



Civil Resolution Tribunal

Date Issued: April 23, 2021

File: SC-2020-008944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malhotra v. Chandi*, 2021 BCCRT 422

BETWEEN:

NAVAL MALHOTRA

APPLICANT

AND:

JASWINDER SINGH CHANDI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the sale of a taxi.
2. The applicant, Naval Malhotra, says that he and a partner leased a taxi plate and bought a vehicle from the respondent, Jaswinder Singh Chandi, which they operated as a taxi. Mr. Malhotra says that when his partner ended his lease, Mr. Chandi bought

back the partner's half-share of the taxi. Mr. Malhotra says that he ended his lease about 1.5 months later, but Mr. Chandi did not buy out his share of the taxi. Mr. Malhotra says Mr. Chandi put the taxi up for sale and failed to tell him when it sold. Mr. Malhotra claims \$4,714 for his half-share of the taxi sale proceeds.

3. Mr. Chandi says that he paid Mr. Malhotra for his share of the taxi before he sold the taxi, and he does not owe Mr. Malhotra anything.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 at paragraphs 32 to 28, 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.

7. 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.
8. 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.
9. Mr. Malhotra filed late evidence with his final reply submissions, which consisted of 2 witness statements. One statement relates to Mr. Chandi's allegation that Mr. Malhotra and JJ did not fully pay for the taxi, and the other statement relates to the taxi's sale price when Mr. Chandi ultimately sold it in March 2020. While Mr. Chandi disputes the reliability of this late evidence, he does not object to it being admitted and he provided his submissions about it. Bearing in mind the CRT's mandate to be flexible, I have admitted the late evidence. However, given my findings below, I find that the late evidence was unnecessary, so have not placed any weight on it.

ISSUE

10. The issue in this dispute is whether Mr. Chandi still owes Mr. Malhotra for a half-share of the taxi?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Mr. Malhotra must prove his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. It is undisputed that in February 2018, Mr. Malhotra and a partner, JJ, entered into an agreement with Mr. Chandi to lease Mr. Chandi's taxi plate. At the same time, Mr.

Malhotra and JJ also purchased Mr. Chandi's 2016 hybrid vehicle, which was already set up as a taxi. It is undisputed that the taxi's agreed purchase price was \$19,000.

13. The parties agree that Mr. Malhotra and JJ drove the taxi and shared its expenses from February 2018 to September 2019. On September 30, 2019, JJ ended his lease of Mr. Chandi's taxi plate, and sold his half-share in the taxi back to Mr. Chandi for \$3,400.
14. It is also undisputed that Mr. Malhotra ended his lease of Mr. Chandi's taxi plate, as of November 15, 2019. Mr. Malhotra says Mr. Chandi never paid him for his share of the taxi. He says that Mr. Chandi later sold the taxi in March 2020 without telling him, so he says Mr. Chandi should pay him half of the sale proceeds. In contrast, Mr. Chandi says he paid Mr. Malhotra for his share of the taxi in November 2019 and denies that he owes Mr. Malhotra anything from the taxi's sale proceeds. More on the payment below.
15. I note that there are no written contracts or any other written documentation about any of the alleged transactions between Mr. Malhotra and Mr. Chandi. While verbal contracts are enforceable like written contracts, they are generally harder to prove.
16. Here, Mr. Malhotra and Mr. Chandi disagree about many of the facts and various terms of their agreements. For instance:
 - Mr. Malhotra says that he and JJ were each paying Mr. Chandi \$315 per month for the taxi plate lease, for a total of \$630 per month. Mr. Chandi says that Mr. Malhotra and JJ were each paying \$315 by cheque and a further \$315 in cash per month, for a total of \$1,260 per month.
 - Mr. Malhotra says that between October 1 and November 15, 2019, Mr. Chandi agreed to share the vehicle's repair and maintenance costs with him equally, but Mr. Chandi says he was not responsible for those costs because Mr. Malhotra and JJ misrepresented the vehicle's condition when he purchased JJ's share.

