



Civil Resolution Tribunal

Date Issued: May 10, 2019

File: SC-2018-007058

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Lodging Company Reservations Ltd. dba TripLink.ca Vacations v. Yu*,
2019 BCCRT 561

BETWEEN:

The Lodging Company Reservations Ltd. doing business as TripLink.ca
Vacations

APPLICANT

AND:

Salina Yu

RESPONDENT

AND:

The Lodging Company Reservations Ltd. doing business as TripLink.ca
Vacations

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for a vacation.
2. The applicant, The Lodging Company Reservations Ltd. doing business as TripLink.ca Vacations (“TripLink”), says the respondent, Salina Yu, booked a vacation to Cuba through TripLink, went on the vacation, and was subsequently refunded the cost of the trip by Ms. Yu’s credit card company. TripLink seeks \$3,447, the cost of the trip.
3. Ms. Yu says it owes nothing to TripLink as she was unhappy with the vacation, and counterclaims that TripLink should pay for the vacation and seeks \$1,149 in damages due to the bad vacation.
4. TripLink is represented by Birte Andersen, a manager. Ms. Yu is self-represented.

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. Some of the evidence in this dispute amounts to a “he said, she said” scenario. The 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. Under tribunal rule 9.3(2), 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

9. The issues in this dispute are:
 - a. Who is responsible for paying \$3,447 for the vacation booked through TripLink?
 - b. Is Ms. Yu entitled to damages as a result of what she says was a ruined vacation?

EVIDENCE AND ANALYSIS

10. TripLink bears the burden of proving its claim, on a balance of probabilities. In the counterclaim, Ms. Yu bears this same burden. I have reviewed all of the evidence and submissions, but refer to it only as needed to explain my decision.
11. The essential facts of this claim are not in dispute. On February 22, 2018, through TripLink's online reservation system, Ms. Yu booked an all-inclusive vacation to Cuba for herself, her husband, and her son. TripLink provided the reservation as a third party travel agency on behalf of Air Canada Vacations. The trip was for 7 days starting March 15, 2018. The invoice indicates the total paid for the trip was \$3,447 and further noted that tickets were 100% non-refundable.
12. Ms. Yu submits that she did not mean to make the booking with TripLink and that a computer virus caused the booking to occur. However, in an email with TripLink on February 24, 2018, and in subsequent submissions, Ms. Yu admits that she had intended to book with another company, but mistakenly went to TripLink's site and made the booking there instead. The booking confirmation form shows that Ms. Yu entered each of her family members' names, birthdates, her contact information and payment information. On balance, I find that Ms. Yu's evidence that a computer virus made her book the vacation is not credible. I am satisfied that Ms. Yu intentionally made the booking herself, and it was not the result of a virus or other technical error.
13. In any event, after booking, Ms. Yu states she contacted TripLink and requested cancellation of the trip due to the mistake.
14. In an email dated February 26, 2018, TripLink advised Ms. Yu that her booking was non-refundable, but that she could make a hotel change for a stipulated fee, or could cancel through trip insurance, if she had any. Ultimately, Ms. Yu decided to file a complaint with her credit card company about the charge, and proceeded to go on the vacation with her family in March 2018, using the tickets provided through TripLink, which were later refunded by her credit card company.

15. Ms. Yu was unhappy with her vacation and submitted photographs of what she says was an inadequate room and bug bites on her son, as well as a hospital emergency care record dated March 31, 2018 regarding a flare of her pre-existing asthma condition.
16. TripLink does not dispute that Ms. Yu was unhappy with her travel package, but says it is not responsible. It submits it is a booking agency only, and Ms. Yu's complaints were forwarded to Air Canada Vacations, who promptly dealt with her complaints.
17. On May 7, 2018, Ms. Yu was credited the total cost of the TripLink travel package through the credit card complaint proceeding commenced before the vacation took place.
18. TripLink submits that Ms. Yu participated in the transaction and travelled on the vacation she booked. It states Ms. Yu was credited the \$3,447 from her bank through a charge back and that Air Canada Vacations requires TripLink to collect the funds to pay for the reservation.
19. Although Ms. Yu received a credit for the full amount of the travel package, the details of how that outcome was achieved are not before me. I am satisfied that Ms. Yu started the process soon after she booked the vacation and that she and her family still went on the vacation the next month. TripLink submits the reason given for the successful charge back was "Service Not Received." The credit card company's charge reversal decision does not bind me. As noted, the applicant bears the burden of proof in this dispute. Here, while Ms. Yu had not yet received the trip (service) when she started the credit card charge back proceedings, it is undisputed that she subsequently went on the booked vacation and did receive the services she booked. I am satisfied she is required to pay for the services she booked and used. I find TripLink has proven on a balance of probabilities that Ms. Yu booked and went on the vacation but has not paid for it. Ms. Yu is therefore obligated to pay for the services in which she received. I will address the counterclaim below.

