



# Civil Resolution Tribunal

Date Issued: June 3, 2021

File: SC-2020-008289

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nawaz v. Wallace*, 2021 BCCRT 605

BETWEEN:

MOAHMMED ABDUL AKTHAR NAWAZ

**APPLICANT**

AND:

ZSA-ZSA WALLACE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about alleged unauthorized credit card purchases. The applicant, Moahmmed Abdul Akthar Nawaz, says he lent his credit card to the respondent, Zsa-Zsa Wallace, to buy food. Mr. Nawaz claims that Ms. Wallace fraudulently charged other purchases and made cash withdrawals on his credit card, without his permission. Mr. Nawaz claims \$900 for the alleged unauthorized charges.

2. Ms. Wallace denies making any unauthorized purchases or withdrawals. She says the purchases and withdrawals were made at Mr. Nawaz's request and for his own use. Ms. Wallace also says she cannot afford to pay Mr. Nawaz the claimed amount, other than about \$100 for food.
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. 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.
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.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, Ms. Wallace must pay Mr. Nawaz the claimed \$900 in alleged unauthorized credit card purchases and withdrawals.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Mr. Nawaz must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision. I note that Ms. Wallace did not provide any evidence in this dispute, despite being given the opportunity and reminders from CRT staff to do so.
10. The parties agree that Mr. Nawaz provided his credit card to Ms. Wallace so she could buy herself some food from the grocery store. Mr. Nawaz says that when he later checked his credit card transactions, he discovered Ms. Wallace had used his credit card to make several other purchases and cash withdrawals without his consent, totaling approximately \$900.
11. Ms. Wallace has a very different story. She says that Mr. Nawaz made her several offers to hangout and party with him, and she ultimately agreed to do so in exchange for "a little help" with buying some food. She says they went out drinking together and that Mr. Nawaz sent her with his credit card to buy alcohol and to withdraw cash from the ATM to further fund their partying. Ms. Wallace denies that she made any purchases on Mr. Nawaz's credit card without his knowledge, and says they were all made at his request.

12. Mr. Nawaz did not explain the details of his agreement with Ms. Wallace about loaning her his credit card for food purchases, such as for how long she could have the card, how much she was entitled to spend, or whether he expected her to pay him back. The only evidence Mr. Nawaz provided in support of his claim that Ms. Wallace made unauthorized purchases was a November 2019 credit card statement. Mr. Nawaz highlighted the charges on the statement between November 15 and 21, 2019, which I infer is the period Mr. Nawaz says his credit card was in Ms. Wallace's possession and used without his permission.
13. I note that the statement shows one grocery store charge during the highlighted period, made on November 15, 2019 for \$5.93. While it is possible that other charges on the statement were food related, I cannot determine that conclusively based on the statement alone. In any event, I find Mr. Nawaz's reference to Ms. Wallace requesting assistance to buy food was only to explain his position about why she had his credit card in her possession. I find that Mr. Nawaz's claim does not include food purchases because his claim is for fraudulent or unauthorized use of his credit card, and he undisputedly agreed that Ms. Wallace could use his credit card to buy food. Since food purchases are not part of this dispute, I make no findings about whether Ms. Wallace must pay Mr. Nawaz back for the food.
14. With respect to the other purchases and cash withdrawals, I find there is nothing on the credit card statement that would support one party's version of events over the other. Given Mr. Nawaz undisputedly provided Ms. Wallace with his credit card and its PIN, I find the purchases and withdrawals could equally have been made either without Mr. Nawaz's participation and knowledge, or as the result of Ms. Wallace essentially running errands for Mr. Nawaz, at his request.
15. I note that Mr. Nawaz also provided a copy of his employment time sheet, which shows he worked November 15 through 18 and on November 21, 2019. However, the credit card statement does not include the time any given purchase or withdrawal was made. I find his time sheet is unhelpful in proving whether Mr. Nawaz was working when his credit card was used on those dates.

16. I find I am left with an evidentiary tie about whether Ms. Wallace made any unauthorized purchases and withdrawals for her own use on Mr. Nawaz's credit card. Given Mr. Nawaz has the burden to prove his claims on the balance of probabilities, I find he has failed to meet his burden.
17. I note that Ms. Wallace submits she could afford to pay Mr. Nawaz approximately \$100 for the groceries. I find Ms. Wallace's submission was a statement about what portion of Mr. Nawaz's claim may be related to food purchases, not an admission that she owed Mr. Nawaz anything. Given my finding above that food purchases are not part of this dispute, I place no weight on Ms. Wallace's submission.
18. I find Mr. Nawaz has not proved that Ms. Wallace owes him for the alleged unauthorized credit card charges. I dismiss Mr. Nawaz's claims.
19. 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 see no reason in this case not to follow that general rule. Mr. Nawaz was unsuccessful and so I dismiss his claim for CRT fees. Ms. Wallace did not pay any fees, and neither party claimed any dispute-related expenses.

## **ORDER**

20. I dismiss Mr. Nawaz's claims and this dispute.

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Kristin Gardner, Tribunal Member