



Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-002070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *yu v. Karim*, 2019 BCCRT 236

BETWEEN:

licheng yu

APPLICANT

AND:

Navaaz Karim

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Licheng Yu, claims that he purchased a year of automobile insurance with the Insurance Corporation of British Columbia (ICBC) for a vehicle registered in the name of the respondent, Navaaz Karim. The applicant says that the respondent cancelled the insurance and received a refund of \$3,195, but refuses to pass the

refund along to the applicant as they agreed. The applicant also claims \$225 in interest on his credit card and dispute-related expenses.

2. The respondent says that he kept the refund because the applicant owed him the money. He asks that I dismiss the applicant's claims.
3. Each of the parties is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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. 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.
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 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

8. The issues in this dispute are:
 - a. Does the respondent owe the applicant the full amount of the refund of the ICBC insurance, without a set off?
 - b. Is the applicant entitled to reimbursement of the interest on his credit card?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. It is not in dispute that the applicant and the respondent had an agreement that the respondent would buy vehicles with the applicant's money. According to their arrangement, the vehicles were initially registered in the respondent's name but were promptly transferred to a company, presumably controlled by the applicant. The applicant exported the vehicles abroad. The applicant paid the respondent for his work.
11. The details of the particular transaction at the heart of this dispute is not entirely clear. The applicant provided a text message conversation between the parties, which provides some context. Based on these text messages, it appears that in early January, 2018, the respondent purchased a BMW on the applicant's behalf. The respondent used the applicant's credit card to put a \$5,000 deposit on the BMW.
12. The respondent also used the applicant's credit card to pay the ICBC insurance. The applicant's credit card statement shows that the respondent purchased the ICBC insurance on January 5, 2018. The respondent was to cancel the insurance

right away, presumably after delivering the vehicle to the applicant. The applicant says that their agreement was that the refund would be paid back to the applicant.

13. On February 8, 2018, the respondent texted the applicant that ICBC had released the refund cheque. Between February 8 and March 12, the applicant followed up several times about the cheque and the respondent kept saying that he had not received it.
14. From the evidence before me, there is no indication that the respondent said that he believed that the applicant owed him any money or raised any issues about the fairness of their agreement. On March 2, 2018, he texted the applicant that “as soon as I get the cheq I will give you”.
15. I find that the parties agreed that the respondent would cancel the ICBC insurance and provide the refund to the applicant. While the date that the respondent cancelled the ICBC insurance is not in evidence, the respondent does not dispute that he cancelled it immediately and received a full refund. In particular, the respondent has not provided any evidence about the amount of the refund, even though I find that he would that evidence in the form of documentation from ICBC. In the absence of any evidence to the contrary, I find that the respondent received a full refund of \$3,195. I find that the respondent breached the agreement by failing to pay the refund to the applicant.
16. The respondent says that he should be allowed to keep the refund because the applicant treated him unfairly and owes him money. I take the respondent to be asking for an equitable set off. This means that if the respondent can prove that the applicant owes him money that is reasonably connected to the debt, he can deduct it from the amount he owes to the applicant.
17. The respondent has the burden to prove that he is entitled to an equitable set off. The respondent alleges 2 reasons why he should be allowed to keep the \$3,195.
18. First, the respondent says that the applicant promised that he would pay him more money than he actually did. The respondent does not provide any details about how

much the applicant promised to pay him or how much he believes the applicant owes him. In addition, his evidence about this issue is contradictory, because he also says that the applicant never responded to the respondent's request to be paid more. I find that the respondent failed to prove that the applicant owed him any money under their agreement.

19. Second, the respondent says that their deal was unfair and that he was underpaid. The respondent does not provide any details about why their deal was unfair, how much he was paid, or how much he believes he should have fairly been paid.
20. Therefore, there is no basis for an equitable set off based on the respondent's belief that the contract was unfair.
21. I find that the respondent owes the applicant the entire \$3,195 debt, without a set off.
22. The applicant also claims \$225 for credit card interest. He says that he had to pay 19.9% interest on his credit card for 6 months. The applicant claims that he was forced to carry the amount of the refund on his credit card at a high interest rate because the respondent breached their agreement to pay him back.
23. When a person makes a claim for a breach of contract, it cannot recover money unless it reasonably and naturally arises from the breach of contract or was in the reasonable contemplation of the parties when they made the contract. Otherwise, the money claimed is too remote from the breach of contract. See *Learmonth v. Letroy Holdings Ltd.*, 2011 BCSC 143.
24. I find that interest charges on the applicant's credit card are too remote from the breach of contract. I find that interest charges do not naturally arise from the respondent's failure to repay the debt because it was the applicant's decision to use his credit card to buy the insurance. In addition, whether the applicant paid off his credit card or not is outside of the respondent's control. Therefore, I dismiss the applicant's claim for credit card interest.

25. I find that the applicant is only entitled to pre-judgment interest under the *Court Order Interest Act*. The date that the respondent received the cheque from ICBC is not in evidence, so I must fix a reasonable date for interest to begin accruing. The respondent told the applicant that ICBC had released the cheque on February 8, 2018. I find that 2 weeks is a reasonable amount of time to allow for the respondent to receive the cheque. I find that the applicant is entitled to pre-judgment interest from February 22, 2018 until the date of this decision, which is \$46.74.
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. I find the applicant is entitled to reimbursement of \$175 in tribunal fees.
27. As for the time and money spent serving the respondent, the applicant does not explain how far he had to travel to serve the respondent or provide any receipts. I dismiss the applicant's claim for money spent serving the respondent with the Dispute Notice. The applicant does not claim any other dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,416.74, broken down as follows:
 - a. \$3,195 in debt,
 - b. \$46.74 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 for tribunal fees.
29. The applicant's remaining claims are dismissed.
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.

Eric Regehr, Tribunal Member