



Civil Resolution Tribunal

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000693

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DGS ASTRO LADIES SLOPITCH BALL TEAM v. WENZEL*, 2018 BCCRT
905

B E T W E E N :

DGS ASTRO LADIES SLOPITCH BALL TEAM

APPLICANT

A N D :

JESSICA WENZEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about money missing from a slo-pitch ball team's cash box and liquor returns.

2. The applicant DGS Astro Ladies Slopitch Ball Team says that, in the summer of 2012, the respondent Jessica Wenzel took money from its liquor bottle returns and cash box, without permission.
3. The applicant claims \$633.12 for the bottle returns and \$447.45 from the cash box.
4. The respondent denies taking money from the cash box. She agrees that she deposited a liquor returns cheque into her account, but says she was only holding the team funds temporarily.
5. The applicant is represented by slo-pitch team member Roxy Honing. The respondent is self-represented.

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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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 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

10. The issues in this dispute are:
 - a. Is the applicant's claim brought within the limitation period?
 - b. If so, is the respondent required to return the claimed money to the applicant?

EVIDENCE AND ANALYSIS

11. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have referred to the evidence and submissions only to the extent necessary to explain my decision.

Limitation Period

12. As of June 1, 2013, the *Limitation Act* provided a basic 2-year limitation period. For claims arising before that date, the applicable limitation period is 2 years for negligence but six years for contract disputes. For claims in fraud, a 10-year limitation period applies.
13. I find that a six-year limitation period applies to both debt claims in this dispute, given the evidence that the respondent promised to repay the cash box money, and admitted to depositing the liquor return money. The Dispute Notice was issued on January 31, 2018. I find that the claims were brought within the limitation period.

Liquor Bottle Returns Claim

14. On August 22, 2012, the respondent deposited \$633.12 into her personal account. The parties agree this deposit was a team liquor bottle returns cheque.
15. The respondent says she used her personal account to hold team funds with Ms. Honing. Ms. Honing denies that the respondent was supposed to control the funds. She says the account was not a holding account or joint between them.
16. If the respondent returned the funds, she should have been able to point to a transaction debiting the amount from her personal account. The respondent's bank account statements show the \$633.12 deposit on August 22, 2012. They do not show \$633.12 then being transferred or returned to the team.
17. As well, the account is in the respondent's name. Contrary to the respondent's submission, there is no indication that the account was joint with Ms. Honing or that funds in it could be accessed by her.
18. The respondent also did not provide evidence of any spending she did on the team's behalf, to account for the \$633.12.
19. Based on this evidence, I find that the respondent deposited the team's \$633.12 liquor returns cheque into her personal account. I further find that she failed to return the money to the applicant.

20. I order the respondent to pay the applicant \$633.12, plus pre-judgment interest from August 22, 2012, the date the respondent deposited the cheque, to the date of this decision.

Cash Box Claim

21. The applicant's other claim is that the respondent took \$447.45 from the team's cash box. The respondent denies taking the cash.

22. The respondent filed her August and September 2012 bank statements in evidence. I find that these statements do not prove anything regarding the cash box claim.

23. Based on a July 8, 2012 witness statement from the slo-pitch team assistant representative, I find that the respondent took \$447.45 from a July 2012 fundraising event by returning the cash box short.

24. I prefer the applicant's evidence about the cash shortfall because,

- a. two witnesses directly observed the respondent saying she had taken the money and intended to return it,
- b. the assistant representative's witness statement was written close in time to the event, and
- c. the respondent admits depositing team funds into her personal account in the liquor bottle returns claim.

25. I further find that, as directly observed by this witness and Ms. Honing, that same day the respondent admitted taking the money and agreed to return it.

26. I find that the respondent never repaid the money.

27. I order the respondent to pay the applicant \$447.45 plus pre-judgement interest from July 8, 2012, the date the respondent was to have returned the money, to the date of this decision.

28. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$163 in dispute-related expenses.

ORDERS

29. Within 10 days of the date of this order, I order the respondent to pay the applicant, a total of \$986.20, broken down as follows:

- a. \$633.12 for the liquor bottle return amount;
- b. \$37.81 in pre-judgment interest under the *Court Order Interest Act* (COIA), on \$633.12, from August 22, 2012 to the date of this decision;
- c. \$27.27 in pre-judgment interest under the COIA, on \$447.45, from July 8, 2012 to the date of this decision;
- d. \$125 in tribunal fees; and
- e. \$163 in dispute-related expenses.

30. The applicant is entitled to post-judgment interest, as applicable.

31. 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.

32. 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.

Julie K. Gibson, Tribunal Member