The Counterclaim

20. The question, then, is whether Ms. Yu is entitled to compensation for her spoiled vacation (damages) as she found the vacation unsatisfactory. In this situation, TripLink did not provide the vacation itself, as it was only a booking agency. Therefore, Ms. Yu's claim rests on whether TripLink fairly advertised the vacation. By law, this is a claim about negligent misrepresentation.
21. A negligent misrepresentation occurs when: (1) there is a duty of care based on a "special relationship" between the seller making the representation and the buyer, (2) the representation in question was untrue, inaccurate, or misleading, (3) the seller acted negligently in making the representation, (4) the buyer relied in a reasonable manner on the negligent misrepresentation, and (5) the reliance must have been detrimental to the buyer (see: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
22. I accept that Ms. Yu and TripLink were in a special relationship. TripLink owed Ms. Yu a duty of care to provide the appropriate level of skill and diligence of an online travel agent booking a travel package.
23. I also accept that Ms. Yu purchased the travel package believing that she would receive a certain quality vacation package.
24. The issue here is whether TripLink failed to meet the required standard of care by providing untrue, inaccurate or misleading information about the travel package. In other words, Ms. Yu must prove TripLink was negligent in representing the quality of the travel package and that Ms. Yu relied upon this causing what she says was the unfortunate events of the holiday.
25. Here, I find that Ms. Yu was presented with several travel options in an online setting, and that she chose a travel package that TripLink subsequently reserved through Air Canada Vacations on her behalf. TripLink booked the resort chosen by Ms. Yu. There is insufficient evidence that TripLink made promises that were untrue, inaccurate or misleading.

26. I find that TripLink made no promises to Ms. Yu about her room. Specifically, when Ms. Yu made a complaint about her room, TripLink escalated the complaint to the proper vendor, Air Canada Vacations, who looked into the matter. I find TripLink is not responsible for the room assignment provided to Ms. Yu.
27. I also find TripLink made no promise about the health and welfare of Ms. Yu or her son during the holiday. I make no findings on how or whether Ms. Yu or her son became sick on holidays. Whether it was due to the condition of the room, or some other cause, I find TripLink is not responsible for it.
28. Given my conclusions above, I find Ms. Yu has not proven on a balance of probabilities that TripLink negligently misrepresented the quality of the vacation package sold. I dismiss Ms. Yu's claim that TripLink should pay for the vacation and her claim for damages.

TRIBUNAL FEES, EXPENSES AND INTEREST

29. 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. Given that TripLink was successful, I find that it is entitled to reimbursement of \$175 in tribunal fees. TripLink did not seek reimbursement of any dispute-related expenses.
30. I also find TripLink is entitled to pre-judgment interest based on the rates set out in the *Court Order Interest Act*, from May 7, 2018, the date the funds were refunded to Ms. Yu's credit card.
31. I dismiss Ms. Yu's claim for tribunal fees as she was not successful in her counterclaim.

ORDERS

32. Within 15 days of the date of this decision, I order Ms. Yu to pay TripLink a total of \$3,677.37, broken down as follows:
- a. \$3,447.00 for a booked vacation package,
 - b. \$55.37 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in tribunal fees.
33. TripLink is also entitled to post-judgment interest, as applicable.
34. Ms. Yu's counterclaim is dismissed.
35. 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.
36. 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.

Andrea Ritchie, Vice Chair