



Civil Resolution Tribunal

Date Issued: March 18, 2019

File: SC-2018-006397

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Darnell v. Paypal Canada Co.*, 2019 BCCRT 348

B E T W E E N :

Bradley Darnell

APPLICANT

A N D :

Paypal Canada Co.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant says he sold \$5,000 worth of Bitcoin to CG. CG paid using services provided by the respondent Paypal Canada Co. (Paypal). After the applicant delivered the Bitcoin to CG, he says CG contacted Paypal and had the payment reversed. As a result, the applicant says CG got the Bitcoin but did not pay for it.

2. In May 2018, Paypal reviewed the case internally and awarded the applicant \$2,500. However, on July 6, 2018, the applicant says Paypal reversed that decision and refunded the full amount to CG.
3. The applicant says Paypal should provide seller protection on digital goods, since it does for non-digital goods. He says Paypal's action is a discriminatory practice that "violates their license as a Money Service Business in Canada". He alleges the practice is "tortious interference".
4. The applicant also says Paypal has been negligent in failing to reduce or eliminate criminal fraud facilitated through their site. The applicant claims \$2,500 for the payment that he says should not have been reversed.
5. Paypal disagrees with the applicant. It says that on May 13, 2018, he received two payments of \$2,500 USD. The person who made the payments told Paypal the first payment was unauthorized.
6. On May 15, 2018, Paypal determined that one \$2,500 payment was authorized, and paid it to the applicant. Paypal found the other payment was not authorized and returned those funds to the buyer. Later, the credit card holder responsible for the first payment determined a chargeback was necessary, so the applicant's account was debited \$2,500.
7. Paypal says the applicant was aware that its Policy for providing protection for transactions does not extend to transactions of Bitcoin. Paypal says it is not liable for damages suffered by the applicant, who used Paypal knowing of its Policy. Paypal asks that the dispute be dismissed.
8. The applicant is self-represented. The respondent is represented by employee or principal Clarence Williams.

JURISDICTION AND PROCEDURE

9. 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.
10. 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, she 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.
11. 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.
12. 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.
13. 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

14. The issue in this dispute is whether Paypal breached its agreement to provide payment services to the applicant and, if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

15. This is a civil claim where the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions, but only refer to them as necessary to explain my decision.
16. On August 5, 2014, the applicant accepted Paypal's User Agreement. I find that the applicable version of the User Agreement includes accepting that the Paypal Seller Protection policy applies to transactions involving tangible goods and expressly excludes digital goods and services.
17. Paypal's Seller Protection policy states that if a person sells something the buyer claims they did not receive, or if a seller receives an unauthorized payment (for example, made from a stolen credit card) Paypal will cover the full amount of the payment "on eligible sales."
18. "Eligible sales" are sales of tangible items only. Digital goods or intangible items are not covered. I find that the applicant's sale of Bitcoin was not covered by Paypal's Seller Protection Policy.
19. Based on the documents filed in evidence, I find the following facts:
- a. On May 13, 2018, the applicant received two payments of \$2,500 USD. (Payment A and Payment B) CG told Paypal the first payment was unauthorized.

- b. The same day, Paypal emailed the applicant telling him that Payment A was made without the account holder's permission or was the result of a transaction error. Paypal said it would review the case and contact the applicant if it needed more information.
- c. Paypal placed Payment B pending reversal while it investigated the transaction. At the same time, it told the applicant not to send the item to the buyer, and to provide Paypal with delivery details if the item had already been sent.
- d. On May 15, 2018, Paypal determined that Payment A payment was authorized, and paid it to the applicant.
- e. Paypal found the Payment B was not authorized and returned those funds to CG on May 16.
- f. On July 5, 2018, Paypal says, and I accept, that it received a chargeback notice against both payments from the Buyer's credit card company. Payment A was therefore on hold to review the applicant's eligibility for Seller Protection. Payment B had already been refunded to the buyer and so Paypal closed its file.
- g. On July 5, 2018, Paypal emailed the applicant again, to let him know that CG had "opened a case" regarding Payment A. The email asked that the applicant send in any additional information to help resolve the case. It also asked "If this is a digital goods transaction, please provide the download date and time for the associated purchase through the Resolution Centre to help us dispute your case."
- h. Paypal emailed again on July 5 saying CG had also disputed Payment B, but that because CG had already been refunded, it would dispute this case with CG's financial institution.

- i. On July 29, 2018, Paypal determined that the applicant did not qualify for Seller Protection because Paypal does not offer that protection on the sale of financial products or digital goods, such as Bitcoin.
 - j. The credit card company decided the chargeback of Payment A in favour of CG.
 - k. On July 29, 2018, Paypal emailed the applicant saying that CG's financial institution been asked to reverse the money for this transaction. Therefore, Paypal debited the applicant's account for \$2,500. Although Paypal said it disputed the case with CG's financial institution, it advised that the applicant was not eligible for Seller Protection.
 - l. On August 27, 2018, Paypal emailed to say that CG's credit card issuer had decided the chargeback in CG's favour. Paypal wrote that although it could not dispute the transaction further, it encouraged the applicant to contact CG directly to reach a resolution.
 - m. Paypal reminded the applicant that Paypal accounts cannot be used to sell any type of crypto-currency, such as Bitcoin.
20. To succeed in his breach of contract claim, the applicant has to establish that it is more likely than not that Paypal failed in some contractual obligation to him. Here, I find Paypal's decisions were consistent with the User Agreement. While the applicant may have a dispute with CG over non-payment, or with CG's credit card issuer over the chargeback, he has not established his claim against Paypal. Paypal acted in accordance with its policies, where a seller is not reimbursed a payment that is denied by the credit card holder for a buyer, if the item being sold was an intangible item.
21. The applicant argues that because Paypal's website says that once a dispute is closed it cannot be reopened, I should find against Paypal. He says Paypal should not have reopened the dispute on July 5, 2018. I disagree. First, the website guidance appears intended to limit repeat disputes on the same point. Here, the

second dispute was due to the credit card holder's position, not the position of CG directly. As such, it was reasonable for Paypal to consider it a separate dispute.

22. As far as his claim in negligence for failing to take appropriate steps to limit criminal fraud, the applicant provided no evidence in support of this claim and I dismiss it.
23. The applicant's claim that Paypal wrongly discriminates against non-tangible items is also dismissed. Paypal is a private service provider that can determine the parameters of the service it provides.
24. Because the applicant has not satisfied the burden upon him, I dismiss his claims and the dispute.
25. 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. As the applicant was unsuccessful, he is not entitled to be reimbursed for tribunal fees or dispute-related expenses.

ORDER

26. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member