



Civil Resolution Tribunal

Date of Original Decision: July 31, 2020

Date of Amended Decision: September 9, 2020

File: SC-2019-008622

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kan v. BNW Travel Management Ltd.*, 2020 BCCRT 860

B E T W E E N :

MEI TIP EVA KAN and YING JUN LEI

APPLICANTS

A N D :

BNW TRAVEL MANAGEMENT LTD. and DANIEL ALLEN BURNS

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid loan. The applicants, Mei Tip Eva Kan and Ying Jun Lei, seek repayment of \$5,000 from the respondents, BNW Travel Management Ltd. (BNW) and Daniel Allen Burns.

2. The respondents say this claim should be dismissed. Mr. Burns denies that he is a proper party to this dispute. BNW says the applicants have not proven their claim. It says the loan was made by a credit card, and the applicants have failed to provide the credit card statements necessary to support their claim.
3. Ms. Kan represents the applicants. Mr. Burns represents the respondents. Mr. Burns only submitted a Dispute Response for himself, but I find nothing turn on this. He provided evidence and separate submissions for both himself and BNW.

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. Both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

The March 5, 2020 Preliminary Decision

8. On March 5, 2020 a CRT member decided in a preliminary decision that the CRT has jurisdiction over this dispute. The CRT member held that the the applicants' claim was within the CRT's \$5,000 monetary limit for small claims. This was because the applicants had abandoned any amounts that exceeds this limit. I agree with this decision as the applicants have not changed their position on this matter.
9. The CRT member also disagreed with the respondents' argument that the applicants were "litigating in slices". The applicants say they loaned Mr. Burns \$57,000 and each party says it may have claims over this amount. The CRT member held that matter was separate from the issues in this dispute because, according to the applicants, it was about a personal loan to Mr. Burns for an unrelated investment opportunity. The CRT member also based his decision on the fact that the applicants had not commenced any other proceeding about the \$57,000 loan. I agree with the CRT member's decision on this issue as well. None of the evidence or submissions before me changed any of the facts relied upon by the CRT member in reaching his decision. I have also decided that Mr. Burns is not a proper party to this dispute, which supports this decision. My reasons are set out below.
10. In summary, I find the CRT has jurisdiction over this dispute.

ISSUES

11. The issues are as follows:
 - a. Is Mr. Burns a proper party to this dispute?
 - b. Must any of the respondents pay the applicants \$5,000 for an unpaid loan?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to them to the extent necessary to explain my decision.
13. As discussed below, I find that Mr. Burns is not a proper party to this dispute, so I dismiss all claims against him. I find that BNW must pay the applicants \$5,000 in debt for the loan. My reasons follow.
14. The background facts are undisputed. BNW is a travel agency. Mr. Burns is its controlling shareholder and principal. BNW previously employed Ms. Kan as BNW's controller until she retired on July 16, 2018.
15. Prior to her retirement, a BNW travel agent purchased a flight pass for one of its clients for \$12,705 on June 26, 2018. At the time BNW did not have enough credit to purchase the flight pass itself. Ms. Kan paid for the flight pass using a Royal Bank Visa card. Credit card statements show the payment for the flight pass and that Ms. Kan and Mr. Lei are joint cardholders for the card used.ⁱ
16. BNW's client paid BNW for the entire cost of the flight pass on July 12, 2018. That same date, BNW paid \$4,705 directly to the applicants' Royal Bank Visa card.
17. On August 8 and August 28, 2019, Ms. Kan emailed BNW's employees about repayment of \$8,000 still owing for the flight pass purchase. Both Ms. Kan and Mr. Lei sent letters to BNW dated August 28 and September 16, 2019. There is no indication that BNW or Mr. Burns responded to any of the applicants' correspondence.

Issue #1. Is Mr. Burns a proper party to this dispute?

18. 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, for example, *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121.

19. It is undisputed Mr. Burns is BNW's shareholder and principal. The applicants say both BNW and Mr. Burns employed Ms. Kan but I disagree. They are separate legal entities. There is nothing to suggest that Mr. Burns directly employed Ms. Kan or that he otherwise acted in his personal capacity in this dispute.
20. The applicants' evidence and submissions also support the conclusion that they loaned money to BNW to purchase the flight pass. The undisputed facts show Mr. Burns had no direct involvement with the loan, nor did the applicants provide any loan funds to him. I find that Mr. Burns did not commit a wrongful act independent from that of BNW in this dispute.
21. For all those reasons, I dismiss all claims against Mr. Burns in his personal capacity.

