to say "The decision of the Card Association Committee is final and we have no recourse after the decision is made." The Pre-Arbitration Form uses the pronoun "we" to refer to the applicant throughout. The applicant's representative's signature appears on the Notification, accepting the arbitration process on these terms on March 16, 2017.

15. Based on the documents filed in evidence by the applicant, I find that the applicant chose to participate in a private arbitration of the disputed credit card charge through its financial services provider. I further find that the applicant agreed, in writing, prior to the arbitration, that the decision of the Arbitration Committee would be final and binding on it. The applicant participated in the arbitration and paid a fee of $500.

16. While the applicant submits in this tribunal proceeding that these efforts to "…recover the chargeback were not successful", in fact an Arbitration Ruling dated May 6, 2017 was issued finding that VISA had determined that the chargeback to the applicant was valid. The applicant was found financially liable for the disputed amount. That is, although the applicant was disappointed with the result, the final decision in the arbitration process found it responsible for the $1,386.43 amount.

17. Where a claim has already been resolved through a legally binding process, the claim is referred to as being res judicata. Here, res judicata arises because the applicant is trying to raise an issue that has already been decided through another process (see Cliffs Over Maple Bay (Re), 2011 BCCA 180 at paragraphs 28 and 31,and East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819 2017 BCCRT 22 at paragraphs 23, 24 and 28).

18. In Loewen v. Manitoba Teacher's Society, 2015 MCBA 13, the courts indicated that the principles of res judicata and issue estoppel can be applied where the prior legally binding process is arbitration.

19. Given that

    a. the Arbitration Ruling of May 6, 2017 decided the same question as the claim here between the applicant and the respondent Schiavi,

    b. the arbitration decision is final as agreed in advance by the applicant, and

    c. the parties were the same in the arbitration as they are here,

    I find that the applicant is prevented (sometimes called estopped) from bringing the same claim again.

20. In summary, I have decided to dismiss the applicant's claims against the respondent Schiavi because the claim has been resolved through another legally binding process, namely arbitration about the credit card charge of $1,386.43.

21. The applicant also sought $500 for the arbitration fee. I find it agreed to pay the $500 to participate in the arbitration, understanding that it would not be refunded the fee even if the arbitration decision went against it. I therefore dismiss the claim for the credit card charge and the application fee.

22. Given my conclusions above, I find the dispute against the respondent Schiavi must be dismissed.

23. With respect to the respondents Rebecca Dugas and Kimberly Uribe, I have found that the Dispute Notice against them is invalid and the applicant agreed to withdraw the claims against them.

**ORDER**

24. I order that the applicant's dispute against the respondent Schiavi is dismissed.

Julie K. Gibson, Tribunal Member