



# Civil Resolution Tribunal

Date Issued: January 20, 2022

File: SC-2021-004793

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Spectrum Stone Ltd. v. Alonso*, 2022 BCCRT 79

BETWEEN:

SPECTRUM STONE LTD.

**APPLICANT**

AND:

DIEGO MIGUEL OLIVEIRA PINEDA ALONSO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Laylí Antinuk

## INTRODUCTION

1. This dispute is about an alleged debt.
2. The applicant, Spectrum Stone Ltd. (Spectrum), says its former employee, the respondent Diego Miguel Oliveira Pineda Alonso, owes it a \$3,116.07 debt. Spectrum says Mr. Alonso quit working for Spectrum but asked to stay on the payroll because

his work permit specifically named Spectrum as his employer. Spectrum says the parties agreed Spectrum would continue issuing Mr. Alonso pay cheques after he quit, and that Mr. Alonso would pay Spectrum back in cash. Spectrum says Mr. Alonso asked for this agreement so that his application for permanent residency would not be negatively impacted.

3. Spectrum asks me to order Mr. Alonso to repay the alleged \$3,116.07 debt plus interest.
4. Mr. Alonso says he owes Spectrum nothing. He says he worked for Spectrum the entire time Spectrum issued him pay cheques. He also says Spectrum illegally forced him to pay back some of his wages over the course of his employment. He says he felt compelled to comply with Spectrum's demands as a temporary foreign worker on an employer-specific work permit. I note that Mr. Alonso did not file a counterclaim and has not requested the return of any wages from Spectrum.
5. Spectrum's Director, Alan Mok, represents Spectrum. Mr. Alonso represents himself.
6. As explained below, I dismiss Spectrum's claims.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties that will likely continue after the CRT process has ended.
8. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. The parties' submissions directly conflict with one another in several ways, and both accuse the other of fabrication, inaccuracy, and untruth. The BC Supreme Court has said that issues of credibility are routinely addressed on written records. See *Yas v.*

*Pope*, 2018 BCSC 282 at paragraph 35. Here, I have decided that a written hearing is appropriate. I find I am properly able to assess and weigh the documentary evidence and submissions before me. Keeping in mind the CRT's mandate, which includes proportionality and speedy dispute resolution, I see no reason for an oral hearing despite the conflicting evidence and argument before me.

9. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Where permitted under CRTA section 118, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also make an order that includes any terms or conditions the CRT considers appropriate.
11. Both parties submitted late evidence, which I have reviewed. I find the late evidence relevant. Each party had the opportunity to review and respond to the other's late evidence. Given the CRT's mandate for a flexible and informal procedure, I have admitted and considered the late evidence. Where relevant, I address the evidence's weight below.
12. Mr. Alonso submitted a video recording of himself speaking in Portuguese as evidence in this dispute. CRT rule 1.7(5) requires that all evidence and materials relied on by a party must be in English or translated to English. Mr. Alonso did not provide a complete translation of the video word-for-word. However, in his submissions, Mr. Alonso explains what he said in the video, why he made it, and why he included it as evidence in this dispute. I have considered these submissions.

## **ISSUE**

13. The issue in this dispute is to what extent, if any, Mr. Alonso owes Spectrum \$3,116.07 in debt.

## EVIDENCE AND ANALYSIS

14. As the applicant in this civil proceeding, Spectrum must prove its claims on a balance of probabilities (meaning “more likely than not”).
15. I have read all the parties’ evidence and arguments. However, I will refer only to what I consider necessary to explain my decision. At the outset, I note that the parties’ made various allegations about each other, including exploitation and fraud. I find that I do not need to address those matters given the narrow issue before me, as discussed below.
16. The parties agree that Mr. Alonso began working for Spectrum in December 2018 under an employer-specific work permit. The parties also agree that Mr. Alonso came to Canada as a temporary foreign worker hoping to secure permanent residency. The parties agree on little else.
17. Spectrum says Mr. Alonso quit work on December 2, 2020 but asked to remain on Spectrum’s pay roll because of his employer-specific work permit. Spectrum says Mr. Alonso agreed to repay all the post-December 2 pay cheques and reimburse Spectrum’s related CPP, EI and WCB contributions. Spectrum says it agreed to continue to pay Mr. Alonso after December 2, even though he quit, because Spectrum sympathized with Mr. Alonso’s immigration status. Spectrum says Mr. Alonso paid back some, but not all, of the pay cheques issued under their agreement. It now claims repayment for \$3,116.70, which Spectrum says is still owed under the alleged agreement.
18. Mr. Alonso adamantly denies ever entering into the agreement Spectrum alleges. He says he did not quit working for Spectrum until March of 2021. Mr. Alonso submitted text messages he sent to a Spectrum representative (Mr. Mok’s son) on March 31, 2021 saying he was quitting. Mr. Alonso also says that if the parties actually did enter into the alleged agreement (which he denies), the entire basis of Spectrum’s claim would be unlawful and unenforceable because Spectrum is asserting that it participated in fraud.

