



Civil Resolution Tribunal

Date Issued: December 13, 2019

File: SC-2019-002814

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marasa v. Cankaya*, 2019 BCCRT 1407

B E T W E E N :

AMELIA MARASA

APPLICANT

A N D :

DEVIRIM CANKAYA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a contractual dispute. The applicant, Amelia Marasa, says that she assisted the respondent, Devrim Cankaya, with tasks related to the death of a relative. The applicant says that she and the respondent made an agreement that the applicant would pay some expenses and the respondent would repay her with interest. The

applicant says that, although she paid the expenses, the respondent has not reimbursed her. She asks for an order that the respondent pay her \$4,270.12 plus interest. The respondent admits that she made an agreement with the applicant, but says that the applicant has not followed its terms.

2. The parties are self-represented.

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* (CRTA). 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 submissions, 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, where permitted under section 118 of the CRTA:
 - 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 issues in this dispute is whether the applicant complied with the parties' agreement such that the respondent owes the applicant \$4,270.12 plus contractual interest.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this one, the applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
9. One of the respondent's relatives died in Guatemala. The respondent asked the applicant to help her make arrangements for the relative's burial and obtaining death certificates. The applicant recommended that the respondent hire the applicant's cousin, Ms. C, who lives in Guatemala, to arrange for the burial and obtain death-related documentation. The respondent hired Ms. C, but the terms of their agreement are not before me.
10. The deceased relative's bank accounts in Guatemala were frozen, and Ms. C incurred some estate-related expenses. In late 2018, Ms. C sent the respondent 2 invoices for her expenses, as well as an electronic copy of the death-related documentation. Ms. C asked for reimbursement before sending the original documents. The respondent did not pay Ms. C, apparently due to difficulties accessing the relative's Canadian bank accounts without the original death-related documentation.
11. The parties exchanged messages about how to resolve the impasse. The applicant sent the respondent 2 email messages on December 20, 2018. In the first, she says that she "decided to take care of [Ms. C's] bill so that the documents will arrive here in Canada sooner rather than later". The message went on to state that "you can pay me when they release the funds". The amount of the payment was detailed in

both messages as \$3,065 USD at an exchange rate of 1.3834, plus wire transfer fees and courier charges, for a total of \$4,270.12 CAD. The second message also stated that the applicant would charge the respondent annual interest of 2.75%. The message concluded with “All of this bills [sic] will be given to you, along with the originals when we settle the bill after you have access to your [relative’s] account”. The respondent answered on December 22, 2018 with a message of thanks to the applicant.

12. The original documents arrived in Canada by courier. The applicant asked the respondent to arrange an appointment at the bank where they could exchange the original documentation for the applicant’s payment. For reasons that are not entirely clear, the respondent did not attend the appointment at the bank. The applicant did not receive payment and still had the original documents. The applicant requested another meeting at the bank, but the respondent did not make these arrangements.
13. The relationship between the parties appears to have deteriorated at this point. The applicant sent the original documents back to Ms. C in Guatemala instead of giving them to the respondent.
14. The applicant says that the respondent has breached their contract by failing to pay her what she owes. The applicant’s position is that the respondent should have made other payment arrangements when she encountered difficulties with the bank. The applicant says that Ms. C has the original documentation and some of the relative’s belongings in Guatemala, which she suggests can be sent to her Canadian notary once the respondent has made her payment.
15. The respondent says that she was willing to meet at the bank so she could receive the documents and give the applicant her money, but the applicant cut off communication before this could happen. The respondent says that she needs the original documentation before she can deal with estate-related matters for her deceased relative, and that the situation is very stressful for her.

16. I find that the parties' agreement is contained in their December 20 and December 22, 2018 email messages, where the respondent agreed to repay the applicant the \$4,270.12 she claims, plus interest at 2.75%. The fact that subsequent issues arose about the translation and certification of documents and the relative's real and personal property in Guatemala does not alter the scope or validity of this agreement.
17. Unless the parties' agreement is terminated, they must fulfil their express and implied obligations under it (see, for example, *Kuo v. Kuo*, 2017 BCCA 245). Termination by repudiation occurs when a party shows an intention to not be bound by the agreement and the other party accepts the repudiation.
18. I find that the parties intended the agreement to have a short duration and for the exchange of documents for payment to occur as soon as possible. The email messages say that "you can pay me when they release the funds" and that the original documents would be provided "when we settle the bill after you have access to your [relative's] account". I find that this shows an intention that there be an exchange of documents and money at the same time.
19. Although the respondent says that she was willing to meet the applicant to exchange the documents for payment, she did not explain why she missed the original meeting or failed to arrange a new meeting. She also did not explain her January 16, 2019 email request that the applicant send the documents directly to the bank before receiving payment.
20. The evidence before me shows that the respondent continued to deal with the bank after the missed meeting, and that she continued to use the electronic copy of the documentation without having paid for it. In addition, there is a suggestion in a January 11, 2019 email from a bank employee that the funds from the relative's bank account may have been released to another person instead of the respondent. While the respondent submitted that she still needs the original documentation to arrange for pension payments and death benefits, she did not state specifically that she had been unable to access the bank accounts.

21. Based on the evidence before me, I find that the respondent failed to attend the meeting at the bank, failed to arrange a new meeting, and asked for the original documents before providing payment. I am satisfied that the respondent's conduct amounted to a breach of the agreement and demonstrated an intention to no longer be bound by its terms. I also find that, in effect, the applicant accepted the repudiation of the agreement.
22. I find that the applicant's remedy for the breach and repudiation of the contract is damages. Damages for breach of contract are intended to place an applicant in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. In this case, had the respondent met her obligations under the agreement, the applicant would have been paid the full amount she claimed. Accordingly, I find that the applicant is entitled to damages of \$4,270.12.
23. The applicant is also entitled to contractual interest of 2.75%. Calculated from December 20, 2018, this equals \$115.18.
24. Under section 49 of the CRTA 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 \$175.00 in tribunal fees.

ORDERS

25. Within 30 days of the date of this order, I order that the respondent pay the applicant the amount of \$4,560.30, broken down as follows:
 - a. \$4,270.12 in damages,
 - b. \$115.18 for contractual interest, and
 - c. \$175.00 for tribunal fees.
26. The applicant is entitled to post-judgment interest, as applicable.

27. Under section 48 of the CRTA, 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.
28. Under section 58.1 of the CRTA, 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.

Lynn Scrivener, Tribunal Member