



# Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-009705

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morrison v. Wizriber*, 2021 BCCRT 544

B E T W E E N :

BARBARA MORRISON

**APPLICANT**

A N D :

KEREN WIZRIBER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about craft market vendor fees. The applicant, Barbara Morrison, says she paid the respondent, Keren Wizriber, to participate as a vendor in 2 craft markets

scheduled for November 2020. Both markets were cancelled due to the COVID-19 pandemic. Mrs. Morrison claims a \$210 refund of her paid vendor fees.

2. Ms. Wizriber says she was the event organizer for the craft markets, but she had no contract with Mrs. Morrison. In any event, Ms. Wizriber says under the contract Mrs. Morrison had with a third party, the vendor fees are non-refundable. Ms. Wizriber denies that she owes Mrs. Morrison anything.
3. The parties are each 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). 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. 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.
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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Whether the parties' have a contract?
  - b. If so, is Mrs. Morrison entitled to a refund of \$210 in paid vendor fees?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Mrs. Morrison must prove her 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.
10. It is undisputed that Mrs. Morrison completed an online application form on April 6, 2020 to be a vendor at 2 separate Christmas craft markets scheduled for November 2020. The first market was scheduled for a single day and cost \$60 for a table, the other was a 2-day market and cost \$150. The form Mrs. Morrison completed was titled "Community Market Application/ Contract" (contract).
11. It is also undisputed that Ms. Wizriber sent Mrs. Morrison an April 6, 2020 email confirming that her application had been accepted and requesting the \$210 payment be e-transferred to Ms. Wizriber's email address. The evidence shows that Mrs. Morrison paid the \$210 by e-transfer, and that "Keren Wiz" accepted the payment. The evidence also shows that Ms. Wizriber was the contact person for any craft market vendor questions.
12. On October 27, 2020, Mrs. Morrison learned the craft markets were cancelled due to the COVID-19 pandemic. Mrs. Morrison emailed Ms. Wizriber the next day to request

a \$210 refund. Ms. Wizriber responded that all payments for cancelled events would be held as a credit for future events. Despite Mrs. Morrison's further requests, it is undisputed that she has not received a refund.

13. Ms. Wizriber says that she was not a party to the contract, and she did not personally receive the money Mrs. Morrison paid to be a vendor at the craft markets. Rather, Ms. Wizriber says that Mrs. Morrison contracted with the business "Community Market", and any claim Mrs. Morrison has should be made against Community Market.

14. I will first address whether Mrs. Morrison has a contract with Ms. Wizriber.

***Did the parties have a contract?***

15. The legal doctrine called "privity of contract" says that as a general rule, a contract cannot give rights or impose obligations on persons or entities who are not a party to the contract.

16. Mrs. Morrison did not explain where she obtained the contract or why Ms. Wizriber should be responsible for providing her with a refund. I infer that it is Mrs. Morrison's position that Ms. Wizriber should be responsible for any refund because Mrs. Morrison says she paid the vendor fees to Ms. Wizriber.

17. The contract does not make any reference to Ms. Wizriber by name, though it does include her email address for e-transfer payments to be made. As the contract was completed online, there are no signatures on it. The contract's last page included a paragraph that stated, in part: "I have Read the contract and completely Understand and Agree to the terms and Rules therein". The paragraph also stated: "I Shall indemnify and save Community Market and Owners, Organizers, from and against any and all loss...". Mrs. Morrison clicked the option "ok I understand And agree to this contract" at the bottom of this paragraph (all quotes above are reproduced as written).

18. I also note there are provisions in the contract dealing with limitations on liability. These provisions refer to “Community Market” assuming no liability for vendors’ property, and no responsibility for property damage, theft, injury, or losses from installation, set-up, operation, or disassembly of vendors’ exhibits.
19. Ms. Wizriber also provided an April 6, 2020 sales receipt confirming Mrs. Morrison’s \$210 payment. The sales receipt is in the name of Community Market, and it makes no reference Ms. Wizriber.
20. Further, while Ms. Wizriber initially responded to Mrs. Morrison’s inquiries about a refund, in none of her communications did Ms. Wizriber express or imply that she had the personal capacity to approve or provide Mrs. Morrison with a refund. I also note there is a November 26, 2020 email in evidence from a Community Market Events email address to Mrs. Morrison that stated “Ms. Wiz” would no longer be replying to Mrs. Morrison’s communications because her position with the company is the organizer and she does not deal with credit and refund issues. I infer that “Ms. Wiz” refers to Ms. Wizriber.
21. While Ms. Wizriber argues that Mrs. Morrison’s contract was with Community Market, she initially provided no additional information about this entity, despite requests from CRT staff. She also did not explain her relationship to Community Market, other than to say she was the event organizer. Further, Ms. Wizriber declined to add Community Market as a party to this dispute.
22. I determined that I needed more information about Community Market in order to make my decision. So, I asked Ms. Wizriber through CRT staff, to clarify Community Market’s incorporation status and to whom the vendor fees were paid. Ms. Wizriber stated that “Community Market is an LTD”. Ms. Wizriber also stated that while an email in her name was used for the e-transfer payments, the payments were deposited into Community Market’s bank account.
23. On balance, I find that Community Market is an incorporated company, which means it has the capacity to enter into contracts on its own behalf. Given the contract refers

only to Community Market and there is no evidence that Mrs. Morrison had any communication with Ms. Wizriber before she filled out the contract, I find there is no basis to find Ms. Wizriber was acting as Community Market's agent when Mrs. Morrison entered the contract.

24. Further, I find that just because Mrs. Morrison's e-transfer payment was made to an email address in Ms. Wizriber's name, does not mean the payment was deposited into Ms. Wizriber's bank account. Rather, I find Ms. Wizriber was handling vendor fee payments on behalf of Community Market, and she did not receive the money in her personal capacity.
25. While I acknowledge that Ms. Wizriber was the only designated contact person for Community Market known to Mrs. Morrison, I find that is insufficient to conclude that Ms. Wizriber was a party to the contract. I find Mrs. Morrison was put on notice that Community Market was likely a proper party to this dispute, both by the November 26, 2020 email referring to Community Market as a company, and by Ms. Wizriber's Dispute Response.
26. Based on the evidence before me, I find that Mrs. Morrison's contract was solely with Community Market. I find that Mrs. Morrison has not met her burden of proving that she had a contract with Ms. Wizriber. Based on privity of contract, I find that Mrs. Morrison cannot attempt to enforce any contractual remedies against Ms. Wizriber, including a refund of the vendor fees she paid to Community Market, because Ms. Wizriber was not a party to the contract. On that basis, I dismiss Mrs. Morrison's claim.
27. Given my findings, I do not have to consider whether the contract's terms entitle Mrs. Morrison to a refund in any detail. However, I note that even if I had found Mrs. Morrison could enforce the contract against Ms. Wizriber, I find Mrs. Morrison agreed to the contract's term that she would indemnify organizers from any loss. Given Ms. Wizriber was the event's organizer, I find Mrs. Morrison was precluded from bringing a claim against Ms. Wizriber for a refund.

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. Ms. Wizriber was successful but did not pay any fees or claim expenses. I dismiss Mrs. Morrison's claim for reimbursement of CRT fees.

## **ORDER**

29. I dismiss Mrs. Morrison's claims and this dispute.

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Kristin Gardner, Tribunal Member