



Civil Resolution Tribunal

Date Issued: July 15, 2021

File: SC-2021-003379

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kerby v. Cooper*, 2021 BCCRT 776

B E T W E E N :

NATHANIEL KERBY

APPLICANT

A N D :

MAUREEN COOPER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This is a summary decision about whether the Civil Resolution Tribunal (CRT) should refuse to resolve this dispute under section 10(1) of the *Civil Resolution Tribunal Act*

(CRTA) for being outside the CRT's jurisdiction. This is not a decision on the merits of the applicant's claim.

2. The applicant, Nathaniel Kerby, seeks an order that the respondent, Maureen Cooper, pay \$1,957.54 for the "Removal of defamatory internet post by Respondent" (reproduced as written).
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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.

ISSUE

9. The issue in this dispute is whether the applicant's claim is outside the CRT's jurisdiction.

EVIDENCE AND ANALYSIS

10. As set out in CRTA section 119(a), it states that the CRT does not have jurisdiction in a claim for libel. Libel is written communication that is defamatory. A communication will be defamatory if the published words negatively affect the applicant's reputation in a reasonable person's eyes (see *Grant v Torstar Corp.*, 2009 SCC 61 at paragraph 28).
11. As noted above, the applicant framed this dispute in libel for an alleged defamatory internet post allegedly posted by the respondent. The parties were invited to make submission on the question of whether this dispute is within CRT's jurisdiction. The applicant submits that this dispute is within the CRT's jurisdiction because their claim is not a claim in defamation but rather for the recovery of costs incurred to remove the internet post. The respondent did not provide submissions about whether the CRT has jurisdiction to decide this dispute. Rather, the respondent reiterated their Dispute Response denial that they posted anything at all.
12. In the applicant's Dispute Notice, the applicant says the internet post had to be removed because it was affecting their occupation, and it cost them \$1,957.54 to do so. The applicant therefore seeks an order for damages to recover this amount from the respondent. However, in order for the applicant to succeed in their claim for relief, here being the recovery of \$1,957.54, their claim must be tied to a legal cause of action (see for example *Evans v. Dumitrescu*, 2021 BCSC 1275 (CanLII) at paragraph 219). A cause of action is an applicant's legal basis for the relief sought. The records

and submissions show that the applicant has alleged no other material facts giving rise to any cause of action other than libel. In other words, the applicant has alleged no other legal basis other than defamation for why the respondent should pay \$1,957.54 to the applicant. For this reason, I find that the applicant's claim is based in libel. I further find that the dispute cannot be amended under section 10 of the CRTA to remove the jurisdictional issue because the entire claim is based on the alleged libelous post. I therefore find that this dispute is outside the CRT's jurisdiction and so I must refuse to resolve the applicant's dispute.

ORDER

13. Under section 10 of the CRTA, I refuse to resolve the applicant's dispute because the CRT does not have jurisdiction to resolve it.

Roy Ho, Tribunal Member