



# Civil Resolution Tribunal

Date Issued: March 14, 2019

File: SC-2018-005907

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jain v. Bombuwala (dba GDI Bistro)*, 2019 BCCRT 314

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

Prateek Jain

**APPLICANT**

**A N D :**

Don Bombuwala (Doing Business As GDI Bistro)

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Prateek Jain says his employer, the respondent Don Bombuwala, Doing Business As GDI Bistro, had him pay for its point of sale (POS) system, Yellow Pages, Quickbooks and a hotel stay, but then failed to pay him back.

2. The applicant claims \$3,674.80 in repayment for the items he bought for the respondent.
3. The respondent denies owing the applicant money. He says he can prove that he paid back any money owed to the applicant for business expenses. The respondent asks that the dispute be dismissed.
4. The applicant is self-represented. The respondent is represented by principal Don Bombuwala.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
7. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 issue in this dispute is whether the respondent owes the applicant \$3,674.80 for its own business expenses.

## **EVIDENCE AND ANALYSIS**

11. On May 14, 2018, a \$3,429.46 invoice was issued to the respondent for TouchBistro, the POS system. I find that, based on the credit card statement filed in evidence, the applicant paid this invoice on his personal credit card. It is undisputed that the applicant paid for these items personally. The respondent says, in his defence, that he repaid the applicant.
12. On May 16, 2018, I find that the respondent withdrew \$3,000 cash from his bank account. He says that he paid \$3,300 in cash to the applicant to reimburse him for his TouchBistro payment, by “directing both my accountants at GDI Bistro and Papa Don’s Pizza.”

13. In his Dispute Response filed at the outset of this proceeding, the respondent said he would rely on “screen captures of money transfer to Prateek by my bank” as evidence that he re-paid the claimed expenses. This is different from his evidence that he made a substantial payment in cash. As well, the cash payment the respondent says he made is less than the \$3,429.46 TouchBistro expense. The respondent did not explain this difference.
14. The respondent attempted to rely on a handwritten note that he says was written by his accountant. The note is very informal. It says, in part, “Prateek = \$3309 + 54 + 54 + 109” and then says “Karishma paid me 3300 for Prateek (before), Bal = \$3999.79.” Some of this note appears to have been squeezed into the margin of the page after the fact, specifically the words “for Prateek”.
15. The respondent says the note was written by “Bibi Nazreen” and added “YOU CAN VERIFY HER WRITING.” Since the respondent seeks to rely on this document to defend the claim, it is for him to prove what the document shows. He did not file a statement from whoever wrote the note, explaining what they meant or offering their observation of whether or not the applicant was re-paid these amounts.
16. Given the informality of the note, my concerns about whether it was written all at once, and the lack of a statement explaining it, I find that I cannot rely upon it.
17. Given the discrepancy between the respondent’s Dispute Response and his later argument about how the respondent allegedly repaid the applicant, and the lack of a credible statement or document from either of his “accountants” to corroborate the cash payment to the applicant, on balance I find that the respondent owes the amount claimed for TouchBistro and the other business expenses, as claimed.
18. The applicant provided credit card statements showing he purchased a total of \$3,675.56 in items or services, which I find, based on the invoices filed in evidence, were for the respondent. The details of these payments are as follows:
  - a. TouchBistro, the POS, on May 15, 2018 for \$3,429.46;
  - b. A hotel stay at Best Value Inn on May 31, 2018 for \$109.25.

- c. Yellow Pages on June 29, 2018 for \$51.40;
  - d. Yellow Pages on June 29, 2018 again for \$51.40; and
  - e. Quickbooks Online on July 9, 2018 for \$34.05.
19. The applicant filed a bank statement showing that while he received payments from GDI Bistro at other times, he did not receive e-transfers covering the amounts adding to the \$3,675.56 at the times those items were charged to his credit card, or in amounts corresponding to those expenses.
20. I find that the applicant has established, on a balance of probabilities, that the respondent owes him \$3,674.80 for its business expenses. Although the amount established by his credit card statements was slightly higher, I am awarding only the amount the applicant claimed in his Dispute Notice and submissions, since that is what the respondent had the opportunity to address.
21. 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.

## **ORDERS**

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,890.85, broken down as follows:
- a. \$3,674.80 as reimbursement for the items and services purchased by the applicant,
  - b. \$41.05 in pre-judgment interest under the *Court Order Interest Act*, from July 1, 2018 to the date of this decision, and
  - c. \$175 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.

24. 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.
  
25. 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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Julie K. Gibson, Tribunal Member