



Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2019-002209

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wu v. Jimenez*, 2019 BCCRT 871

B E T W E E N :

DOUGLAS WU

APPLICANT

A N D :

CARMELITA JIMENEZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute about money lost gambling in Las Vegas.
2. The applicant, Douglas Wu, claims the respondent, Carmelita Jimenez, owes him \$1,057 for joint gambling at the Mirage Casino. He says the respondent agreed to

pay him \$1,000 USD when they returned to Vancouver but only repaid \$281. In this decision, figures are in Canadian dollars unless otherwise indicated.

3. The respondent acknowledges that she agreed to pay the applicant \$1,000 USD but says she deducted amounts for money he won, for money she gambled away on his behalf, and for a meal. She says that she has repaid her debt.
4. Both parties are 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 (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, both parties in this dispute call 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
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.
9. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within its jurisdiction. Nothing in the Act specifically addresses the tribunal's jurisdiction in cases where the events triggering the dispute happened outside BC.
10. In *Smith v. Sunwing Vacations Inc. et. al.*, 2018 BCCRT 122, the tribunal found that it could determine disputes arising outside BC if there are enough factors connecting the dispute to BC and if the parties do not raise an issue of jurisdiction (what is known as "attorning to jurisdiction").
11. Although tribunal decisions are not binding on me, I agree that the tribunal has discretion in appropriate cases to assume jurisdiction even though the events occurred outside BC.
12. In this case, there is a connection to BC because both parties live in BC and the respondent agreed to pay the applicant when the parties returned to BC. The respondent did not raise an issue of jurisdiction and has participated in the dispute resolution process. I therefore find that the tribunal has jurisdiction to decide this dispute.

ISSUE

13. The issue in this dispute is whether the respondent has fully repaid her half of the \$2,000 USD she jointly gambled with the applicant.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
15. The applicant and respondent were coworkers. The respondent joined the applicant and others on a 4-night trip to Las Vegas from June 27 to July 1, 2018. This dispute pertains to funds jointly gambled on June 30, but the facts from the previous nights' gambling are informative.
16. The parties agree that on June 27, the applicant contributed \$2,000 USD to a pot of funds from which they both gambled at the respondent's hotel. They agreed to share the winnings and losses jointly. That night, they won \$1,200 USD. There is no dispute that the respondent received half the winnings (\$600 USD).
17. On June 28, each party acquired \$1,000 USD worth of casino chips with their own money. They gambled at a different hotel. The applicant says the arrangement was the same as the previous night. The respondent says that because of the hotel's stricter rules about chip-sharing, they agreed to gamble separately. The respondent says after an hour of baccarat, the applicant had lost all his chips, but the respondent continued to gamble. She says while the applicant was observing her, he asked her to bet \$400 USD for him, so she bet on his behalf, unsuccessfully. The applicant denies asking the applicant to place a \$400 USD bet on his behalf.
18. I prefer the applicant's evidence about June 28. The respondent provided no evidence to support her claim that the other hotel had different rules for chip sharing. Given their success the night before, it is unlikely that the parties, knowing the other hotel did not allow chip sharing, would not simply return to the

respondent's hotel or find another hotel that allowed chip sharing. On a balance of probabilities, I find that on June 28, the parties were gambling together until they lost their combined \$2,000 USD worth of chips. Even if the applicant asked the respondent to place the \$400 bet, I find that placing the bet was a joint decision about joint money. The loss was not solely the applicant's loss to bear.

19. Around 1:40 am on June 30, the parties met again at the respondent's hotel. There is no dispute that they agreed to jointly gamble another \$2,000 USD. The applicant purchased the chips. The respondent says she agreed to "pay him later when we lose all the chips." They did indeed lose all the chips.
20. Later that morning, around 10 am, the parties met again in the hotel's VIP room. The respondent says the applicant did not notice that she was right behind him as he cashed out his chips. She says he cashed out \$640 USD. When she confronted him, he said that the \$640 USD was not won with money from the \$2,000 USD worth of chips they had shared. She told him they would settle their debts when they returned to Vancouver.
21. The respondent paid the applicant \$281 by cheque dated July 11, 2018. She says that by doing so, she accounted for the \$400 USD she bet on his behalf on June 28, the \$320 USD that represented her half of the \$640 USD the applicant won on June 30, and \$26.90 USD for a meal eaten at the Pantry.
22. I prefer the applicant's version of the July 30 events. The respondent admitted that the parties "lost all our chips" on July 30. It is not clear exactly when this happened or when the parties separated, but the parties did not meet up again until after 10 am. The respondent cannot claim half the applicant's winnings from that morning when she admits they lost all their jointly-funded chips. After that point, the applicant was gambling with his own money.
23. In summary, the respondent owed the applicant \$1,000 USD, and I have found that the respondent was not justified in reducing her repayment as she did. The applicant agrees that the respondent may deduct the amount she paid for the June

31 meal (\$26.90 USD) meaning the total owed was \$973.10 USD. The parties did not agree on a specific date for repayment, but given that the respondent paid the applicant \$281 on July 11, 2018, it is appropriate to use the Bank of Canada exchange rate for that date, which was 1.3151%. I find the applicant was entitled to \$1,279.72. The respondent already paid the applicant \$281, leaving a balance owing of \$998.72.

24. The applicant is entitled to pre-judgment interest on the \$998.72 under the *Court Order Interest Act*. (COIA) from July 11, 2018, the date the respondent should have paid the applicant in full, to the date of this decision.
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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.
26. The applicant also claimed \$37 for dispute-related expenses. I find the expenses were reasonable, but the receipts only support a claim for \$36.74, so I find the applicant is entitled to that amount.

ORDERS

27. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,177.83, broken down as follows:
 - a. \$998.72 as reimbursement for their joint gambling,
 - b. \$17.37 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$161.74, for \$125.00 in tribunal fees and \$36.74 for dispute-related expenses.
28. The applicant is entitled to post-judgment interest, as applicable.
29. 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.

30. 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.

Micah Carmody, Tribunal Member