



Civil Resolution Tribunal

Date Issued: June 7, 2021

File: SC-2021-000148

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zheng v. T.R. Sanford Enterprises Ltd.*, 2021 BCCRT 622

BETWEEN:

LI ZHENG

APPLICANT

AND:

T.R. SANFORD ENTERPRISES LTD.

RESPONDENT

AND:

LI ZHENG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about an alleged gift card fraud. The applicant, and respondent by counterclaim, Li Zheng, purchased gift cards at a store operated by the respondent, and applicant by counterclaim, T.R. Sanford Enterprises Ltd. (TRS). Ms. Zheng says that TRS negligently failed to warn her about potential gift card “scams”. She claims \$5,000, consisting of \$2,000 for money later lost in an allegedly fraudulent scheme involving the purchased gift cards, and \$3,000 in punitive damages for a breach of the “negligence code of Canada.”
2. TRS says it sold gift cards to Ms. Zheng on behalf of third parties, and that it had warning signs and procedures in place that addressed potential gift card scams. TRS says that the basis of Ms. Zheng’s fraud and loss claims is unclear because she has not explained what occurred. TRS says it sold Ms. Zheng working gift cards, and that her credit card company later wrote off Ms. Zheng’s debt for those purchases. TRS says it is not responsible for any fraud following the purchases and owes nothing. TRS counterclaims \$2,500 for legal fees, time, and stress, which Ms. Zheng denies owing.
3. Ms. Zheng is self-represented in this dispute. TRS 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
8. Ms. Zheng originally filed her Dispute Notice as Vivien Zheng, and TRS filed its counterclaim Dispute Notice against Vivien Zheng. During facilitation, Ms. Zheng said that her legal name is Li Zheng, and she amended her Dispute Notice to reflect that name. TRS agreed to the name change, but did not amend the Dispute Notice for its counterclaim. I am satisfied that Vivien Zheng and Li Zheng are the same person, and that the parties agreed to change Ms. Zheng's name to Li Zheng in both the claim and counterclaim. So, I find that "Li Zheng" is the applicant and respondent by counterclaim in this dispute, as set out in the style of cause above.
9. Both parties submitted late but potentially relevant news article evidence about gift cards and fraud. Each party had an opportunity to comment on the evidence and neither objected to it. I find the parties were not prejudiced by the late evidence, and I allow it.

ISSUES

10. The issues in this dispute are:

- a. Whether TRS was negligent in allegedly failing to sufficiently warn Ms. Zheng about possible gift card scams, and if so, does it owe her \$5,000 or another amount in damages and punitive damages?
- b. Whether Ms. Zheng owes TRS \$2,500 or another amount for legal fees, time, and stress.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Zheng must prove her claims on a balance of probabilities. TRS must prove its counterclaims to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
12. TRS operates a Canadian Tire franchise store. Ms. Zheng does not deny that TRS sells third party gift cards and remits payments for those cards to the franchisor, Canadian Tire Corporation. Ms. Zheng purchased third party gift cards at TRS's store on May 29, 2019. Based on an undisputed TRS transaction log in evidence, I find that 2 \$500 gift cards were purchased on a Canadian Tire credit card sometime between 10:24 and 10:28, and 2 more \$500 gift cards were purchased from a different register sometime between 11:17 and 11:47. I find that Ms. Zheng herself purchased the gift cards, and that they were properly activated and functioning when purchased, because TRS says this is what happened and Ms. Zheng does not deny it.
13. Ms. Zheng says she was the victim of a fraud involving the gift cards, which caused her to lose the \$2,000 she paid for them. She says that such scams are very common, and she submitted copies of news articles about different types of scams, including ones involving gift cards. These news articles described gift card frauds including convincing a card owner to reveal card numbers and PIN numbers, computer hacking, convincing an elderly person to purchase undesired gift cards, and others.
14. On the evidence before me, I find Ms. Zheng relies on these news articles about gift card scams, and on TRS's alleged failure to warn her about such scams, to prove

that TRS was negligent and owes her the value of the purchased gift cards plus punitive damages.

15. To show TRS was negligent, Ms. Zheng must prove that (a) TRS owed her a duty of care, (b) TRS failed to meet a reasonable standard of care, (c) Ms. Zheng sustained damage, and (d) TRS's failure actually caused the claimed damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
16. Despite having an adequate opportunity to do so, Ms. Zheng does not describe the alleged gift card fraud against her in this dispute. I find Ms. Zheng has not explained how she allegedly lost the \$2,000 value on the gift cards or who took that value from her. TRS pointed out in its submissions that it was unclear what fraud Ms. Zheng alleged, but Ms. Zheng did not clarify the alleged fraud or losses in her reply submissions. I cannot find TRS is liable in negligence for failing to warn Ms. Zheng about possible scams without Ms. Zheng proving that she was the victim of a scam, and that she suffered a loss from it.
17. TRS says it discovered that Ms. Zheng called a Canadian Tire customer relations call centre on May 29, 2019 and said that she felt forced by her boss to provide her gift card details and PIN. No record of that call is in evidence, but Ms. Zheng does not directly deny making that call or sharing her gift card information with another person.
18. TRS says it has signs on its gift card rack warning about potential gift card scams. Ms. Zheng denies seeing any warnings in her visits before and after the gift card purchase. I find a photo in evidence shows a gift card rack featuring a prominent warning sign about a Canada Revenue Agency gift card scam. TRS also says that its systems limit the amount of money spent on gift cards in a single transaction, but that Ms. Zheng circumvented those systems by making 2 different purchases at 2 different registers. Ms. Zheng does not explain why she purchased the cards at different times and at different registers on the same day, although she says TRS's systems should not have allowed her to do so. On balance, I find that Ms. Zheng's gift card purchases from TRS were not fraudulent, and were completed at her request.

19. As noted, Ms. Zheng bears the burden of proving that she suffered a loss because of a gift card scam. I find she has not met that burden, as the evidence does not describe the alleged fraud in any detail or how her alleged losses occurred. Ms. Zheng also did not respond to TRS's allegation that she was never required to pay the \$2,000 credit card charge for the gift cards.
20. Even if Ms. Zheng had proven that she lost the gift cards' \$2,000 value in a scam, I find she has not proven that TRS owed her a duty of care to warn her about possible fraudulent schemes involving gift cards. Further, even if TRS did owe her such a duty, I find TRS was not involved in any fraud against Ms. Zheng, that it had a prominent gift card fraud warning sign on its gift card rack, and that its systems limited gift card purchases to discourage certain types of fraud. So, even if TRS had a duty of care to Ms. Zheng, I find TRS did not fail to meet the appropriate standard of care for a gift card retailer in the circumstances. Taken together with the fact that Ms. Zheng has not proven her losses, I find TRS was not negligent.
21. Having weighed the evidence before me, I find that TRS is not responsible for Ms. Zheng's alleged \$2,000 gift card loss. I also find that there is no evidence TRS engaged in any harsh, vindictive, reprehensible, or malicious conduct deserving of punitive damages. I dismiss Ms. Zheng's claims.
22. Turning to TRS's \$2,500 counterclaim for legal fees, time, and stress, I note that under CRT rule 9.5, compensation for legal fees or a party's time spent dealing with a CRT proceeding is only awarded in extraordinary circumstances. I find that there are no extraordinary circumstances here. Further, I find there is no proof that TRS paid or owes any amount for legal fees for this dispute, and no proof recording how much time TRS spent on the dispute. I also find there is no evidence before me describing the stress TRS allegedly endured, or explaining how a corporation like TRS can experience stress. On the evidence before me, I find that TRS is not entitled to \$2,500 for legal fees, time, and stress. I dismiss TRS's counterclaims.

CRT FEES AND EXPENSES

23. 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. Ms. Zheng was unsuccessful in her claims, but TRS paid no CRT fees for those claims. Similarly, TRS was unsuccessful in its counterclaims, but Ms. Zheng paid no fees for those counterclaims. Above, I denied TRS's counterclaim for legal fees and time spent, and neither party claimed any other dispute-related expenses. So, I order no reimbursements.

ORDER

24. I dismiss Ms. Zheng's claims, TRS's counterclaims, and this dispute.

Chad McCarthy, Tribunal Member