



Civil Resolution Tribunal

Date Issued: July 6, 2020

File: SC-2020-000860

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *White v. Gokturk*, 2020 BCCRT 750

BETWEEN:

SHARON WHITE

APPLICANT

AND:

MICHAEL GOKTURK and EINSTEIN EXCHANGE INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the purchase of Bitcoin. On September 12, 2019, the applicant, Sharon White, paid the respondent Einstein Exchange Inc. (Einstein) for

Bitcoin, but she never received it. Ms. White claims \$2,988 CAD, as a refund of her \$2,250 USD purchase price.

2. The respondent Michael Gokturk was Einstein's director, president, and chief executive officer. He says he is not personally liable. As discussed below, despite being served, Einstein did not file a Dispute Response as required and is in default.
3. Ms. White is self-represented. Mr. Gokturk is represented by a lawyer, Daniel Yaverbaum.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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 tribunal considers appropriate.

8. As noted above, Einstein did not file a Dispute Response despite being served. The parties agree Einstein went into a temporary receivership on around November 1, 2019. Mr. Gokturk says the receivership ended at the end of November 2019 and a “report issued”. I do not have that report in evidence. Section 69.3(1) of the federal *Bankruptcy and Insolvency Act* (BIA) states that “on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.” However, section 69.3(1.1) of the BIA says the stay in section 69.3(1) ceases to apply in respect of a creditor on the day the trustee is discharged. Based on Mr. Gokturk’s submission that the receivership ended, I find there is no applicable stay under the BIA.

ISSUE

9. To what extent, if any, is the applicant Ms. White entitled to a refund of her Bitcoin purchase funds from either of the respondents, Mr. Gokturk or Einstein?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Ms. White bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The parties agree:
 - a. On September 12, 2019, Ms. White contracted with Einstein to buy Bitcoin on her behalf, in the amount of \$2,250 USD.
 - b. Ms. White paid Einstein for the Bitcoin in cash, for deposit into her Einstein account, and Einstein issued her a receipt.
 - c. Ms. White did not receive the Bitcoin from Einstein.
 - d. Ms. White had no dealings or interactions directly with Mr. Gokturk.

12. Mr. Gokturk says Ms. White's contract was only with Einstein and there is no basis to hold him personally liable. I agree. As cited by Mr. Gokturk, a corporation like Einstein is distinct from its directors and officers. At law, officers, directors and employees of corporations are not personally liable unless they committed a wrongful act independent from that of the corporation (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121). There is simply nothing in the evidence submitted that indicates Mr. Gokturk committed any wrong act independent from Einstein. Ms. White's Bitcoin purchase was through Einstein, and as noted she had no dealings with Mr. Gokturk directly.
13. Ms. White's central argument is to question why Einstein took her money on September 12, 2019, when she says it must have known it was going to go into receivership in November 2019. Mr. Gokturk denies knowing in September 2019 that Einstein was going into receivership. While I acknowledge Ms. White unsuccessfully sought a response from Einstein in October and November 2019, Ms. White has provided no evidence in this dispute to support a conclusion Mr. Gokturk knew in September 2019 about the upcoming receivership.
14. There is also no evidence before me that Mr. Gokturk used Einstein for a fraudulent or improper purpose. In short, I find there is no evidence before me that would make him legally personally responsible for Ms. White's claim. I dismiss Ms. White's claims against Mr. Gokturk.
15. I turn then to Einstein's liability.
16. On September 12, 2019, Ms. White signed a 1-page receipt acknowledging her \$2,250 USD payment. There is a ticked box beside a confirmation that the client signing (Ms. White) has read or been given an opportunity to read the Einstein User Agreement found at Einstein's website, and that the client agrees to be bound by its terms.

17. I note the User Agreement has an arbitration clause. However, since Einstein did not participate in this CRT proceeding as required and Mr. Gokturk did not raise the clause, I find nothing turns on it.
18. While Mr. Gokturk submitted Ms. White agreed to the User Agreement, he did not indicate what turns on it in the circumstances of this dispute. It is undisputed Ms. White never received the Bitcoin she paid for. Based on the evidence and submissions before me, I find nothing turns on the User Agreement or whether Ms. White's attention was brought to it when she signed the receipt.
19. As noted above, Einstein is in default, as it failed to file a Dispute Response despite being properly served with the Amended Dispute Notice on March 16, 2020 by registered mail. I also note that before that date, Einstein was deemed served on February 9, 2020 with the original Dispute Notice, which the CRT sent by regular mail in accordance with the CRT's rules.
20. Given the service of the above documents and Mr. Gokturk's role with Einstein, I find it clear that Einstein was aware of this proceeding and chose not to participate as required. I note the Dispute Notice was originally issued in 2020, and Einstein's receivership ended in November 2019. So, there is no reason before me that would justify Einstein's failure to participate as required.
21. When a party is in default, it is reasonable to draw an adverse inference and assume liability and conclude the applicant's position is correct. Further, given Mr. Gokturk's agreement with the facts summarized above and the evidence before me, I find Einstein took Ms. White's funds provided for the purchase of Bitcoin but failed to provide the Bitcoin. I find Ms. White is entitled to a refund.
22. Ms. White paid \$2,250 in USD. In today's currency, this converts to \$3,049.50 CAD. However, Ms. White claims only \$2,988 CAD and so that is what I find Einstein must pay.

23. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. White is entitled to \$46.99 in pre-judgment interest on the \$2,988 ordered, from September 12, 2019 to the date of this decision.
24. 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 find Einstein must reimburse Ms. White the \$150 she paid in CRT fees. While Mr. Gokturk paid \$25 in CRT fees and was successful in this dispute, Mr. Gokturk did not claim reimbursement and so I make no order for it. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of this decision I order Einstein to pay Ms. White a total of \$3,184.99, broken down as follows:
 - a. \$2,988 in debt,
 - b. \$46.99 in pre-judgment COIA interest, and
 - c. \$150 in CRT fees.
26. Ms. White is entitled to post-judgment interest as applicable.
27. Ms. White's claims against Mr. Gokturk are dismissed.
28. 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.

29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.
30. A party in default (here, Einstein) has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

Shelley Lopez, Vice Chair