



Civil Resolution Tribunal

Date Issued: June 19, 2020

File: SC-2020-000711

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Anton*, 2020 BCCRT 677

BETWEEN:

LI LI

APPLICANT

AND:

DANIEL ANTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about responsibility for the cost of cancelled travel plans.
2. The applicant, Li Li, says that she paid for her and her children to attend a camping trip in the United States. She says that the trip's organizer, the respondent Daniel Anton, failed to tell her about required visa enrollment for her children and they were

unable to board the plane. Ms. Li says that Mr. Anton should refund all trip expenses she paid, including \$1,455.50 for flights, \$675 for the event tickets, \$432 for visas, \$30 for a taxi, \$446 for the non-fundable hotel expenses, and \$30 for notary fees. While these amounts total \$3,068.50, Ms. Li claims \$3,068.20 in her Dispute Notice.

3. Mr. Anton denies Ms. Li's claims. He says that Ms. Li was aware that all camping trip participants were responsible for securing their own necessary visas and that he is not responsible for her and her children missing their flight. He further says that he tried to assist her with making alternative travel arrangements so that she and her children could still attend the trip, but that Ms. Li declined to rebook her flight.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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. Some aspects of this dispute amount to a "she said, he said" scenario with both sides calling 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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

10. The issue in this dispute is whether Mr. Anton is liable for failing to ensure Ms. Li had the necessary visa enrollment for her children to travel to the United States and, if so, whether he must reimburse Ms. Li \$3,068.20 for her cancelled trip.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Ms. Li, bears the burden to prove her claims on a balance of probabilities. I have only addressed the evidence and submissions to the extent necessary to explain my decision.
12. The following underlying facts are not disputed. Ms. Li is the parent of 2 minor children. In November 2018, she and her children decided to attend an international camping trip held from August 12 to 17, 2019 in the United States. Mr. Anton volunteered with a third-party church and helped coordinate attendance at the camp.

13. It is undisputed that Mr. Anton arranged roundtrip airline tickets for a group of 17 people, including Ms. Li and her children, through a travel agency. The departure date from Vancouver was August 11, 2019 with a return from Wisconsin on August 18, 2019. The travel agency required a \$120 deposit per ticket, which Ms. Li paid directly to Mr. Anton in cash on December 19, 2018 for each of her 3 tickets. The remaining balance for the airline tickets was due in May 2019.
14. Ms. Li provided Mr. Anton with copies of the front page of her and her children's passports on March 11, 2019, so that Mr. Anton had accurate information for booking the airline tickets. Ms. Li's children do not have Canadian passports. The passport pages provided to Mr. Anton did not contain any information about the children's visas. Mr. Anton asked Ms. Li in a March 13, 2019 email whether she had secured visas for her children for the trip, and based on the evidence before me, I find that Ms. Li did not respond to the email.
15. Ms. Li made an e-transfer payment directly to Mr. Anton for the balance of the airline tickets on May 14, 2019.
16. On July 24, 2019, Mr. Anton sent an email to the group attending the camp to outline some details of the trip, including specific instructions to ensure that anyone without a Canadian passport had a visa for the United States, if needed. Mr. Anton texted Ms. Li on August 8, 2019 asking whether she had secured visas for her children and she replied on August 10, 2019 that she had done so.
17. When Ms. Li arrived at the airport on August 11, 2019, the airline refused to allow Ms. Li's children to board the plane because they had not enrolled in the Electronic Visa Update System (EVUS). Neither party was aware of this requirement before being advised by the airline. Mr. Anton says that he and other members of the Richmond Church tried to assist Ms. Li with getting the required EVUS enrollment and making other travel arrangements before their departure. While Ms. Li was able to complete the EVUS enrollment the following day, she was unsatisfied with the costs associated with the alternate travel arrangements the travel agency offered her and ultimately decided to cancel the trip altogether. Mr. Anton says that his

church was able to arrange flight credits for Ms. Li and her children for the cancelled flights, but that the credit comes with a \$200 fee per ticket.

