



Civil Resolution Tribunal

Date Issued: July 13, 2020

File: SC-2020-000466

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Time Limousine Service Ltd v. First Data Canada Ltd.*, 2020 BCCRT 777

B E T W E E N :

TIME LIMOUSINE SERVICE LTD

APPLICANT

A N D :

FIRST DATA CANADA LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about credit card chargebacks. The applicant, Time Limousine Service Ltd (Time Limousine), says that the respondent, First Data Canada Ltd.

(First Data), improperly charged back 3 credit card transactions on its account. Time asks that the \$1,138.12 be paid back into its account. Time Limousine is represented by an organizational contact.

2. First Data says that it followed proper procedure under the contract between the parties. It says that ultimately it is the credit card company which determines whether to reverse a chargeback and they decided not to for these three charges. First Data is represented by an organizational contact.

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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether First Data improperly refused to reverse the chargebacks, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant, Time Limousine, must prove its claim on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. The facts of this case are undisputed. The parties entered into two contracts, one in 2017 and one in 2019, where First Data agreed to provide Time Limousine with credit and debit card processing services. The relevant terms of those contracts, which I will discuss below, are the same in both contracts.
11. On April 27, 2019 a person claiming to be Visa cardholder R made a reservation with Time Limousine. Time Limousine had the person send a picture of the front and back side of their credit card as well as a picture of their photo identification. Time Limousine then charged a deposit of \$253.12 to R's Visa card and when the trip was completed, Time Limousine charged the final payment of \$675.00. When R learned of the charges, they called Visa and said the charges were fraudulent.
12. Visa then contacted First Data who required Time Limousine provide information about the transactions. Time Limousine provided all of its evidence and submitted to the CRT that it knew that this was a higher risk transaction because the credit card was not physically present, so it followed all the verification requirements under the contract with First Data.
13. First Data does not dispute that Time Limousine followed the correct procedure. It notes that it sent all the information to Visa but that Visa decided not to reverse the

chargebacks. First Data provided a document showing that Visa declined to reverse the charges because it contacted the cardholder who confirmed he did not book the limousine.

14. First Data provided a copy of the agreement between it and Time Limousine which includes the Merchant Agreement. Time Limousine does not deny that it signed these contracts. It says that the contracts it signed only showed the rates and not the Merchant Agreement. I find it more likely that the contracts did include the Merchant Agreement. However, even if I am wrong about this, it is irrelevant as Time Limousine says it referred to the Merchant Agreement online and followed the procedures set out there. Therefore, it was aware of the terms of the Merchant Agreement and did not dispute that it was bound by them.
15. First Data submits that under section 11 of the Merchant Agreement, if the card issuer requests information when a chargeback is requested, First Data will forward the request to Time Limousine and then deliver Time Limousine's response to the card issuer. First Data notes that Time Limousine agreed to be bound by procedures it had to follow after a chargeback request, including Time Limousine's obligation to attempt resolving the payment dispute directly with the cardholder. First Data says that Time Limousine agreed to be bound by Visa chargeback procedures. There is no evidence that Time Limousine tried to work out the issue directly with the cardholder.
16. Section 11.1 of the Merchant Agreement says that if Time Limousine provides sufficient information to warrant a reversal of the chargeback, First Data would institute a chargeback on Time Limousine's behalf. However, the agreement goes on to say that reversals are "contingent upon card issuers/cardholder acceptance under the applicable Card Organization Rules." First Data has provided documents showing that Royal Bank Visa denied the chargeback. It notes that Visa decided that the charge was fraudulent. I find that Royal Bank Visa declined to reverse the chargeback and under the Merchant Agreement First Data's decision was properly based on Royal Bank Visa's determination.

17. The third chargeback involved an incident on October 18, 2019, when a person booked the limousine service to go to a nightclub. On the way back the driver said that one of the client's group vomited in the vehicle. Time Limousine charged the client's card a \$210 fee for damage to the vehicle. Time Limousine says that the client disputed the fee saying it was fraudulent. The pre-arbitration materials show that the client did not say that somebody was fraudulently using her card. She argued that she never agreed to the \$210 charge. The Bank of Nova Scotia Visa accepted her argument and refused to reverse the chargeback. First Data noted that Visa did not receive evidence of a signature specifically about the damage charge and this is why it refused to reverse the chargeback.
18. Time Limousine's main argument is that its agreement is with First Data and it followed the procedures set out for "card not present" transactions. Time Limousine also points out that First Data charges them extra money for these transactions. However, as noted, the agreement Time Limousine signed specifically states that First Data reversals are dependent on the determination made by the credit card company.
19. A CRT decision, *West Coast Appliance Centre 2014 Ltd. V. Moneris Solutions et al*, 2019 BCCRT 1279, considered a similar issue where Moneris, who provided credit and debit processing services, argued under the term of the parties' agreement it was Visa who made the final decisions about chargebacks. In that dispute the tribunal member found that under the terms of the agreement both West Coast and Moneris were bound by Visa's decision with respect to chargebacks. The tribunal member decided that Moneris was only required to reverse the chargeback if West Coast's dispute with Visa was successful, which it was not.
20. I am not bound by this decision but find its analysis persuasive and apply it to this dispute. I find that the terms of Time Limousine and First Data's agreement are clear that it is ultimately the decision of the card issuer (here, in both cases Visa) whether to reverse a chargeback. I note that this also makes sense as there is no evidence that First Data has any power over Visa and can demand it reverse a

chargeback. First Data is obligated under the agreement to act as a contact between Visa and Time Limousine and to request information from Time Limousine and then pass it along to Visa. First Data did so. The decision was then up to Visa. I also note that the documents clearly show on what basis Visa made its decision to deny the reversals.

21. For all these reasons, I find that Time Limousine has not proved that First Data is responsible for issuing the chargebacks. Therefore, Time Limousine has not proved that First Data was responsible for the non-reversal of the chargebacks and First Data does not have to pay Time Limousine the amount Visa declined to pay.
22. Under section 49 of the CRTA and 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. As Time Limousine was not successful it is not entitled to reimbursement of its tribunal fees. There was no claim for expenses.

ORDER

23. I dismiss Time Limousine's claims and this dispute.

Kathleen Mell, Tribunal Member