19. Here, for Mr. Alonso to be responsible for the repayment of pay cheques issued by Spectrum, Spectrum must prove that the parties entered into the alleged agreement. It is undisputed that there is no written agreement between the parties. Although verbal agreements are binding, they are harder to prove. As explained above, Mr. Alonso denies making the alleged verbal agreement with Spectrum and says he did not quit working for Spectrum until March 2021.
20. To support its claims about the alleged agreement, Spectrum submitted witness statements from the director of Ventura Stone Ltd. (Ventura) who says Mr. Alonso worked for Ventura from about December 2, 2020 to March 2021. Spectrum also submitted text messages between Mr. Alonso and Mr. Mok showing that Mr. Alonso repaid most of 1 pay cheque issued by Spectrum after December 2020. Lastly, Spectrum provided Mr. Alonso's December 2020 timecard which only has entries for December 1 and 2.
21. Mr. Alonso acknowledges that he worked for or with Ventura after December 2, 2020 but says he did this work on days off, or as Spectrum's employee. It is undisputed that Ventura and Spectrum were both working as sub-contractors on the same job site at the time in question. Mr. Alonso also says he stopped filling out timecards in December 2020 because Mr. Mok got very angry that he had requested a \$1 raise. From then on, Mr. Alonso says Spectrum reduced his hours and put him on projects outside the company shop, mostly dealing with subcontractors like Ventura. He says after Mr. Mok got angry with him, he sent Spectrum his hours electronically instead of going into the company shop to fill out timecards every day.
22. Mr. Alonso does not deny that he repaid Spectrum some of his wages. He says Mr. Mok forced him to make these repayments and that they predated December 2020. For support, he submitted photographic evidence to show that he made cash repayments to Mr. Mok in 2019 and that Mr. Mok provided typed documents to him along with his pay cheques, showing what amounts he had to repay based on his earnings.

23. Mr. Alonso alleges that Spectrum would issue him pay cheques, then Mr. Mok would demand a return of some of his wages. Mr. Alonso says he understood it was illegal for Mr. Mok to do this, but he felt that he had no choice given his immigration status and employer-specific work permit.
24. I accept that Spectrum (through its Director, Mr. Mok) required Mr. Alonso to repay various amounts of his wages over the course of his employment. I make this finding because Mr. Alonso submitted evidence to show that he repaid some of his wages prior to December 2020. Significantly, Spectrum does not specifically deny that Mr. Mok required Mr. Alonso to make these types of repayments over the course of his employment.
25. I find that requiring an employee to repay earned wages is illegal. Specifically, section 21(1) of the *Employment Standards Act (ESA)* says an employer must not, directly or indirectly, require payment of all or part of an employee's wages for any purpose. Based on the evidence before me, I find that Spectrum contravened the ESA.
26. In its submissions, Spectrum did not explain why Mr. Mok required Mr. Alonso to repay some of his wages over the course of his employment with Spectrum. However, Spectrum did submit a letter ostensibly written and signed by Mr. Alonso in 2018 as evidence in this dispute. The letter says Mr. Alonso agreed to repay Spectrum a substantial portion of all his wages. Mr. Alonso says he did not write this letter and signed it under duress.
27. I find it unlikely that Mr. Alonso would write this letter, effectively offering to be paid a substantial amount less than the hourly rate required by the federal and provincial programs under which Mr. Alonso held a work permit. The letter does not benefit Mr. Alonso in any way. Instead, the letter is entirely to Spectrum's benefit and to Mr. Alonso's detriment. On balance, I find that Spectrum wrote the letter and I accept that Mr. Alonso felt forced to sign it in the circumstances because of his employer-specific work permit.

28. To summarize, I find that Spectrum required Mr. Alonso to repay wages in violation of the ESA. I also find that it required Mr. Alonso to sign the 2018 letter described in the 2 paragraphs above. I find that all this significantly reduces Spectrum's credibility. As a result, I prefer Mr. Alonso's version of the events at issue.
29. In short, I find that Mr. Alonso did not quit working for Spectrum until March 2021, when he undisputedly texted Mr. Mok's son saying he was quitting. Contrary to Spectrum's submissions, I find that there was no verbal agreement between Spectrum and Mr. Alonso about the repayment of all his wages after December 2, 2020. So, I find that Mr. Alonso does not owe Spectrum a debt and I dismiss Spectrum's claims. Given this conclusion, I do not need to address Mr. Alonso's argument about the illegality and unenforceability of the alleged verbal agreement that Spectrum would pay unearned wages which Mr. Alonso would repay, to protect Mr. Alonso's immigration status.
30. As noted, Mr. Alonso did not file a counterclaim for the return of any of his wages. Given this, I make no findings or orders about that.
31. 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 to depart from the general rule. Spectrum paid CRT fees but failed in this dispute, so I will not order a reimbursement of CRT fees.

## **ORDER**

32. I dismiss Spectrum's claims and this dispute.

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Laylí Antinuk, Tribunal Member