Issue #2. Must any of the respondents pay the applicants \$5,000?

22. I find the evidence supports the conclusion that the applicants loaned BNW \$12,705 and BNW agreed to repay this amount within a reasonable time period.
23. Although the parties did reduce the loan agreement to writing, parties' conduct may be used to assess objectively what they agreed to. See *Shaw Production Way Holdings Inc. v. Sunvault Energy, Inc.*, 2018 BCSC 926 at paragraph 144.
24. It is undisputed that from April 2018 onwards, BNW's credit facilities were stretched. An April 23, 2018 email from a BNW employee shows that BNW asked to use Mr. Lei's "amex or visa" card. Ms. Kan then used their jointly held card to loan money to BNW. Based on the email, I find that BNW understood that it was obtaining the loan from both Ms. Kan and Mr. Lei.
25. BNW's internal "payment book" notes that BNW paid \$4,705 to the applicants' Royal Bank Visa card on July 12, 2018. The payment book entry says the transaction was a "partial payment" for the flight pass. I find this conduct shows that BNW agreed to repay the funds within a reasonable time period, though it failed to repay the loan in full.

26. Given the above, I am satisfied that the applicants have proven their claim against BNW. They have established that they entered into a loan agreement and provided the funds to BNW. BNW's own records show it only partially repaid these funds.
27. BNW's main submission is that the applicants failed to provide underlying credit card statements to prove their claim. It says that from May 4, 2018 to July 13, 2018, Ms. Kan made various payments from the company account to various credit cards held by herself, Mr. Lei, or both jointly. BNW summarized the transactions in a chart. It says that Ms. Kan may have wrongfully diverted funds from BNW to pay her own personal expenses. BNW says it has no way of knowing if these payments were legitimate without the credit card statements to show what each payment was for.
28. Ms. Kan did not deny the accuracy of the summary chart but in lengthy submissions she described what each payment was for. Generally, Ms. Kan says she used the personal credit cards to pay for BNW's various business expenses. These included office supplies and client flight tickets. She says BNW then repaid all money she loaned to it, save for the amount in this dispute.
29. I find BNW's allegations of wrongdoing by Ms. Kan to be speculative. BNW made no effort to provide any of its own underlying records for the listed transactions. I find it likely that these records would be available to BNW. This is because the applicants were able to provide BNW's credit union statement and the payment book entry for the flight pass. Ms. Kan also says that when she made purchases and was reimbursed by BNW, Ms. Kan submitted reports with attached receipts for BNW's accounting records. BNW did not explain why it could not produce these records.
30. BNW also said it was conducting its own audit, which would be completed by November 5, 2019. BNW did not provide the results of the audit. I found BNW equivocal as to whether Ms. Kan actually engaged in any wrongdoing.

31. In summary, I find BNW must pay the applicants \$5,000 in debt. The *Court Order Interest Act* (COIA) applies to the CRT. Interest under the COIA is excluded from the CRT's monetary limit, as are CRT fees and dispute-related expenses. The applicants are entitled to pre-judgment interest on the debt award from June 26, 2018 (the date of the loan) to the date of this decision. This equals \$185.39.
32. 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. I find the applicants are the substantially successful party as they proved their claim in full against BNW. I find they are entitled to reimbursement of \$175 in CRT fees.
33. The applicants also claimed \$112 in legal fees as a dispute-related expense. CRT rule 9.5 says that reimbursement for legal fees is only awarded in extraordinary cases. I see no reason to depart from that practice here. I found nothing extraordinary about the circumstances of this dispute and I therefore do not award legal fees or any other dispute-related expenses to any party.

ORDERS

34. Within 14 days of the date of this order, I order BNW to pay the applicants a total of \$5,360.39, broken down as follows:
 - a. \$5,000.00 in debt,
 - b. \$185.39 in pre-judgment interest under the COIA, and
 - c. \$175.00 in CRT fees.
35. The applicant are entitled to post-judgment interest, as applicable.
36. I dismiss all claims against Mr. Burns.

37. 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.
38. 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.

David Jiang, Tribunal Member

Amendment Notes

ⁱ I have amended paragraph 15 to correct a typographical error at a party's request. I have made this amendment under the authority of section 64 of the *Civil Resolution Tribunal Act*.