



Civil Resolution Tribunal

Date Issued: February 23, 2021

File: SC-2020-005497

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barger v. Sunwing Vacations Inc./Vacances Sunwing Inc.*,
2021 BCCRT 212

B E T W E E N :

SUMMER BARGER

APPLICANT

A N D :

SUNWING VACATIONS INC./VACANCES SUNWING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a vacation that was cancelled due to the COVID-19 pandemic.

2. The applicant, Summer Barger, bought an all-inclusive vacation ticket from the respondent, Sunwing Vacations Inc./Vacances Sunwing Inc. (Sunwing), so she could attend her friend's destination wedding. The wedding was cancelled on March 16, 2020, due to the pandemic. Sunwing was willing to provide Ms. Barger with a voucher in the amount of her ticket, but Ms. Barger wanted a cash refund. Ms. Barger sought \$2,095 in this dispute.
3. After the case management phase for this dispute was complete, Ms. Barger requested that her main claim for a refund be withdrawn and that only her claim for reimbursement of her Civil Resolution Tribunal (CRT) fees and dispute-related expenses proceed.
4. Sunwing does not object to the withdrawal of Ms. Barger's refund claim, but it is opposed to reimbursing Ms. Barger's fees and expenses.
5. Ms. Barger is self-represented. Sunwing is represented by an employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.

8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Should Ms. Barger's request to withdraw her main claim for a refund be permitted?
 - b. Should Sunwing reimburse Ms. Barger \$125 in CRT fees and \$11.36 in dispute related expenses?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Barger must prove her claims on a balance of probabilities. I have read all of the parties' evidence and submissions, but I address them only to the extent necessary to explain my decision.
12. As noted, Ms. Barger seeks to withdraw her main claim for a refund and proceed only with her claim for reimbursement of CRT fees and dispute-related expenses.
13. Under CRT rule 6.1, a party can ask the tribunal member for permission to withdraw one or more of its claims after the dispute has been assigned to a tribunal member for adjudication. Here, Ms. Barger sent the CRT an email after the case management

phase had ended, advising that her credit card company had reimbursed her the claimed \$2,095 for Sunwing's undelivered services, so she wants to "remove" that claim. I find that because the case management phase for this dispute had ended, Ms. Barger's request to withdraw one of her claims was directed to the assigned tribunal member under CRT rule 6.1.

14. In *Grand-Clement v. The Owners, Strata Plan KAS2467*, the CRT Chair decided that an applicant's request for withdrawal should generally be granted unless the respondent is significantly prejudiced. Although this decision is not binding on my decision in this matter, I find the reasoning in *Grand-Clement* to be persuasive and I follow it here.
15. Once this dispute was assigned to me for adjudication, I asked CRT staff to request Sunwing's submissions about Ms. Barger's request to withdraw her refund claim and, specifically, whether it would suffer any prejudice if it was withdrawn. Sunwing says it does not object to Ms. Barger withdrawing her main claim for a refund, and it did not say it would suffer any prejudice by its withdrawal. Therefore, I permit Ms. Barger's request to withdraw her refund claim.
16. So, the only remaining claim before me is Ms. Barger's claim for reimbursement of her CRT fees and dispute-related expenses.
17. Sunwing says if Ms. Barger had waited for her refund request from her credit card company to be determined before she started a CRT dispute, she would not have incurred any CRT fees or related expenses. Ms. Barger says that she did not initiate her credit card refund request until after she filed her application with the CRT for dispute resolution. She argues that her CRT fees and expenses were generated directly as a result of Sunwing refusing to refund her money.
18. 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 note that I do not have any evidence before me about Ms. Barger's credit card refund request, including the timing or relevance of this dispute

to her request. Given Ms. Barger's substantive claim has been withdrawn, I find she has been unsuccessful in this dispute. So, I dismiss Ms. Barger's claim for CRT fees and dispute-related expenses.

ORDERS

19. I permit Ms. Barger's request to withdraw her refund claim.

20. I dismiss Ms. Barger's claim for reimbursement of CRT fees and dispute-related expenses.

Kristin Gardner, Tribunal Member