- Mr. Chandi alleges that he gave Mr. Malhotra \$2,075 in cash for half the repair and maintenance costs to help Mr. Malhotra financially, but that the cash was a loan and Mr. Malhotra must pay him back. Mr. Malhotra denies that he received any cash from Mr. Chandi or that he owes Mr. Chandi anything.
17. However, I find it is unnecessary to resolve each of these disputed facts because they are not determinative of the issue in this dispute.
 18. The main disagreement relevant to this dispute concerns a November 21, 2019 cheque for \$1,792 that Mr. Chandi paid to Mr. Malhotra. A copy of this cheque was filed in evidence.
 19. Mr. Chandi says the \$1,792 was the payout of Mr. Malhotra's half-share of the taxi. Mr. Chandi says that when he paid JJ \$3,400 for his share of the taxi, Mr. Malhotra was present and said he wanted to be paid the same amount (\$3,400) when he ended his lease. Mr. Chandi says he agreed to this proposal, less depreciation depending on how long Mr. Malhotra continued to drive the taxi.
 20. Mr. Chandi says that when Mr. Malhotra ended his lease on November 15, 2019, Mr. Chandi deducted \$1,260 for missed cash lease payments from August to November 2019 (\$315 per month), and an additional \$350 for depreciation, from the agreed \$3,400. Mr. Malhotra denies that he missed any lease payments, and Mr. Chandi provided no supporting evidence that Mr. Malhotra was behind in his payments. I infer from the parties' submissions that they did not discuss depreciation in advance and that Mr. Chandi unilaterally decided on the amount he deducted for depreciation. I also note that Mr. Chandi's stated deductions would equal a \$1,790 payment, and he does not explain why he paid what seems to be the very specific \$1,792.
 21. On the other hand, Mr. Malhotra argues that the \$1,792 was for Mr. Chandi's share of the taxi's repair and maintenance costs. The evidence shows that Mr. Malhotra paid \$4,147.95 for repairs and maintenance between October 1, 2019 and November 15, 2019. Mr. Malhotra says that Mr. Chandi owed him for half the repair costs, which equaled \$2,073.97. Mr. Malhotra says Mr. Chandi deducted \$281.97 for his adjusted

November taxi plate lease payment, from the \$2,073.97 Mr. Chandi owed for the repairs to arrive at the \$1,792 payment.

22. I note that Mr. Malhotra ended the lease exactly half-way through the month. Given he says his monthly lease payment was \$315, it is unclear why he says Mr. Chandi required him to pay well over half the month's lease. There is no evidence that the parties negotiated how much Mr. Malhotra should pay for the taxi plate lease for the partial month of November or how they arrived at what otherwise seems to be an arbitrary amount.
23. As noted, Mr. Malhotra bears the burden to prove his claim. I find he has failed to do so. My reasons follow.
24. I find that both parties' explanations for Mr. Chandi's \$1,792 payment are plausible, yet equally unsatisfactory to explain why he paid such a specific amount. Nevertheless, on balance, I find the \$1,792 payment was likely a payout for Mr. Malhotra's share of the taxi. I say this largely due to the timing of the payment. Mr. Chandi's November 21, 2019 cheque came less than one week after Mr. Malhotra ended his lease. If it was not meant to be a payout for Mr. Malhotra's half-share of the taxi, I would have expected Mr. Malhotra to have provided some evidence that he followed up with Mr. Chandi about the taxi payout, but there is none. Mr. Malhotra does not explain the terms of his agreement with Mr. Chandi about a payout, or when he expected to be paid for his share of the taxi after he ended the lease. Mr. Malhotra simply says he found out indirectly about the taxi's sale 4 months later and approached Mr. Chandi to get his "share of the sale".
25. I note that there is also no evidence before me about whether the parties transferred the taxi's legal ownership and registration with each transaction where they say their interest in the taxi was bought and sold. For instance, there were no transfer/tax forms or other documentation provided showing the taxi's ownership trail. Given that Mr. Malhotra's cooperation was not required for Mr. Chandi to sell the taxi, I infer that he was not named on the taxi's insurance and registration. Therefore, I find it is unclear on what legal basis Mr. Malhotra claims an interest in the taxi's ownership or its sale.

26. I find the evidence does not establish that there was any agreement about how much Mr. Chandi would pay Mr. Malhotra for his share of the taxi. I also find Mr. Malhotra has failed to prove that Mr. Chandi agreed to pay Mr. Malhotra half of the taxi's sale price. Given the timing of Mr. Chandi's \$1,792 payment to Mr. Malhotra, and the lack of any evidence that Mr. Malhotra demanded a payout for his share of the taxi after he ended his lease, I find it is more likely than not that Mr. Chandi's \$1,792 payment represented a payout for Mr. Malhotra's share of the taxi. I find Mr. Malhotra is not entitled to half of the taxi's sale proceeds. I dismiss Mr. Malhotra's claim.
27. I note Mr. Chandi submits that Mr. Malhotra still owes him \$2,000 because he paid only \$17,000 of the agreed \$19,000 when Mr. Malhotra initially bought the taxi. He also requests reimbursement of the \$2,075 cash loan he says he gave Mr. Malhotra for the taxi's repairs. However, Mr. Chandi did not file a counterclaim. I infer it is Mr. Chandi's position that this money Mr. Malhotra allegedly owes him should be set-off against any amount he might owe Mr. Malhotra. Since I have dismissed Mr. Malhotra's claim, there is no basis to consider a set-off. So, I decline to make any findings about these issues.
28. 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. As Mr. Malhotra was unsuccessful, I dismiss his claim for CRT fees and dispute-related expenses. Mr. Chandi did not pay and fees or claim any dispute-related expenses.

ORDERS

29. I dismiss Mr. Malhotra's claims and this dispute.

Kristin Gardner, Tribunal Member