



Civil Resolution Tribunal

Date Issued: March 12, 2021

File: SC-2020-008415

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reynolds v. A Thinking Ape Entertainment Ltd.*, 2021 BCCRT 281

BETWEEN:

COURTNEY REYNOLDS

APPLICANT

AND:

A THINKING APE ENTERTAINMENT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about access to an online computer game. The respondent, A Thinking Ape Entertainment Ltd. (ATA), operates a multiplayer online computer game known as Kingdoms At War (KAW). The applicant, Courtney Reynolds, played the game

through an account named “belle”. She says ATA wrongfully banned her from accessing the game through this account. Ms. Reynolds claims \$597.66 for the amount she spent on various virtual items or objects for the KAW game’s belle account, because she can no longer access them. She also claims \$240 for the alleged value of KAW virtual objects obtained in the course of playing the game, \$800 for KAW virtual objects received as gifts from friends while playing the game, and \$3,362.34 for pain, suffering, loss of friends and community, and the value of her time. These claims total exactly \$5,000.

2. ATA says it has deactivated Ms. Reynolds’ KAW accounts several times over a period of years for violating its Terms Of Use (TOU) agreement. ATA says that the TOU entitled it to deactivate the belle account, and that under the TOU all KAW features are ATA’s non-refundable property. ATA also says KAW sales and refunds are processed exclusively through a third party retailer, not ATA. ATA says it owes Ms. Reynolds nothing.
3. Ms. Reynolds is self-represented in this dispute. ATA is represented by an authorized employee or principal.

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). 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.
5. 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. Although the parties’ submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written

evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. 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.
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.
8. Ms. Reynolds submitted some evidence after the deadline. ATA said the evidence was not relevant, so it felt no need to comment on it. I find ATA was not prejudiced by the late evidence, so I allow it.
9. Although Ms. Reynolds did not directly claim the following relief, I note that she said she would "like to be unbanned", and would like ATA to promise to stop wrongfully banning KAW accounts. Requests like these, for a party to do or stop doing something, are known as injunctive relief. The CRT does not have jurisdiction to make such orders except in the narrow circumstances allowed under CRTA section 118(1), which I find are not applicable here. I deny Ms. Reynold's requests for injunctive relief.
10. The parties do not dispute that the CRT should hear this dispute. Ms. Reynolds applied to the CRT for dispute resolution, but resides in the United States. ATA's offices are in British Columbia. Given this, the Canada-specific TOU language mentioned below, and the lack of contrary evidence, I find that ATA likely operates KAW in BC and is a BC company. In light of the dispute's connection to BC, I find that the CRT has jurisdiction to hear it.

11. I considered whether BC law applies to this dispute, given that Ms. Reynolds lives in the United States and cited caselaw from non-Canadian jurisdictions. I find this is essentially a contract dispute about the TOU agreement. In *Imperial Life Assurance Co. of Canada v. Segundo Casteleiro Y Colmenares*, 1967 CanLII 7 (SCC), [1967] SCR 443 at page 448, the Supreme Court of Canada said that the proper law of a contract is the law that has the closest and most substantial connection to the contract, in light of the surrounding circumstances. The TOU before me do not say what law applies, so the proper law must be inferred from the circumstances at the time the parties agreed to the TOU (see *Budget Rent A Car System, Inc. v Philadelphia Indemnity Insurance Company*, 2018 BCSC 1564 at paragraph 26). In *Colmenares*, the court indicated that circumstances to consider include the parties' location, the character of a corporation and where its principal place of business and head office are situated, where the contract was made and performed, whether the contract's style is appropriate to one system of law and not another, and any other relevant factors.
12. As noted, I find that ATA's principal place of business and head office are in BC, and KAW is provided to players from BC. I find the TOU were agreed to online between a BC company and a United States resident. I find that Ms. Reynolds played KAW by connecting to ATA's systems over the internet, so on balance I find it more likely than not that the contract was primarily performed in BC. I also note that a fragment of the TOU in evidence refers to "federal, provincial and local taxes relating to or arising from your purchase", and I find that "provincial" refers to Canadian provinces and not United States areas. Having weighed these factors and the surrounding circumstances, I find that BC law has the closest and most substantial connection to the TOU, and is the proper law here.

