



# Civil Resolution Tribunal

Date Issued: June 19, 2020

File: SC-2019-011092

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Punian v. Kaur*, 2020 BCCRT 680

BETWEEN:

DALJIT PUNIAN

**APPLICANT**

AND:

KULBEER KAUR and TARANJEET KAUR

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The applicant, Daljit Punian, says he hired the respondents to provide immigration services, which they have not provided. He says he paid the respondent Taranjeet Kaur (Taranjeet) a \$5,000 deposit for the services. Mr. Punian wants the \$5,000 deposit returned.

2. Mr. Punian says that the arrangements were made through a relative, Mr. N. Mr. N is not a party to this dispute.
3. The respondents, Kulbeer Kaur (Kulbeer) and her sister Taranjeet, deny agreeing to provide immigration services to Mr. Punian, either directly or through Mr. N.
4. Taranjeet admits she received money from Mr. Punian but denies that it was for immigration services. She says it was either a gift or repayment of personal money Mr. N owed to her.
5. Mr. Punian is represented by a family member. Kulbeer represents the respondents. As both respondents have the same last name, without intending any disrespect, I will refer to them by their first names to avoid confusion.

## **JURISDICTION AND PROCEDURE**

6. 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.
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. The CRT 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. Most of the argument in this dispute amounts to a "he said, she said" scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that

oral hearings are not necessarily required in all cases where credibility is in issue. I have considered the CRT's mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing.

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 tribunal considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did either respondent agree to provide immigration services to Mr. Punian?
  - b. Was the \$5,000 payment a deposit for those services?
  - c. Must either respondent refund the \$5,000 to Mr. Punian?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim, such as this one, the applicant must prove his claims on a balance of probabilities. I have reviewed all the evidence and arguments provided, but only refer to what is necessary to explain my decision.

### ***Was there an agreement?***

12. The respondents deny providing immigration services at all. Kulbeer says, although she took an immigration consultant course, she did not obtain her licence and does not provide immigration services. She admits that she does help friends and family by translating and filling out various immigration documents.

13. Mr. Punian says he hired the respondents to obtain a Canadian farm worker visa for S, a family member. He says he sent the respondents documents they requested, such as a bank statement and a copy of the family member's passport, as well as a \$5,000 deposit. Mr. Punian admits he did not communicate with the respondents directly, but made the arrangements through Mr. N.
14. Mr. Punian submitted as evidence a February 2, 2020 affidavit sworn by Mr. N. Mr. N says he acted as the middle person between Mr. Punian and the respondents. He says he was friends with the respondents and he understood that they worked together to provide immigration services, as they had asked Mr. N to refer clients to them. Mr. N says that he asked the respondents to obtain a work visa for S, on Mr. Punian's behalf.
15. Mr. Punian provided copies of text messages between Mr. N and Kulbeer. The messages are in a combination of English and a foreign language which I do not understand. However, Mr. Punian's representative translated the messages between Mr. N and Kulbeer into English. I accept the translations are generally accurate as Mr. Punian swore an affidavit confirming the translation and his fluency in both languages, and the respondents have not disputed the accuracy of the translation.
16. Based on a series of undated messages, I find Kulbeer asked Mr. N for the farm worker's passport and the first installment of \$5,000, with the rest to be paid later. In a series of messages on February 22, 2018 Mr. N agreed to send Kulbeer the documents and money, and Kulbeer agreed to start the work. In another series of messages in April 2018 Kulbeer advised the application was pending with Service Canada.
17. Kulbeer admits she sent the messages to Mr. N but says it was for his own work visa application, and not for S. Kulbeer says the information had been provided to her by immigration consultants and she simply forwarded it to Mr. N.

