



# Civil Resolution Tribunal

Date Issued: January 23, 2020

File: SC-2019-007042

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clark v. Dosanjh*, 2020 BCCRT 80

**B E T W E E N :**

**GARRETT CLARK**

**APPLICANT**

**A N D :**

**Sarbjit Dosanjh**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. The applicant, Garrett Clark, is a stand-up comedian who performed at a comedy club on August 9 and 10, 2019. He says that on August 9, 2019 the respondent and apparently the club's owner, Sarbjit Dosanjh, slapped the applicant's cell phone out of his hand, causing it to smash on the floor.

2. The applicant seeks an order that the respondent pay him \$1,100 for the broken iPhone 6. The respondent denies damaging the applicant's phone.
3. Each party is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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 each other's credibility. 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.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent damaged the applicant's iPhone, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove his 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.
10. The applicant says he arrived at the comedy club around 3:30 pm on August 9, 2019. He was with 2 other comedians scheduled to perform at the club, RF and KM. Normally, each comedian has a complementary room at the hotel connected to the club. However, on this day there were only 2 rooms available. The applicant says he called his agent to inquire about a third room, but his agent was unable to reach anyone who could obtain a third room.
11. The applicant asked the respondent if there was somewhere he could change before the show. He says the dialogue became frustrated. Using his iPhone, the applicant took a photo of the respondent so he could show his agent who was causing him "grief". He says the respondent slapped the applicant's hands, causing the iPhone to go "flying onto the stairs." He says the respondent said not to take photos of him.
12. The applicant says the iPhone is ruined as it cannot be unlocked and the screen is obscured. The applicant submitted photos of his iPhone, which I accept confirm that it is destroyed. He also submitted a photo of the respondent that he says was taken just before the slap, and was uploaded to the cloud.

13. There is no dispute that the applicant used a friend's phone to call the police. The police attended but said it was a civil matter because the applicant was not injured.
14. The applicant submitted witness statements from RF and KM. RF saw the "club owner" strike the applicant, causing the phone to smash. KM could only partially see the applicant, but saw the respondent reach in the applicant's direction in a swiping motion. She immediately spoke with the applicant, who was rattled and told her that the respondent had slapped his phone out of his hand. She said the phone was cracked and did not function at all.
15. The respondent denies slapping the applicant's iPhone. I note that in his Dispute Response, he acknowledged that he told the applicant not to take his photo. The respondent argues that I should not believe the applicant because he failed to bring his broken phone to management's attention and the applicant performed the scheduled 2 nights in the club. I find those arguments unpersuasive, given the undisputed evidence that the applicant immediately contacted the police. I find it unlikely that the applicant would contact the police if his iPhone was not broken. I also accept the applicant's evidence that he needed to perform the scheduled shows in order to receive payment for the weekend.
16. The respondent says the applicant's witness KM should be discounted because she is the applicant's friend. I find KM's statement was detailed and forthright, acknowledging that she did not see the phone because her view was obscured. Moreover, KM's statement is consistent with RF's statement, and with the applicant's evidence. I accept RF's and KM's evidence.
17. I find that the respondent slapped the applicant's iPhone out of his hand, making it non-functional. I therefore find that the respondent must compensate the applicant for the iPhone.
18. The remaining question is what is the value of a used iPhone 6. The applicant says he paid \$1,100 for his iPhone 6 and has put "hundreds of dollars more into it," replacing the battery, screen and antenna. He says these repairs make it worth

more than \$1,100. I do not agree. Replacing a phone's components typically extends the phone's life but does not increase the phone's value, which depreciates from the moment the phone is purchased.

19. The applicant does not say when he purchased the iPhone 6, but I note that several newer models of iPhone have since replaced it. The applicant does not state the memory capacity of his phone, which would differentiate between different models, which have different costs. The applicant also said nothing about the iPhone's condition prior to the incident.
20. On the other hand, the respondent made no submissions about the value of the phone, despite having the opportunity to do so. Considering the age of the phone and its unknown prior condition, on a judgment basis I find the phone worth \$400, and I order the respondent to pay the applicant this amount.
21. In submissions, the applicant says the comedy club cancelled his gig in November 2019 with only 4 days' notice. He asks for \$1,000 for the lost work. He did not make this claim in his Dispute Notice and did not put forward the claim for resolution. His submissions about the show cancellation appear under his claim for "dispute-related fees and expenses", perhaps due to a system error. I find nothing turns on whether the claim is properly before because I would dismiss it in any event.
22. The applicant provided no contract or agreement showing his rate for the shows. Moreover, his gig was with the comedy club rather than the respondent, so any claim for damages he might have for cancelling the gig would be against the comedy club. The comedy club is not a party to this dispute, and I cannot make an order against a non-party.
23. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$400 compensation for the iPhone from August 9, 2019, the date of the damage, to the date of this decision. This equals \$3.59.
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 his \$75 in tribunal fees. Neither party claimed any dispute-related expenses.

## ORDERS

25. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$478.59, broken down as follows:
- a. \$400.00 as compensation for the damaged iPhone 6
  - b. \$3.59 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$75.00 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.

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Micah Carmody, Tribunal Member