



# Civil Resolution Tribunal

Date Issued: August 2, 2018

File: SC-2017-007531

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boll v. Hartmann*, 2018 BCCRT 417

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

Natalie Boll

**APPLICANT**

**A N D :**

Stefan Hartmann

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. The applicant, Natalie Boll, says that the respondent, Stephan Hartmann, charged \$4,611.60 on her credit card and has not repaid any of the money, as agreed. The respondent says that the applicant agreed to accept repayment of only part of the debt and has received full payment of that lesser amount, \$4,014.

2. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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. Neither party has requested an oral hearing and I have decided to hear this dispute through written submissions.
5. Much of the evidence in this dispute amounts to a "she said, he said" scenario with each party calling into question the credibility of the other. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. As noted in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA), the assessment of what is the most likely account of events depends on its harmony with the rest of the evidence. In considering what is most likely to be the truth, I consider what "a practical and informed person would readily recognize as reasonable in that place and in those conditions". In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC

282 at paragraphs 32 to 38, in which the court also recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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**

7. The issues in this dispute are whether the respondent owes money to the applicant and, if so, how much.

## **EVIDENCE AND ANALYSIS**

8. In civil disputes such as this the burden is on the applicant to prove her case, on a balance of probabilities. I have reviewed all of the evidence and submissions provided to me and summarize below the facts that provide background and context to my decision.
9. The applicant oversees some of the operations in her husband's restaurant. The respondent worked as an executive chef in that restaurant between 2014 and April 2017. The respondent organized an out-of-town trip for some of the restaurant staff, to take place in early January 2016.
10. The applicant did not participate in the trip. She allowed the respondent to use her credit card to make a reservation for the trip. According to the applicant's credit card statement, \$4,611.60 was charged to the card on January 4, 2016 for full payment of the trip.

11. The applicant says that the respondent agreed to pay her back the amount for the trip and that he had not done so. She argues that the respondent owes her \$4,611.60 plus interest. The respondent makes no submission on the total amount of the original debt, but acknowledges that he did use the credit card to pay for the trip, and does not dispute that the applicant was entitled to repayment of some amount.
12. There is no indication that the respondent was provided a copy of the credit card statement prior to this dispute, or that the applicant told him that he owed her \$4,611.60. Given that the applicant informed the respondent, in her text, that the charge was \$4,650 and discussed terms of payment, I find that the original amount of debt that the respondent agreed to pay was \$4,650.
13. The respondent submits that the applicant held back two weeks' worth of tips from himself and the kitchen staff. The respondent, the applicant, and the staff had agreed to apply those tips to the cost of the trip.
14. On January 5, 2016 the applicant texted the respondent that she checked her statement and that the charge was \$4,650. She noted that the tips were \$2014 and that there was \$2636 "left".
15. The applicant says that, after she sent this text, the respondent changed his mind about using the tips to pay for the trip as he did not want to deprive the staff of their tips. The applicant argues that, if the tips were to be used to pay for the trip, all staff would have had to give their written consent, and the payment would have to be documented. The applicant's submission on this point is not consistent with the evidence before me, as noted below.
16. The respondent says that the applicant wanted to contribute to part of the cost of the trip for the staff. He says that she agreed to take \$2,000 more in full satisfaction of the remainder of the debt. The applicant says she did not agree to those terms.

17. In a text to the respondent on February 28, 2016 the applicant told the respondent that his commercial was on television and that he should get paid soon. The respondent wrote that he would then pay his debt to the applicant, noting that he still owed her \$2,000. The applicant texted the respondent not to worry about it, and that it was okay to pay her whenever he could.
18. On October 17, 2017 the applicant emailed the respondent's lawyer about an unrelated matter. In her email she wrote that the respondent had borrowed money from her personally for a trip and that he had only repaid a part of the money owed to her. The email did not contain any dollar figures.
19. In a May 3, 2018 unsigned statement, the applicant wrote that the respondent had purchased some items for the restaurant and asked that the value of those items be deducted from the remaining debt he owed to the applicant. The applicant had agreed, upon sufficient proof of payment for the items. The applicant estimated the value of the items at a few hundred dollars and stated that proof of payment was not submitted. She wrote that those amounts were what she was referring to as partial payment in her email to the respondent's lawyer.
20. The applicant's submission on this point is inconsistent with both the text messages and the letter to the respondent's lawyer. If the respondent had not made any payment to the applicant, I would expect that she would have disputed the amount of \$2,000 mentioned in the second text. Furthermore, I would not expect her to note that partial payment on the debt was made in the letter to the lawyer. I do not accept that the reference to partial payment in the letter referred to payments that the respondent did not actually make. I find that the applicant and respondent agreed to reduce the amount owed to the applicant by the \$2,014 worth of tips withheld by the applicant, leaving \$2,636 owing.
21. I further find that the applicant agreed to take further payment of \$2,000 as full satisfaction of the remaining amount owing. This is consistent with the February text message.

22. The respondent submits that, shortly after the February 28, 2016 text, he decided not to wait to get paid from the commercials before repaying the applicant. He states that he paid the applicant \$2,000 in cash, at the restaurant, to satisfy the rest of the debt. He states that he had saved up the cash from his tips.
23. The applicant denies this and argues that the respondent would not have been able to save \$2,000 in tips in February as the restaurant, as a whole, only generated \$1,800 to \$2,000 per month in tips during January and February. Furthermore, the respondent had taken vacation during February.
24. I am not persuaded that the respondent paid the applicant \$2,000 in cash to satisfy the remainder of his debt. There is no documentary evidence or witness evidence to support that such a cash payment was made. It also does not make sense to me that the respondent would tell the applicant that he was waiting for payment to come to him from his commercials to pay the debt if he had \$2,000 cash on hand. There was no further reasoning or explanation provided by the respondent for changing his mind about the method of payment. I find that the outstanding debt of \$2,000 remains unpaid.
25. I find that the respondent owes the applicant the amount of \$2,000, plus interest. *The Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing as of the date on which the cause of action arose, up to the date of the order. I find the cause of action arose on February 28, 2016, the date on which the respondent acknowledged the remaining \$2,000 owing to the applicant. The prejudgment interest payable is \$39.82.
26. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicant requests reimbursement of \$175 in tribunal fees. As the applicant was only partially successful in this dispute, I find that she is entitled to reimbursement of part of her tribunal fees, in the amount of \$100.

## ORDERS

27. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$ 2,139.82, broken down as follows:
  - a. \$ 2,000 as repayment of the remainder of the cost charged to the applicant's credit card,
  - b. \$ 39.82 in pre-judgment interest under the COIA, and
  - c. \$100 in tribunal fees.
28. The applicant is entitled to post-judgment interest under the COIA, as applicable.
29. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
30. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Sherelle Goodwin, Tribunal Member