



Civil Resolution Tribunal

Date Issued: January 14, 2021

File: SC-2020-006787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Masteel America Corp. v. Anderson*, 2021 BCCRT 44

BETWEEN:

MASTEEL AMERICA CORP.

APPLICANT

AND:

CAROL ANDERSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the return of money and reimbursement for a laptop computer. The applicant, Masteel America Corp. (Masteel), says that it used to employ the respondent, Carol Anderson. Masteel says that while Ms. Anderson was its employee, she issued herself 5 Masteel cheques without permission and cashed

them. Masteel also says that Ms. Anderson took a Masteel laptop computer without permission. Masteel claims \$900 for the cheque payments, and \$520.79 for the laptop. Ms. Anderson did not address Masteel's claims in her Dispute Response, after which she stopped communicating with the Civil Resolution Tribunal (CRT).

2. Masteel is represented by an authorized employee in this dispute. Ms. Anderson is self-represented.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
5. Section 42 of the CRTA says 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.

Ms. Anderson's participation

7. Ms. Anderson provided no evidence or arguments in this dispute, despite several attempts by CRT staff to contact her by telephone and email. However, Ms. Anderson received and responded to the CRT Dispute Notice, and did not say she was abandoning the dispute resolution process. So, I find that she likely received the CRT's communications and knew that she had an opportunity to provide evidence and arguments.
8. I note that in her Dispute Response, Ms. Anderson did not address Masteel's claims, and said that she could not "find the Claim Description referred to". However, I find that Ms. Anderson had already received a description of the claims against her in the Dispute Notice that she was responding to. Further, I note that the CRT's Dispute Response process includes step-by-step instructions for responding, as well as claim descriptions. There is no evidence Ms. Anderson took any steps to contact the CRT for assistance, or to respond to the CRT's several contact attempts, despite being given the CRT's email address and telephone number. On balance, I find that Ms. Anderson has chosen to proceed with this dispute without providing evidence or arguments.
9. So, I find that all of the evidence and submissions the parties wished to provide are before me, and that I may decide this dispute based on them.

ISSUES

10. This issues in this dispute are:
 - a. Whether Ms. Anderson took \$900 from Masteel without permission and must reimburse that amount, or another amount.
 - b. Whether Ms. Anderson failed to return a laptop computer to Masteel and owes \$520.79 for it, or another amount.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Masteel must prove its claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Does Ms. Anderson owe Masteel \$900 for cheques she issued and cashed?

12. Masteel says that Ms. Anderson worked for Masteel as an Accounts Payable bookkeeper from June 13, 2019 until about July 12, 2019. Masteel says that shortly after Ms. Anderson left, they discovered that she had written herself 5 Masteel cheques totalling \$900. Masteel says the cheques were issued without Masteel's knowledge or authorized signatures. Masteel says that its bank "cashed and cleared" the cheques anyway, even though some were unsigned, and the others did not bear authorized signatures.

13. Masteel provided bank statements showing images and posting dates for the 5 cheques. I infer from the evidence that the posting dates are the dates when the cheques were cashed. I find all the cheques were Masteel cheques made out to Carol Anderson, were dated July 4, 2019 or later, and were for the same Masteel bank account. The 5 cheques were all posted between July 5, 2019 and July 15, 2019, and together they total \$900. 2 of the cheques were unsigned, and the signatures on the other cheques are not legible.

14. As noted, Ms. Anderson chose to provide no evidence or arguments in this dispute. She does not explain who issued the cheques, what they were for, and who cashed them. So, I find that Ms. Anderson does not deny that she wrote the cheques to herself and cashed them.

15. Given Masteel's undisputed submissions and the bank statement evidence, I find that Ms. Anderson issued herself the 5 cheques without authorization and without being entitled to that money. I also find it likely that Ms. Anderson cashed the cheques and took possession of the money herself. I find the bank statements show that the

cashed cheques total \$900. So, I find that Ms. Anderson owes Masteel \$900 for these unauthorized cheque payments, and I allow Masteel's claim for that amount.

Did Ms. Anderson take, and fail to return, a laptop computer?

16. Masteel says that after Ms. Anderson left her job, Masteel discovered that its newly purchased laptop computer was gone. Masteel says that Ms. Anderson said she was "interested in" the laptop. Masteel alleges that Ms. Anderson stole the laptop, which Masteel values at \$520.79.
17. However, Masteel provided no further information or evidence about the alleged theft or the missing laptop. Masteel does not say whether anyone saw Ms. Anderson take the laptop. Masteel does not further explain how it determined that Ms. Anderson took the laptop, or whether it ruled out other explanations for the missing laptop. Further, Masteel does not say exactly when the laptop was allegedly stolen, only that Masteel discovered it was missing sometime after Ms. Anderson's departure.
18. I also find that Masteel has provided no description of the laptop, and no documentary evidence showing that it owned a laptop or supporting its claimed value. In particular, there are no receipts, account statements, witness statements, or any other laptop-related documents in evidence.
19. I considered whether I should draw an adverse inference against Ms. Anderson, because she failed to provide supporting evidence or arguments contradicting Masteel's laptop claim. The courts have said that an adverse inference may be drawn against a party where that party fails to produce evidence or call a witness expected to provide supporting evidence, without sufficient explanation. However, the courts have also said that an adverse inference should only be drawn after the party bearing the burden of proof establishes a "*prima facie*" case, meaning a case that appears on its face to have merit.
20. Having reviewed Masteel's evidence, I find that Masteel has failed to establish a *prima facie* case that Ms. Anderson took Masteel's laptop. As noted, there is no reliable evidence before me showing that Masteel owned a laptop, or that the laptop

was stolen by anyone. I find Masteel's argument, that Ms. Anderson seemed interested in the laptop and that it was found to be missing sometime after her departure, are insufficient to establish a *prima facie* case that she took the laptop. Further, I find that Ms. Anderson issuing herself Masteel cheques without permission is not proof that she took Masteel's laptop. So, I decline to draw an adverse inference against Ms. Anderson.

21. On the evidence before me, I find Masteel has not met its burden of proving that it owned a laptop, or that Ms. Anderson took it without permission. Even if I had found that Ms. Anderson was required to reimburse Masteel for the laptop, I find that Masteel has failed to prove its value. I dismiss Masteel's claim of \$520.79 for the laptop's value.

CRT FEES, EXPENSES, AND INTEREST

22. 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. Masteel was successful in its claim for the \$900 in cheques, and had to file a CRT application to get that money back. So, I find Ms. Anderson must reimburse Masteel the \$125 it paid in CRT fees. Ms. Anderson paid no CRT fees, and neither party claimed CRT dispute-related expenses, so I order no other reimbursement.
23. Masteel did not claim interest on the \$900 owed by Ms. Anderson. However, I find Masteel is entitled to pre-judgment interest under the *Court Order Interest Act*. I find this interest is calculated from July 15, 2019, the date the last cheque was cashed, to the date of this decision. This equals \$19.12.

ORDERS

24. Within 30 days of the date of this order, I order Ms. Anderson to pay Masteel a total of \$1,044.12, broken down as follows:

- a. \$900 in debt for unauthorized cheque payments,
- b. \$19.12 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

25. Masteel is entitled to post-judgment interest, as applicable.

26. I dismiss Masteel's remaining claims.

27. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

28. 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