18. I disagree, as the messages refer to other people's documents and to Kulbeer herself doing the work. Further, Kulbeer did not provide the names of these immigration consultants, or their messages. Although Kulbeer said she could obtain this information if needed, she has provided no reason why she was unable to obtain that evidence already. I do not accept Kulbeer's argument that she is unable to access her stored messages, as she has not explained why that is the case. Parties are told to submit all relevant evidence to support their claims to the CRT.
19. Kulbeer provided a screenshot of her email inbox, which shows a series of emails from Mr. N between February 19 and April 11, 2018. Attached to the emails are documents titled "S...", which is the name of Mr. Punian's family member. Although Kulbeer says she did not respond to these emails, I find nothing turns on this.
20. I do not accept Kulbeer's argument that Mr. N's March 29, 2018 email contained the documents she asked Mr. N to send her to complete a visitor's visa application for Mr. N as this is inconsistent with the documents attached to the email, which are labelled with S's name, not Mr. N's name. Neither do I accept Kulbeer's argument that Mr. N sent documents for her to print out for him as there is no indication from the emails or messages that Mr. N asked for the documents to be printed.
21. The respondents say that Mr. N's evidence should not be believed. Taranjeet says that she and Mr. N were in a relationship and that they lived together between January 2018 and July 2019. I accept this to be true, based on Kulbeer's notes about what Mr. N said in a December 18, 2019 meeting between the parties, and based on the respondents' photographs in evidence.
22. The respondents say that Mr. N created a story about Mr. Punian and S and the money to retaliate against Taranjeet for ending their relationship in July 2019. I disagree, as the messages between Mr. N and Kulbeer had already been sent, and the money already paid, by the time that Taranjeet broke up with Mr. N. Kulbeer says Mr. N admitted the break-up hurt his ego in the December 18, 2019 meeting. While I accept that Mr. N may have been hurt, I do not find that supports that he

created this whole situation, particularly given the communications between Kulbeer and Mr. N.

23. Based on the timing and content of the messages and emails between Kulbeer and Mr. N, I find that it is more likely that Kulbeer asked for, and received, S's documents for the purpose of obtaining a Canadian work visa for S. For example, in a series of messages on and around April 10, 2018, Kulbeer asks Mr. N for a bank statement, and confirms receiving the other documents. Mr. N's April 11, 2018 email attaches a document titled "PDF Bank Statements S...".
24. I do not accept Kulbeer's argument that she does not deal in immigration services. While I accept that she is not licenced to do so, Kulbeer admits that she is trained to do the work and helps friends and family on immigration matters. I find that, in this case, Kulbeer asked for a fee for that work. Whether she regularly deals in immigration services or not, I find that Kulbeer did so in this case.
25. I accept the respondents' argument that they did not know Mr. Punian and did not communicate directly with him prior to December 2019.
26. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. Based on Mr. N's and Kulbeer's communications, Mr. N's evidence and Mr. Punian's submissions, I find Mr. N acted as Mr. Punian's agent and entered into an agreement with Kulbeer on Mr. Punian's behalf. On balance, I find Kulbeer contracted with Mr. Punian, through Mr. N, to obtain a farm worker's visa for S, for an initial deposit of \$5,000.
27. There is no evidence that Taranjeet communicated with Mr. N about S's work visa, or otherwise agreed to provide immigration services to Mr. Punian. I find she was not a party to the contract.

### ***The \$5,000 payment***

28. Based on messages between Kulbeer and Mr. N, I find Kulbeer asked that \$5,000 be deposited into her sister Taranjeet's bank account and instructed that the money

be described as a gift. Kulbeer sent Mr. N Taranjeet's bank account information on February 22, 2018.

29. Mr. Punian's money transmission document shows he transferred \$5,000 to Taranjeet's bank account on February 23, 2018 as a "remittance toward personal gifts and donations" (all quotes reproduced as written). Taranjeet submitted a wire transfer receipt showing that \$4,973 was deposited into her account, from Mr. Punian as "remittance towards personal gifts and donations". I find the \$27 difference is likely due to bank fees for the wire transfer.
30. In the dispute response Taranjeet says the money was gift money, although she did not know who Mr. Punian was at the time.
31. Under the law of gifts, once Mr. Punian has proved the transfer of goods or money, the burden shifts to the person alleging that the money was a gift, in this case the respondents (see *Pecore v. Pecore*, 2017 SCC 17). The evidence needs to show that the intention of the money as a gift was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004).
32. I find the identification of the money as gift money on the transfer document is not determinative, based on the remainder of the evidence. Based on the messages between Kulbeer and Mr. N I find Mr. Punian called the money gift money as that was how Kulbeer instructed Mr. Punian's agent, Mr. N, to describe the money. Further, Taranjeet provides alternate reasons for the money, which is inconsistent with it being a gift. I find the money is not a gift.
33. Taranjeet says the money was a refund of money owed to her by Mr. N. In his sworn statement Mr. N denies owing Taranjeet any money.
34. It is undisputed that Mr. Punian, his representative, Mr. N and the respondents met on December 18, 2019 at the respondents' office. The respondents provided both a video and an audio recording of the meeting. The audio recording is in a foreign language, which I do not understand, and therefore I give it no weight. The video

recording has no sound and does not identify who is who in the meeting. Neither recording is helpful in deciding this dispute.

