



# Civil Resolution Tribunal

Date Issued: December 10, 2018

File: SC-2018-001175

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kim v. Commisso*, 2018 BCCRT 828

**BETWEEN:**

King Tat Terry Kim

**APPLICANT**

**AND:**

Yolanda Labastida Commisso

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This dispute is about monetary claims arising from an unsuccessful business project. The applicant, King Tat Terry Kim, says the respondent, Yolanda Labastida Commisso, owes him \$6,022 as reimbursement of money he gave her for their business project. He seeks an order for payment of \$5,000, which is the maximum amount permitted under the Civil Resolution Tribunal (tribunal) small claims monetary limit.
2. The respondent denies the applicant's claims, and says the applicant did not give her the claimed money.
3. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 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.

## **ISSUES**

8. The issue in this dispute is whether the respondent owes the applicant \$5,000, as repayment of money provided to her for business purposes.

## **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 applicant says that in 2017, he engaged in a business project to market and sell a type of small cooking appliance (cooker) in Mexico. He says the respondent agreed to help him with this project. The parties disagree about the nature of their business relationship. In the Dispute Notice, the applicant said the respondent was an independent contractor, but he had to terminate her and cancel the project due to the respondent's lack of effort and inconsistent work. The applicant provided contrary evidence in subsequent submissions to the tribunal. He said the cooker project was a "joint venture", in which he put up the money and the respondent was supposed to "act in good faith or with reasonable care in her duties to help with the project".
11. The respondent says the parties initially discussed that they would be equal partners in the cooker project. She says they discussed that the applicant would

provide all financing, and the respondent would bring in all contacts for suppliers and customers in Mexico. She says they agreed to sell the first shipment and repay the applicant's initial investment, then continue as equal partners. The respondent says there was never any written agreement, and when the applicant later gave her a contract stating that she was a sales contractor with no equity in the business she refused to sign it.

12. The applicant says the respondent did not act in good faith or with reasonable care in her duties. However, I find the applicant has failed to prove what the respondent's duties were, or that the respondent owed him a duty of care, as the business arrangement between them is unclear. There is no documentation before me to establish that the respondent was the applicant's employee, independent contractor, or business partner. While the parties discussed the cooker project, and the respondent took some steps in moving the project forward, there was no signed agreement between the parties, and no meeting of the minds to constitute a verbal agreement.
13. The respondent says the applicant did not give the claimed money to her, and she never received it. Rather, she says, and the documents confirm, that she sent the money to ML, in Mexico, on behalf of the applicant. I infer that ML is the respondent's brother. The text messages provided in evidence show that the applicant retained ML to conduct some business in Mexico for the applicant, including renting a storage unit, and setting up official Mexican product safety testing and certification. This is confirmed in the applicant's November 23, 2017 letter to ML. In that letter, the applicant wrote that in June, August, and September 2017 he deposited the following amounts of money "to perform paperwork" for the cooker project in Mexico. He wrote that he sent the following amounts (in Canadian dollars):
  - \$2,310 for deposit on a rental unit
  - \$2,112 for product safety certification and consultation fees

- \$1,600 to ML as an advance on future profits

14. At the end of the letter, the applicant requested that ML return all of these amounts, totalling \$6,022, since it was not possible to realize the cooker project in Mexico.
15. This letter is consistent with the applicant's earlier text to the respondent from mid-October 2017, in which he requested that the respondent ask ML to return his money. I place significant weight on this text message and the November 23, 2017 letter, as they were written by the applicant, and clearly set out his position that ML owed him the money claimed in this dispute. There was no assertion at that time that the respondent held this money, or owed this debt. There is also no contract between the parties stating that the respondent would be liable for any such debt.
16. The text messages in evidence show that the business relationship between the applicant, the respondent, and ML broke down sometime in September 2017. As a result, the applicant decided not to pursue the cooker project. His text messages show that he wanted ML to get the certification and rent money back, and return the \$1,600 payment. The applicant and ML disagreed about whether and how to do this, and the applicant wanted ML to repay him. The applicant also wanted the respondent's assistance in getting ML to repay him. However, I find the applicant has not proved that the respondent owes him \$5,000. The respondent had no contractual duty to facilitate repayment from ML to the respondent, and she did not retain the money herself.
17. For all of these reasons, I find the applicant has not met the burden of proving that the respondent owes him \$5,000. I therefore dismiss his claims, and this dispute.
18. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. I would not order the claimed \$150 in dispute-related expenses in any event, as the applicant provided no receipts or particulars to support this claim.

## **ORDERS**

19. I dismiss the applicant's claims, and this dispute.

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Kate Campbell, Tribunal Member