



# Civil Resolution Tribunal

Date Issued: June 18, 2020

File: SC-2020-001739

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kusnir v. The City of Vancouver*, 2020 BCCRT 676

**BETWEEN:**

MARK KUSNIR

**APPLICANT**

**AND:**

THE CITY OF VANCOUVER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about licensing fees paid under a municipal bylaw. The respondent municipality, The City of Vancouver (City), has Bylaw 4450 that requires a marina

operator to pay “Live-Aboard” licence fees, which are payable based on the number and lengths of occupied boats moored at the marina. The applicant Mr. Kusnir paid fees to a marina operator, Coal Harbour Marina Limited (marina), to live on his boat which the marina had requested as reimbursement of the licence fees it paid to the City. Mr. Kusnir seeks \$1,019, which the parties agree was an overpayment that Mr. Kusnir says unjustly enriched the City.

2. Originally, Mr. Kusnir named both the City and the marina, and claimed a total of \$2,019. Mr. Kusnir later reached a partial settlement with the marina and amended his claim to \$1,019, with the City as the sole respondent.
3. The City says it has no direct legal relationship with Mr. Kusnir, as under the bylaw the marina provided the boat measurements and paid the licence fees to the City. As discussed further below, the City denies liability and says Mr. Kusnir’s claim can only be against the marina, for its alleged negligence in inaccurately recording Mr. Kusnir’s boat’s length.
4. Mr. Kusnir is self-represented. The City is represented by an in-house lawyer, Iain Dixon.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is to what extent, if any, is the City obliged to reimburse Mr. Kusnir for an overpayment in licensing fees.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Kusnir bears the burden of proof, on a balance of probabilities.
11. Mr. Kusnir's claim is essentially that while it was the marina who miscalculated measurements and overpaid the licence fees to the City, Mr. Kusnir had in turn overpaid them to the marina. Mr. Kusnir says that since the City has the claimed overpayment in its possession, his claim properly is against the City.
12. The City's Bylaw 4550 requires a marina operator (here, the marina) to pay the City licence fees for "live aboard" boats. As referenced above, the bylaw states the fees are calculated based on "the number and lengths of occupied live-aboard boats moored at the marina" during the relevant period. Bylaw 4550 requires the marina to keep a record of and report a list of boat lengths.
13. The parties agree the marina miscalculated Mr. Kusnir's boat length, namely as 32 to 37 feet instead of 21 to 26 feet. While the applicable invoices at issue are not entirely clear about the years at issue (2017/2018, 2018/2019, or both), nothing turns on it given my conclusion below. The parties agree the City received an

overpayment from the marina based on the marina's miscalculation of Mr. Kusnir's boat's length. Further, Mr. Kusnir's \$1,019 calculation of the overpayment is not disputed by the City.

14. It is undisputed the City's bylaw required the marina operator to report the boat lengths and pay the relevant licensing fees, not individual boat owners like Mr. Kusnir. I accept the bylaw's purpose may have been to collect the equivalent of property tax from boat owners like Mr. Kusnir. However, given the bylaw's language I agree with the City that it had no direct legal relationship with Mr. Kusnir with respect to the live-aboard licensing fees the marina collected and paid under the bylaw. The City has no contractual or statutory obligation to Mr. Kusnir simply because the marina directly passed on the licence fee cost to the boat owners, which the marina appears to have done with a nominal mark-up.
15. There is also no evidence before me that the City was involved in calculating Mr. Kusnir's boat's length. The City accepted what the marina reported, as required under the bylaw. In other words, the terms of Bylaw 4550 were applied to the calculations given to the City by the marina, and then the City issued its invoice to the marina.
16. I find Mr. Kusnir's claim is for restitution and his main argument is based on what is known in law as unjust enrichment. The parties agree there is a 3-prong test, which as summarized in *Garland v. Consumer's Gas Co.*, 2004 SCC 25 at paragraph 30 requires an applicant to show:
  - a. An enrichment of the defendant,
  - b. A corresponding deprivation of the plaintiff, and
  - c. An absence of "juristic reason" for the enrichment. Juristic reason means a reason or justification based on law for the enrichment of one party at the detriment of another.

17. The City admits the first 2 prongs of the above test are satisfied (although the case law indicates the first part of the test is to consider whether there is a juristic reason). In particular, the City admits it has been enriched by the overpayment and that Mr. Kusnir has been deprived by the same overpayment.
18. However, the City argues that there is no absence of a “juristic reason” for its enrichment. Rather, the City says the operation of Bylaw 4550 is the juristic reason. Specifically, section 20.1 of Bylaw 4550 provides a formula that calculates the applicable licence fee based on the boat lengths as recorded by the marina operator.
19. In *Garland*, the court held that the established categories include “valid common law, equitable or statutory obligations”. In particular, the court found at paragraph 49 that “valid legislation can provide a juristic reason which bars recovery in restitution”. Subsequent decisions have confirmed this principle (see *Gladstone v. Canada (Attorney General)*, 2005 SCC 21, and *MacMichael v. Strocel*, 209 BCSC 290).
20. Mr. Kusnir and the City agree the marina made a mistake in measuring Mr. Kusnir’s boat and reporting its length to the City. Here, I acknowledge Mr. Kusnir’s argument that the City does not adequately oversee the marina’s reporting. However, I find there is insufficient evidence before me to prove that allegation or that the City has an obligation to provide such oversight.
21. So, the significant point is that it is undisputed that Bylaw 4550 is a piece of legislation that is valid on its face. As noted above, Bylaw 4550 sets out the marina’s requirement to report boat lengths and it sets out the associated formula for the calculation of applicable licence fees that the marina must pay. *Garland* is binding on me and I find that Bylaw 4550, as valid legislation, is a juristic reason or justification to prevent Mr. Kusnir’s recovery of the overpayment from the City.
22. In summary, I find Mr. Kusnir’s remedy is not against the City, and so I dismiss Mr. Kusnir’s claims against it. I make no findings about whether the marina was in fact

negligent, as the claims against it were settled and it is not necessary for me to make such findings. I note that I do not know the amount of the settlement Mr. Kusnir received from the marina, although I acknowledge Mr. Kusnir amended his claim from \$2,019 to \$1,019. I agree with the City's submission that that settlement must be deducted from any amount I would have awarded against the City, in order to prevent double recovery (see *Henry v. British Columbia (Attorney General)*, 2017 BCCA 420. However, given my conclusion that Mr. Kusnir cannot recover from the City, I do not need to further address this issue.

23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. I see no reason to deviate from that practice here. As Mr. Kusnir was not successful in his claims, I dismiss his claim for reimbursement of CRT fees. No dispute-related expenses were claimed and the City did not pay CRT fees.

## **ORDER**

24. I order the applicant Mr. Kusnir's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair