



Civil Resolution Tribunal

Date Issued: June 25, 2020

File: SC-2019-010193

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bereziak v. Kennedy*, 2020 BCCRT 703

B E T W E E N :

SHERRY BEREZIAK

APPLICANT

A N D :

TODD KENNEDY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for a vacation. The applicant, Sherry Bereziak, says she paid for a vacation for herself and the respondent, Todd Kennedy. Ms. Bereziak says Mr. Kennedy agreed to pay her back for his share of the vacation expenses and did not. Ms. Bereziak claims reimbursement of \$2,000 for vacation expenses,

including parking and fuel costs. Mr. Kennedy says Ms. Bereziak planned her vacation before they met, and denies he owes her anything.

2. The parties each represent themselves in this dispute.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a "she said, he said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. I find I can properly assess and weigh the written evidence and submissions before me, keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes. Therefore, I find that an oral hearing is not necessary, and I decided to hear this dispute through written submissions.
5. 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.

6. 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

7. The issue in this dispute is whether Mr. Kennedy agreed to reimburse Mr. Bereziak for vacation expenses, and if so, how much does he owe?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, Ms. Bereziak must prove her claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
9. The undisputed evidence is that the parties met in early October 2019 and began dating. They took a trip within BC for a few days around early November 2019. Ms. Bereziak says, and Mr. Kennedy does not deny, that this trip was to a townhouse that Ms. Bereziak obtained rent-free from a friend. The parties agree that their relationship was platonic after this trip, and although they disagree why, the reason is not relevant to my decision.
10. The parties also agree that Ms. Bereziak had planned an international vacation for herself before they met. She later added Mr. Kennedy to her vacation itinerary. The parties do not deny that this doubled the cost of the vacation. I find the evidence does not show that Ms. Bereziak was charged any additional costs for changing the itinerary. An October 29, 2019 travel company invoice provided by Ms. Bereziak shows that she booked return international airfare, a hotel room, and other travel items for herself and Mr. Kennedy, totalling \$3,593.44. Mr. Kennedy does not dispute that Ms. Bereziak paid for the vacation, or that he went on the vacation with her.

11. Otherwise, the parties' versions of events are considerably different. They agree that their relationship became rocky during their BC trip, and deteriorated significantly during the international vacation. Each blames the other for the tumultuous vacation, where they did not spend the last few days together and returned separately.
12. Ms. Bereziak says Mr. Kennedy left his vehicle in her underground parking garage as "collateral" for the vacation payment, while Mr. Kennedy says Ms. Bereziak took his keys and kept the vehicle against his wishes. I find there is no direct evidence that the vehicle was left there as collateral. I find it more likely that Mr. Kennedy left his vehicle in the garage because he and Ms. Bereziak drove her vehicle to the airport and left it there during their vacation.
13. Having said that, Ms. Bereziak also submitted undated text messages that she says were between herself and Mr. Kennedy, that show he agreed to pay for his half of the vacation. Mr. Kennedy says he deleted all of Ms. Bereziak's text messages on his phone, but does not refute her submission that these texts were sent between them or that they were about the vacation. On balance, I find that these text messages were sent between the parties before their vacation.
14. In the text messages, Ms. Bereziak said Mr. Kennedy is more than welcome to go, which in context I infer means to go on the vacation with her. In reply, Mr. Kennedy said, "I wont stiff u for that unbelievably generous offer" and "I will be 100% giving u back the money Sherry" (reproduced as written). I find that these text messages are evidence that Mr. Kennedy agreed to pay for half of the vacation, in return for Ms. Bereziak's agreement to go on the vacation despite the parties' recent relationship difficulties.
15. Further, Mr. Kennedy had an opportunity to respond to Ms. Bereziak's allegations, and to submit that he did not promise to pay for half the vacation, or that Ms. Bereziak promised to pay for the whole vacation. But Mr. Kennedy did not say that in his response submissions or elsewhere. Instead, Mr. Kennedy's submissions focussed on the deterioration of their relationship and his allegations that Ms.

Bereziak intentionally displayed poor behaviour during the vacation and afterward, which I find are not relevant to whether he owes her for his share of the vacation. On balance, I find that Mr. Kennedy does not deny that he agreed to pay for half of the vacation expenses.

16. I find there is no evidence to support Mr. Kennedy's allegation that Ms. Bereziak intentionally ruined the vacation. Each party blames the other for the bad vacation. I find neither party has met its burden of proving that the other party made the vacation unpleasant. Further, even if Ms. Bereziak had "ruined" Mr. Kennedy's vacation, I would not have found this relieved Mr. Kennedy of his agreement to pay for his half, given the acknowledged worsening trend of their relationship.
17. Having weighed the evidence, including Mr. Kennedy's text message agreeing to pay Ms. Bereziak, which he does not deny, I find that Mr. Kennedy agreed to pay for half of the vacation expenses. On balance, I also find Mr. Kennedy is not relieved of his obligation to pay for his full share because of Ms. Bereziak's alleged behaviour or another reason. So, I find Mr. Kennedy owes Ms. Bereziak for half the vacation expenses.
18. Half of the \$3,593.44 travel company invoice is \$1,796.72. Ms. Bereziak also submitted a \$163.75 receipt for airport parking, beginning on the first day of the vacation. Mr. Kennedy does not deny that he rode with Ms. Bereziak to the airport, so I find he also owes Ms. Bereziak for half the airport parking fees, which equals \$81.87. The total travel expenses owed by Mr. Kennedy are \$1,878.59. Ms. Bereziak claimed reimbursement of \$2,000, but an amount over \$1,878.59 is not supported on the evidence.

CRT FEES, EXPENSES, AND INTEREST

19. Ms. Bereziak claims 19.99% contractual interest on the amount Mr. Kennedy owes, which she says is the amount charged by her credit card company to carry his debt. However, I find the parties never agreed on an interest rate for the vacation expenses. Further, Ms. Bereziak provided no evidence showing that she carried a

credit card balance, and did not prove the interest rate charged on that balance. So, I decline to order any contractual interest.

20. However, Ms. Bereziak is entitled to pre-judgment interest under the *Court Order Interest Act*. I find that Ms. Bereziak did not demand payment from Mr. Kennedy until after they returned from the vacation at the end of November 2019. So, I find that interest on the \$1,878.59 debt is calculated from December 1, 2019 until the date of this decision. This equals \$20.88.
21. 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. As Ms. Bereziak was successful, I find she is entitled to reimbursement of \$125 in paid CRT fees.
22. Ms. Bereziak claims \$288.75 for a December 11, 2019 skip tracing fee to locate Mr. Kennedy, as a CRT dispute-related expense. Ms. Bereziak says, and Mr. Kennedy does not deny, that when she returned from the vacation, Mr. Kennedy's phone number was no longer in service and his car was gone from her underground garage. She says she did not know Mr. Kennedy's address, as she had not visited his house, and had no other way of contacting him because he blocked her on social media. Mr. Kennedy says he gave his address to Ms. Bereziak so she could book the vacation, but I find none of the evidence, including the travel company invoice, shows that he did so, and none of it lists Mr. Kennedy's address. The process server successfully served Mr. Kennedy in person, but there is no evidence that Ms. Bereziak ever discovered Mr. Kennedy's address. In the circumstances, I find Ms. Bereziak reasonably ordered the skip trace, and is entitled to reimbursement of the \$288.75 fee.
23. Ms. Bereziak also claims \$152.25 for a February 28, 2020 process server fee for serving CRT documents on Mr. Kennedy. The CRT normally serves dispute notices by regular mail on behalf of applicants if a name and address are provided. However, I found above that Mr. Kennedy's address was never discovered. The CRT rules also permit service in person. Ms. Bereziak says she hired a process

server because she did not feel comfortable serving Mr. Kennedy herself. I find that Mr. Kennedy's address and email address were unknown to Ms. Bereziak, who does not claim to have any experience or skill in serving documents. So, I find that the process server was reasonably necessary in this case, and Ms. Bereziak is entitled to reimbursement of the \$152.25 fee. Together with the skip tracing fee, this equals \$441 in CRT dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Mr. Kennedy to pay Ms. Bereziak a total of \$2,465.47, broken down as follows:
 - a. \$1,878.59 in debt for vacation expenses,
 - b. \$20.88 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125 in CRT fees, and
 - d. \$441 in dispute-related expenses.
25. Ms. Bereziak is entitled to post-judgment interest, as applicable.
26. 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.

27. 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.

Chad McCarthy, Tribunal Member