18. Ms. Li says that because Mr. Anton was responsible for making the trip arrangements, including arranging for payment of the flight, inquiring about whether visas had been secured, and organizing all paperwork required for attendance at the camp, he should have advised her about the EVUS enrollment. Ms. Li does not set out the specific legal basis for her position.
19. I will first consider whether there was a contractual relationship between Ms. Li and Mr. Anton. For a contract to exist there must be an offer, acceptance of the offer, and consideration, which is something of value given by each party.
20. Mr. Anton was a volunteer. While Ms. Li paid for the flights that Mr. Anton arranged, Mr. Anton did not receive any consideration for his role in booking the flights. Even if there was sufficient consideration, I find any contract between them was limited to Mr. Anton arranging flights so that participants could attend the camp. I find that Mr. Anton fulfilled that obligation and provided Ms. Li with plane tickets that would allow her and her children to attend the camp. Therefore, I find there was no breach of contract between Mr. Anton and Ms. Li.
21. Next, I consider whether there was an agency relationship between Ms. Li and Mr. Anton. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on their behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will not generally be liable under a contract they make between the principal and third party.
22. I find that Ms. Li did give authority to Mr. Anton to enter a contract with the travel agency on her behalf to purchase the airline tickets. Ms. Li argues that she was not aware that the flights were non-refundable, which Mr. Anton disputes. I find that issue irrelevant because Ms. Li had no intention of cancelling her flights until after

arriving at the airport and realizing her children would not be permitted to board the plane.

23. Ms. Li also complains that the contract's terms between her and the travel agency included unreasonable surcharges for changing her flights at the last minute. However, I have no evidence that the options provided to Ms. Li were unreasonable in the circumstances. In any event, because Ms. Li authorized Mr. Anton to make the travel arrangements, I find she is bound by the terms of the contract Mr. Anton entered into with the travel agency on her behalf. I further find that Ms. Li has failed to prove that Mr. Anton should be held liable for anything under the contract between Ms. Li and the travel agency for the airline tickets that Mr. Anton arranged.
24. Was Mr. Anton negligent in failing to advise Ms. Li about the requirement for EVUS enrollment? I find he was not for the following reasons. To establish her claim in negligence, Ms. Li must show that Mr. Anton owed her a duty of care, that Mr. Anton breached the applicable standard of care, that the loss or damage was reasonably foreseeable, and that Mr. Anton's failure to meet the standard caused Ms. Li's loss.
25. Here, while I find Mr. Anton owed Ms. Li a duty of care in arranging and booking the flights, I am not satisfied that his duty extended to ensuring Ms. Li had complied with all visa requirements. Mr. Anton sent Ms. Li reminders to make the necessary visa arrangements. However, I find that the standard of care for a volunteer in Mr. Anton's position did not require him to make further inquiries once Ms. Li confirmed that she had obtained visas for her children to travel. Ms. Li did not request further assistance and there is no evidence before me that Mr. Anton had reason to believe that she required further information or assistance. Therefore, I find that he was not negligent.
26. In short, I find that at no time did Mr. Anton express or imply that he was responsible for ensuring that those attending the camp had secured all necessary visas and EVUS enrollment. Further, I find that Ms. Li did not offload that responsibility to anyone, including Mr. Anton or the travel agency. The responsibility

was hers alone. I find that Mr. Anton acted reasonably for a person in his circumstances and that he properly fulfilled all obligations that he represented to Ms. Li that he was taking on.

27. Further, even if I am wrong and Mr. Anton is liable for breach of contract or was negligent, I find that Ms. Li waived her right to bring an action against him by signing a “Consent, Waiver and Indemnity (Release) Form” on July 30, 2019. This release provides that Ms. Li waives any rights and releases and discharges any claims or causes of action against the third-party church and its volunteers arising out of or in any way connected with her participation while travelling or taking part in the camp. I find that Ms. Li’s claim that Mr. Anton failed to inform her about the EVUS enrollment and her decision to subsequently cancel her trip due to unsatisfactory costs for rebooking her flights falls within the provisions of the waiver she signed.

28. Given my conclusions above, I dismiss Ms. Li’s claims against Mr. Anton.

29. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Ms. Li was unsuccessful and so I dismiss her claim for CRT fees. She did not claim any dispute-related expenses.

ORDER

30. I dismiss the applicant’s claims and this dispute.

Kristin Gardner, Tribunal Member