35. Kulbeer says that, at the meeting, she and Taranjeet explained to Mr. Punian that the money was a repayment from Mr. N to Taranjeet. Mr. Punian said the money was for the work visa. Kulbeer says that, in the meeting Mr. N agreed that Taranjeet charged him \$5,000 for staying with him for 15 days.
36. I find Mr. N's acknowledgment of a \$5,000 rent charge is not determinative of the matter. The respondents have provided no evidence, or submissions, about the timing of the rent charge or any discussion about it between Taranjeet and Mr. N. Further, Kulbeer acknowledges that Mr. N also said the money Mr. Punian sent was for the work visa. I do not accept her argument that Mr. N was lying about that to save face in front of his family, as that is inconsistent with the communications between Kulbeer and Mr. N about the money and Mr. Punian's evidence.
37. The respondents say that Mr. N instructed Mr. Punian to pay the money to Taranjeet, which shows that Mr. N intended for Mr. Punian to pay Mr. N's rent debt. I disagree. As noted above, I find Mr. N told Mr. Punian to pay the money to Taranjeet on Kulbeer's instructions. Further the messages between Kulbeer and Mr. N discuss payment of \$5,000 as a first installment, with more to be paid later, which is inconsistent with a one-time outstanding rent payment. Also Mr. N and Kulbeer discuss the money at the same time as they discuss the documents, which I find are S's documents.
38. Further, it does not make sense to me to label the money as a gift if it was meant as payment for rent, or otherwise on behalf of Mr. N. It might, however, make sense to label money as a gift if it was intended to pay for immigration services provided by someone who was not licenced to perform such work.
39. On balance, I find it more likely that the money was intended as Mr. Punian's deposit toward payment for Kulbeer's immigration services, rather than any outstanding rent payment of Mr. N.





***Must either respondent return the \$5,000 to Mr. Punian?***

40. Taranjeet says that, at the end of the December 18, 2019 meeting, Mr. N told her he would return to the money to Mr. Punian. I find nothing turns on this as I have already found that the money was not a payment from Mr. N. in his personal capacity. Further, Mr. N is not a party to this dispute.
41. Taranjeet is not entitled to keep the money, as I find it was not paid to her as a gift from Mr. Punian, or as repayment of Mr. N's personal debt.
42. Mr. Punian says that the respondents did not obtain S's work visa and that is why he asked for his money back at the December 18, 2019 meeting. As there is no evidence contradicting this, I accept Mr. Punian's statement. As Kulbeer did not provide the immigration services I have found she agreed to provide, I find the money must be repaid to Mr. Punian.
43. There is no indication that Taranjeet paid the money or otherwise transferred the money to Kulbeer. Although I find Kulbeer did not do the work she agreed to, I do not find that she benefitted from the deposit paid by Mr. Punian. Therefore, I find Kulbeer is not personally liable for the return of the money. I dismiss the claim against Kulbeer.
44. On balance, I find Taranjeet received the benefit of Mr. Punian's money, and that she is not entitled to keep it. I therefore find that Taranjeet is solely responsible for returning the money to Mr. Punian. Given that she received only \$4,973 of the funds, I find that she must return that amount.
45. The *Court Order Interest Act* applies to the tribunal. Mr. Punian is entitled to pre-judgment interest on the \$4,973 from December 18, 2019, the date Mr. Punian asked for a refund of his deposit, to the date of this decision. This equals \$49.15.
46. Under section 49 of the CRTA and the CRT rules, the CRT 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 Mr. Punian is entitled to reimbursement of \$125 in CRT fees. Although Mr. Punian also seeks reimbursement of \$70 in dispute-related expenses for the cost of an affidavit, he has provided no evidence supporting that he paid that expense. I decline to order reimbursement of any dispute-related expenses.

## ORDERS

47. Within 30 days of the date of this order, I order the respondent Taranjeet Kaur to pay the applicant, Mr. Punian a total of \$5,147.15, broken down as follows:

- a. \$4,973 as reimbursement of Mr. Punian's deposit
- b. \$49.15 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

48. Mr. Punian is entitled to post-judgment interest, as applicable.

49. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

50. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Sherelle Goodwin, Tribunal Member