



# Civil Resolution Tribunal

Date Issued: March 16, 2022

File: SC-2021-005093

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Younes v. Hall*, 2022 BCCRT 287

B E T W E E N :

ANDREW YOUNES and JALILZADEH KHIABANI

**APPLICANTS**

A N D :

ZACHARY HALL and CELEST ROBINSON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicants, Andrew Younes and Jalilzadeh Khiabani, each purchased collectible Pokémon cards from the respondent, Zachary Hall. They say that Mr. Hall sent them the wrong cards as part of a scam. The other respondent, Celest Robinson, is Mr. Hall's spouse. The applicants say that Ms. Robinson is part of Mr.

Hall's card selling business. Mr. Younes claims a \$975 refund and Mr. Khiabani claims a \$260 refund.

2. Mr. Hall says the applicants' allegations are "false". He accuses them of trying to make "a quick few bucks". Ms. Robinsons denies any involvement in the sales. They ask that I dismiss both applicants' claims.
3. Mr. Younes represents the applicants. Mr. Hall represents the 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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 CRT's order may include any terms or conditions the CRT considers appropriate.
8. Mr. Hall's submissions include several arguments about how the applicants served him and Ms. Robinson with the Dispute Notice. Both respondents filed Dispute Responses and Mr. Hall fully participated in the tribunal decision process by uploading evidence and making submissions. I therefore find that nothing turns on how they were served.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was Ms. Robinson a party to a contract with either Mr. Younes or Mr. Khiabani?
  - b. Did Mr. Hall send the wrong cards to Mr. Younes?
  - c. Did Mr. Hall send the wrong cards to Mr. Khiabani?
  - d. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Mr. Younes and Mr. Khiabani as the applicants must each prove their case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. I will first briefly address whether either applicant proved that Ms. Robinson was a party to their contract. As mentioned above, Ms. Robinson is Mr. Hall's spouse. Mr. Younes says that Ms. Robinson was directly involved in a previous sale and maintains a related YouTube channel. However, for the sales at issue here, all of the applicants' Facebook messages were only with Mr. Hall. They both sent their

money to Mr. Hall and the return addresses on both packages showed the sender as Mr. Hall. While it may be true that Ms. Robinson was involved with Mr. Hall's activities selling Pokémon cards, I find that there is no evidence that Ms. Robinson was a party to the applicants' contracts at issue in this dispute. I dismiss the applicants' claims against Ms. Robinson.

12. I will address Mr. Younes's claim first. The following facts are undisputed and come mostly from the parties' Facebook Messenger history. Mr. Younes and Mr. Hall first did business in early May 2021. Mr. Younes purchased several cards from Mr. Hall, and he received what he had ordered. They used an intermediary for those transactions.
13. The parties agreed to the sale at issue in this dispute on June 8, 2021. For this sale, Mr. Hall did not want to use an intermediary. Mr. Younes agreed and paid Mr. Hall \$975 for 6 specific cards by e-transfer.
14. Between June 8 and 15, 2021, Mr. Younes asked Mr. Hall several times if he had sent the cards. Mr. Hall eventually sent a package on June 15, 2021. Again, none of this is disputed.
15. By June 15, 2021, Mr. Younes says he was beginning to get suspicious. Mr. Younes says he had found other Facebook posts where it appeared that Mr. