



# Civil Resolution Tribunal

Date Issued: September 1, 2021

File: SC-2021-002582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. Cheung*, 2021 BCCRT 958

BETWEEN:

RICHARD PEARSON

**APPLICANT**

AND:

CHUN CHEUNG and 0882787 B.C. LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. The applicant, Richard Pearson, says that he bought 2 \$250 gift cards at a charity auction in 2019 for a restaurant called Cafe Il Nido. The respondent 0882787 B.C. Ltd. (088) currently operates Cafe Il Nido. The other respondent, Chun Cheung, is an owner of 088. Mr. Pearson says that the respondents have refused to honour the

gift cards. He asks for an order that the respondents provide him with \$500 in goods and services at Cafe Il Nido.

2. The respondents say that 088 bought Cafe Il Nido through an asset purchase from another numbered company on January 1, 2020. They say that they are not responsible for any gift cards issued by Cafe Il Nido's former owner. They ask me to dismiss Mr. Pearson's claims.
3. Mr. Pearson is self-represented. Chun Cheung represents both respondents.

## **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, Mr. Pearson's arguments are about the credibility, or truthfulness, of the respondents' 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 *Yas v. Pope*, 2018 BCSC 282, 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
8. I note that in the Dispute Notice, the personal respondent's name was Andy Cheung. The parties agreed to change this to Chun Cheung to reflect their legal name. I have amended the style of cause accordingly.
9. I will address Chun Cheung's liability briefly. In general, an owner or director of a corporation is not liable for the corporation's debts, even if they are the sole shareholder (see *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 SCR 2 (CanLII) at paragraph 13). Mr. Pearson did not identify any reason why Chun Cheung should be held personally liable for 088's alleged refusal to honour the gift cards, so I dismiss his claims against Chun Cheung.
10. I note that both parties referred to discussions from the CRT's facilitation phase, contrary to the CRT's rules. I find that none of the disclosed information is relevant, so I did not rely on any of it in my decision.

## **ISSUES**

11. The issues in this dispute are
  - a. Does 088 have to honour Mr. Pearson's gift cards?
  - b. If so, what remedy is appropriate?

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Mr. Pearson as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. According to Mr. Pearson, he bought 2 \$250 gift cards for Il Nido Cafe at an online charity auction in October 2019. According to a website printout he provided, he paid \$327.11 for the gift cards. 088 questions the authenticity of the gift cards but provides no specific reason why I should doubt that they are genuine. I find that Mr. Pearson has provided enough evidence to prove that he bought them as alleged.
14. It is undisputed that Mr. Pearson called Il Nido Cafe to make a reservation on March 4, 2021. He says that he told the staff person about the gift cards. He says that the staff person told him that they were not honouring gift cards from the former owner. He says that he then spoke to Chun Cheung, who said the same thing. Chun Cheung gives a similar account of this phone call.
15. Mr. Pearson argues that 088 bought Il Nido Cafe as of January 1, 2020, as a share purchase, not an asset purchase. This distinction matters because in a share purchase, the corporation itself changes hands, along with all of its assets and liabilities. This means that the new owner assumes all of the corporation's existing liabilities, whether the new owner knows about them or not. In an asset purchase, the buyer and seller specifically agree about which assets and liabilities the buyer assumes.
16. As mentioned above, 088 says that it purchased Il Nido Cafe as an asset purchase from another numbered company. It provided copies of its 2020 insurance information and the former owner's 2019 insurance information. These documents show different numbered companies purchasing insurance for the same location. I accept that this evidence proves that 088 likely purchased Il Nido Cafe as an asset purchase. However, I find that this does not end the matter. The fact that it was an asset purchase means that 088 is not automatically responsible for the former

owner's debts or liabilities. It does not necessarily mean that 088 did not acquire any of the former owner's liabilities. Rather, the contract between the former owner and 088 would set out what, if any, liabilities 088 assumed as part of the purchase.

17. 088 says that it did not agree to assume any of the former owner's liabilities when it purchased Il Nido Cafe, including any outstanding gift cards. 088 says that it paid the former owner cash for inventory and nothing more. 088 says that the purchase contract confirms this but refused to provide a copy of it as evidence. He says that the details are "private" and does not want to disclose information like their drivers licenses, addresses, phone numbers or financial information.
18. Mr. Pearson argues that if 088's purchase contract supported 088's arguments, it would have disclosed the contract as evidence. In effect, he asks me to draw an adverse inference against 088. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not have supported their case.
19. I find that an adverse inference is appropriate in this dispute. The CRT's rules require parties to provide all relevant evidence, and CRT staff remind parties of this obligation. I find that 088 knew that the terms of the purchase contract were central to the outcome of this dispute but decided not to provide a copy. I note that 088 redacted irrelevant third-party personal information from the insurance records and a lease. 088 does not explain why it could not have done the same with the purchase contract.
20. With that, I find that 088 agreed as part of its purchase of Il Nido Cafe to honour any outstanding gift cards issued by the former owner. I turn then to the appropriate remedy.
21. As mentioned above, Mr. Pearson asks for an order that 088 provide \$500 worth of goods and services. In effect, Mr. Pearson wants an order that 088 honour the gift cards. Orders requiring a party to do something are called injunctive orders. The CRT has limited ability to make injunctive orders under its small claims jurisdiction.

However, section 118(1)(c) says that the CRT may order a party to perform an agreement relating to personal services, also called specific performance. I find that Mr. Pearson's requested order fits within this provision.

22. Specific performance is generally appropriate where monetary damages will not suffice. I find that specific performance is appropriate in this dispute. This is because if I determined that Mr. Pearson's damages were \$500, he would get a windfall because he only paid \$327.11 for the gift cards. He would also still possess the gift cards. On the other hand, if I determined that Mr. Pearson's damages were \$327.11, he would be undercompensated. I therefore order 088 to honour Mr. Pearson's 2 \$250 gift cards as Mr. Pearson requests.
23. I note that under section 56.2 of the *Business Practices and Consumer Protection Act* and section 2 of the *Prepaid Purchase Cards Regulation*, a gift card purchased for a charitable purpose may be sold with an expiry date. However, Mr. Pearson's gift card specifically says that it does not expire. So, I place no expiry date on my order.
24. 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 find Mr. Pearson is entitled to reimbursement of \$125 in CRT fees. Mr. Pearson provided copies of 2 registered mail receipts for \$11.36 each. He does not say what they were for or claim reimbursement in his submissions. I infer that they were for serving the Dispute Notices on each respondent. I order 088 to reimburse Mr. Pearson \$11.36 for 1 of the receipts, because Mr. Pearson was only successful against 088. I dismiss his remaining claims for dispute-related expenses.

## **ORDERS**

25. I order 088 to accept Mr. Pearson's 2 \$250 gift cards as payment if he presents them at its restaurant, Il Nido Cafe, for that purpose.

26. Within 30 days of the date of this order, I order 088 to pay Mr. Pearson \$136.36 in CRT fees and dispute-related expenses.
27. Mr. Pearson is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
28. I dismiss Mr. Pearson's claims against Chun Cheung.
29. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the day that the state of emergency declared on March 18, 2020 ended, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Eric Regehr, Tribunal Member