



Civil Resolution Tribunal

Date Issued: May 30, 2019

File: SC-2018-009585

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zeb v. Credex Financial Services Inc.*, 2019 BCCRT 660

B E T W E E N :

AMIR ZEB

APPLICANT

A N D :

CREDEX FINANCIAL SERVICES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute arose as a result of an unpaid dental bill. The applicant, Amir Zeb, says that a dental clinic inappropriately charged him for services and sent the account to the respondent, Credex Financial Services Inc., which is a collection agency. The applicant says that the respondent harassed and mentally tortured him, and caused

damage to his credit history. He seeks damages of \$5,000.00. The respondent disagrees with the applicant's position.

2. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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* (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.
4. 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 submission, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the respondent must pay the applicant \$5,000.00 in damages.

EVIDENCE AND ANALYSIS

8. A dental clinic which is not a party to this dispute charged the applicant for dental services for one of his children. The applicant took the position that the treatment should have been covered by insurance, and declined to pay the charge of \$179.00. The dental clinic forwarded the account to the respondent for collection.
9. The applicant says the respondent called him and sent text messages with threats of various actions. He says that the respondent is unprofessional, an extortionist, and unethical. According to the applicant, the respondent has been calling him at odd hours and sending him fake court notices that made him feel harassed, mentally tortured and threatened. The applicant also says the respondent reported him as a “defaulter”, which damaged his credit rating. As a result, the applicant says he was unable to obtain financing for a home and sustained substantial financial losses. The applicant seeks an order that the respondent stop harassing him, clear his credit history, and pay him \$5,000.00 in damages.
10. The respondent says it had minimal contact with the applicant, and that all collection action and credit reporting was done according to the *Business Practices and Consumer Protection Act* (BPCPA). It says that its employees initiated only 3 conversations with the applicant, and that all of these conversations occurred during normal business hours. The respondent denies that any of its employees threatened, tortured, or harassed the applicant. The respondent says that it did report the unpaid collection to Equifax Canada, and the applicant was aware of the impact that an unpaid collection could have on his credit rating.
11. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their

respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.

12. The issue of whether or not the applicant should have been charged for dental services is not before me. The reported debt appears to be the subject of other proceedings. I will confine my analysis to the applicant's claim for damages.
13. The BPCPA governs debt collection practices in British Columbia. Part 7 of the BPCPA sets out the permitted behaviours, methods and timing of communications, and legal proceedings that may be utilized by a debt collector. As noted above, the respondent's position is that it complied with all of these requirements. However, the thrust of the applicant's argument is that the respondent engaged in debt collection practices which are prohibited under the BPCPA.
14. The BPCPA contains a mechanism to regulate debt collectors and ensure compliance. The evidence shows that the applicant has made a complaint to Consumer Protection BC about the respondent's practices.
15. Section 11(1)(a)(i) of the Act states that the tribunal may refuse to resolve a claim or dispute within its jurisdiction if the claim or dispute would be more appropriately resolved through another legally binding process or dispute resolution process. I find that this aspect of the applicant's dispute is more appropriately dealt with through his complaint to Consumer Protection BC. Further, section 171 of the BPCPA states that the Provincial Court has jurisdiction over proceedings to recover damages for failure to comply with the BPCPA. Therefore, even if a breach was established, I would not have the jurisdiction to award damages under the BPCPA. For these reasons, I refuse to resolve this aspect of the applicant's dispute.
16. I have also considered the applicant's more general complaint of harassment. Whether a common law tort of harassment exists in British Columbia is an open question at present. The issue was discussed recently in *Williams v. Simon Fraser University*, 2018 BCSC 1787 at paragraphs 13 – 15. The Court noted that, in *Mainland Sawmills Ltd. v. IWA-Canada, Local 1-3567 Society*, 2006 BCSC 1195,

Sinclair-Prowse J. did not decide whether the tort of harassment existed in British Columbia, but assumed that the test for harassment was essentially the same as that later articulated in *Merrifield v. AG Canada*, 2017 ONSC 1333 (CanLII), as follows:

- a. Was the conduct of the defendant toward the plaintiff outrageous?
 - b. Did the defendant intend to cause emotional stress or did it have a reckless disregard for causing the plaintiff to suffer from emotional stress?
 - c. Did the plaintiff suffer from severe or extreme emotional distress?
 - d. Was the outrageous conduct of the defendant the actual and proximate cause of the emotional distress?
17. The applicant states that he found the respondent's conduct to be stressful but he did not submit any evidence to establish the presence of a diagnosed psychological condition or symptoms of emotional distress. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224 (which is not binding upon me but I find to be persuasive), there must be medical evidence to establish mental distress in order for a claim to be successful.
18. I find that the applicant has not established that he suffered from any form of emotional distress, let alone distress that was severe or extreme in nature. Thus, even if the tort of harassment exists in this province, I find that the applicant has not met his burden of proof about the presence of distress that would warrant compensation. As this element of the test is not established, I find it is not necessary to consider the remainder of the test or the possibility of tort-related damages. I dismiss the applicant's claim in this regard.
19. The applicant also requests an order that the respondent stop harassing him. I do not have the jurisdiction to grant such an order. Claims for restraining or no-contact orders fall outside of the tribunal's small claims jurisdiction that is set out in sections 118 and 119 of the Act.

20. 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. The applicant did not pay tribunal fees, but I would not have awarded reimbursement as he was not successful.

ORDER

21. Under section 11 of the Act, I refuse to resolve the applicant's claims about a possible breach of the BPCPA and associated damages.

22. I dismiss the remainder of the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member