ISSUE

13. Whether ATA was entitled to deactivate Ms. Reynolds' KAW belle account, and if not, is she entitled to damages totalling \$5,000 or another amount?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant Ms. Reynolds must prove her 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.
15. The undisputed evidence is that the KAW game features a type of virtual “world” that is accessed exclusively through player accounts administered by ATA. Within the game, a player’s account can receive virtual objects, depending on how play unfolds. A player can also purchase KAW virtual currency through third party retailers, that is assigned to their account. This virtual currency can be exchanged with virtual entities within the KAW game world for virtual objects.
16. Ms. Reynolds played KAW through the belle account at issue here, as well as 1 or more other accounts. I find there is no evidence before me showing that players must pay for the KAW game itself, or that Ms. Reynolds paid any amount to play KAW through the belle account. Ms. Reynolds says she spent time curating her KAW game experience as she saw fit, including by purchasing virtual currency and virtual objects. She says she also obtained virtual objects for free through her gameplay, and by receiving them as virtual “gifts” from other KAW players.
17. ATA says it deactivated the belle account for prohibited account sharing and transfer under the TOU. As noted, Ms. Reynolds says that ATA wrongfully deactivated the account, and that she has lost access to her virtual objects and has suffered because she can no longer interact with other players within the KAW virtual environment. Specifically, she says that ATA was not allowed to deactivate her account under the TOU applicable to the account.
18. What did the parties agree to about Ms. Reynolds’ belle account? ATA provided excerpts from the TOU as evidence and in its submissions. Ms. Reynolds suggested that ATA had hidden the TOU from her, and that the TOU’s wording was “shady” and amounted to unfair business practices. I find Ms. Reynolds has not proven that the

TOU were difficult to access or were misleading. Ms. Reynolds also says that TOU-type agreements should not be enforced against regular users, citing a decision from a United States court, *Davidson & Associates, Inc. v. Internet Gateway*, 334 F.Supp.2d 1164 (E.D. Mo. 2004). I note that *Davidson* found such an agreement was enforceable against users. In any event, that foreign decision is not applicable here because I found above that the TOU are governed by BC law. I am not aware of any applicable law or rule that says software terms of use are generally unenforceable against “regular users”.

19. Despite her complaints about the TOU, I find that Ms. Reynolds does not deny that the submitted TOU excerpts were accurate, or that they applied to her use of the KAW belle account. Ms. Reynolds suggests that KAW is unique and she was forced to accept the TOU to play the game, so she had no option but to accept. I find there is no evidence showing that she needed to play KAW, as opposed to not playing it or playing a different game under different terms. Further, I find Ms. Reynolds relies on the submitted TOU, arguing that the TOU did not allow ATA to deactivate her account as it did, so ATA breached that contract. On balance, I find the TOU excerpts submitted by ATA are accurate, and that the parties are bound by them.
20. First, I note that the TOU say that ATA is not liable for any “special, indirect or consequential damages, or any damages whatsoever resulting from loss of use, data or profits, whether in an action of contract, negligence or other torturous action, arising out of or in connection with the use of Kingdoms at War or information available from Kingdoms at War” (quote reproduced as written). On balance, I find that Ms. Reynolds’ claims are for loss of use of virtual items, and stress and other alleged suffering, that she says resulted from her being denied access to the belle account. I find that all the claimed damages are indirect, consequential, or result from loss of use. So, I find that under the TOU, ATA is not liable for the claimed damages.
21. I also find that the TOU permitted ATA to deactivate Ms. Reynolds’ belle account. The TOU say ATA has the right to “silence or ban players” from KAW for any reason at any time if ATA feels the player is detrimental to the overall quality of the experience

and health of “our community.” The TOU also say that ATA may suspend, terminate, or delete accounts at any time for any reason, or for no reason, with or without notice to the player. Further, the TOU say that if suspended or terminated accounts will not be reactivated for any reason.

22. Ms. Reynolds’s interpretation of the TOU is that ATA may not permanently ban an account. She says ATA may only deactivate KAW accounts temporarily to prevent possible further damage to their systems or KAW, and ATA should reinstate accounts that were not causing problems. I find such an interpretation is not supported on a plain reading of the TOU as summarized above. Further, whether ATA has reactivated other players’ accounts, as Ms. Reynolds asserts with limited evidence, does not determine whether ATA must do so for the belle account. Rather, the TOU govern, and ATA is not obliged to reactivate the belle account.
23. Ms. Reynolds also says ATA deactivated her account by mistake, because she transferred her KAW app to a new mobile device, making it appear like she was engaging in account sharing prohibited under the TOU. ATA says there was no mistake, and as noted, it deactivated the account for prohibited account sharing and transfer under the TOU. The TOU say that players may not purchase, sell, gift, or trade any account, or offer to do so, and that any such attempts are ineffective and may result in the account’s forfeiture. Further, the TOU say that a player may not create or use accounts under false pretences, or create accounts by providing false information or using devices that the user does not own.
24. ATA provided evidence showing that the belle account was linked to an IP address and email address that were also used by a KAW account previously deactivated for violating the TOU. ATA says Ms. Reynolds has played KAW through several accounts for years, and has had past accounts deactivated for violating the TOU. Ms. Reynolds does not address these allegations in her submissions, and on balance, I accept them as true. So, I find that Ms. Reynolds knew, or should have known, that deactivation of the belle account was also possible under the TOU.

25. Overall, I find that ATA may suspend, terminate, or delete KAW accounts for any reason under the TOU. So, I find that ATA was entitled to deactivate the belle account.
26. Taken together with my finding that Ms. Reynolds cannot recover indirect, consequential, or loss of use damages from ATA, I find that Ms. Reynolds is not entitled to damages for pain and suffering, loss of friends and community, or her time spent playing KAW, resulting from the belle account deactivation. I note that even if Ms. Reynolds was entitled to such damages, I would not have awarded the claimed \$3,362.34, because I find she has failed to prove the damages' value, through medical evidence or other evidence.
27. What about the virtual objects associated with Ms. Reynolds' account? In bold text, the TOU say that players do not own, or have any interest in, their KAW account. The TOU say that ATA owns all rights to KAW accounts, and that all purchases and redemptions of KAW virtual currency are final and non-refundable. The TOU also say players are only given a limited, personal licence to use virtual currency and virtual objects, which cannot be transferred or sub-licensed and may be revoked. I find this means that those virtual items are not sold outright as property, but only a limited permission to use them is sold, and that permission may be revoked.
28. Ms. Reynolds effectively says that she has "invested" in KAW virtual objects, and that she has property rights in them. She cites the decision of a United States court, *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007). Ms. Reynolds says that decision found that players in a virtual world style computer game retained intellectual property rights to certain virtual game elements the players developed. I find that decision is not binding under BC law. In any event, the game's terms of use in *Bragg* specifically granted players certain property rights to virtual items, which I find is not the case in this dispute. Ms. Reynolds also cited a decision from China which she says shows that virtual property rights have been recognized there. Again, I find that decision was about a different software licence in a different jurisdiction under different applicable laws, and is not binding here.

29. Having weighed the TOU and other evidence, I find that Ms. Reynolds only had ATA's permission to use certain virtual objects, and that ATA was entitled to revoke that permission, including as part of an account deactivation. I find the TOU did not require ATA to provide refunds or other compensation for purchased virtual objects upon account deactivation. On balance, I find Ms. Reynolds more likely than not purchased and obtained virtual objects for the belle account knowing that she would not retain an interest in those objects if her account was deactivated.
30. Overall, I find that Ms. Reynolds is not entitled to damages for the loss of KAW virtual objects, whether purchased from KAW's third party retailer, or obtained during gameplay, as gifts, or through other means.
31. I find Ms. Reynolds has not met her burden of proving that KAW wrongfully deactivated her belle account. I also find she is not entitled to any compensation for KAW virtual objects associated with that account, or for pain, suffering, loss of friends and community, and the value of her time. I dismiss Ms. Reynolds' claims.

CRT FEES AND EXPENSES

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. ATA was successful here, but paid no CRT fees. Ms. Reynolds was unsuccessful, so is not entitled to any CRT fee reimbursement. Neither party claimed CRT dispute-related expenses. I order no reimbursements.

ORDER

33. I dismiss Ms. Reynolds' claims, and this dispute.

Chad McCarthy, Tribunal Member