



Civil Resolution Tribunal

Date Issued: September 18, 2020

File: SC-2020-002486

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stothert v. Stothert*, 2020 BCCRT 1061

BETWEEN:

WYN STOTHERT

APPLICANT

AND:

DALE STOTHERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The parties are brothers. The applicant, Wyn Stothert (Wyn) says he paid for hotel rooms and other trip-related expenses for the respondent, Dale Sothert (Dale) during a May to June 2019 European family vacation. Wyn says Dale agreed to repay Wyn when the family returned to Canada but has failed to do so. Wyn claims \$3,259 for Dale's share of the trip expenses.

2. Dale denies any agreement to repay Wyn any trip expenses. Dale says Wyn offered to pay for Dale's share of the expenses, so that Dale could go on the trip.
3. As both parties have the same last name I will refer to each of them by their first names, meaning no disrespect. Both parties are self-represented.

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. 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. Most of the argument in this dispute amounts to a "he said, he 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.
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 tribunal considers appropriate.

8. As a preliminary issue, Dale submitted the parties' text messages as evidence after the deadline for submitting evidence had passed. Wyn was given the opportunity to review the late evidence and respond to it. Under the CRTA and the tribunal's rules, I have discretion to accept evidence I consider relevant. As I find the parties' text messages relevant to this dispute, and as I find Wyn was not prejudiced by the late evidence, I allow the late evidence and consider it in my reasons below.

ISSUE

9. The issue in this dispute is whether Dale must repay Wyn trip-related expenses and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicant, Wyn, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. The parties went on a several week family vacation in Europe in May 2019, along with other family members including Wyn's wife and son. Wyn and his wife booked the trip and paid for airfares, hotel rooms, car rental and car rental insurance. None of this is disputed.
12. Wyn claims \$3,381.10 for hotel room costs, \$1,744.90 for a combination of airfares, seat upgrades, car rental and insurance costs, less the amount Dale already paid Wyn, prior to the 2019 trip.
13. Wyn says that Dale agreed to pay Wyn back for his share of the hotel room and other trip expenses when the parties returned to Canada. Dale disagrees. He says Wyn told Dale he could share a room with Wyn's son and not have to pay as Wyn had to pay for the room in any event. Essentially, Dale argues Wyn gifted him the cost of hotel rooms for the 2019 trip.

14. As discussed in *Lundy v. Lundy*, 2010 BCSC 1004 at paragraph 20, in order for a gift to be established, there must be an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of gift was inconsistent with any other intention or purpose. The burden of proof is on the person alleging the existence of a gift (see *Pecore v. Pecore*, 2017 SCC 17). In other words, Dale must show that Wyn intended to gift Dale the hotel rooms and other trip expenses.
15. Wyn says he trusted Dale would repay him for the 2019 expenses because he had repaid Wyn for previous 2017 trip expenses. Dale agrees he paid Wyn back for trip expenses related to a previous family vacation in 2017. The parties' prior agreement about repayment of trip expenses weighs against a finding that the 2019 trip expenses were a gift. However, it is not determinative of the matter.
16. Wyn submitted a June 6, 2020 letter from another family member (J), who wrote that "it was expected" that Dale would honour his agreement to pay for the rooms he stayed in during the 2019 trip, when he returned to Canada. J does not say why he expected this. Without knowing how or why J expected Dale to pay Wyn back, I find his letter unhelpful in resolving this dispute.
17. It is undisputed that Dale paid Wyn money toward both airfare and hotel costs, before the trip occurred. Based on the parties' submissions, I find that was somewhere between \$1,620 and \$1,650. Although neither party identifies when Dale paid Wyn the money, I find it was sometime before February 25, 2019, based on text messages submitted by Dale.
18. The parties' pre-February 25, 2019 text messages show that Dale told Wyn he could not afford the trip any longer and asked for a refund of the money he already paid Wyn. In his submissions Dale says Wyn made the trip longer and more varied than initially planned. Dale explains that he initially planned to stay in one location, at a residence he partly owns, to save some money. Based on the itinerary and hotel bookings provided by Wyn, Wyn booked 9 different locations over 4 weeks, at a cost

of several thousand dollars. I accept Dale's explanation that the trip became longer and more varied than he initially planned.

19. It is undisputed that Wyn did not return any money to Dale and that Dale did go on the trip. The parties agree that a third-party family member paid for Dale's return airfare. Dale says Wyn told him that he could share hotel rooms with Wyn's son, at no cost to Dale, because Wyn was paying for the rooms for his son in any event. It is undisputed that Dale shared rooms with Wyn's son during the 2019 trip.
20. Dale submitted an undated text message from Wyn stating that Dale was "totally covered". The text message refers to flight details and not hotel rooms, so I am not persuaded that it documents Wyn's intention to pay for Dale's hotel rooms. However, in other text messages, Wyn writes that he and his family will not go on the 2019 trip if Dale does not. In early May 2019 Wyn texts that he is glad Dale is going and that Dale was a big part of the trip plan. I find these texts support Dale's version of events, that Wyn offered for Dale to share hotel rooms with Wyn's son, at no cost to Dale, so that Dale could afford to go on the 2019 trip.
21. It is undisputed that the parties' relationship broke down during the trip and they have not spoken since returning to Canada at the end of June 2019. It is also undisputed that Wyn did not ask Dale to repay the trip expenses until Wyn's April 3, 2020 demand letter to Dale. I find that Wyn's delay of 10 months in asking for repayment is inconsistent with his alleged expectation that Dale would repay the trip expenses upon returning to Canada.
22. On balance, I find it more likely that Wyn agreed to pay for Dale's shared hotel rooms so that Dale could go on the 2019 trip with Wyn. Although Wyn says Dale agreed to pay for "his share" of other trip expenses, there is no evidence supporting any agreement to share the car rental and car insurance expenses Wyn claims in this dispute. There is no evidence showing that Dale used the car or was insured to drive it. I find Dale is not responsible for paying any share of those trip expenses.

23. I also find that Dale has already repaid his airfare costs originally paid by Wyn. Based on the airfare receipts submitted by Wyn, he paid less than \$1,620 for Dale's flights and related seat selections. So, I find Dale owes Wyn no money for airfare.

24. I dismiss Wyn's claim for hotel room costs and additional travel costs.

25. As Wyn was unsuccessful in his claims I find he is not entitled to reimbursement of CRT fees or dispute-related expenses under the CRT rules.

ORDER

26. I dismiss Wyn's claims and this dispute.

Sherelle Goodwin, Tribunal Member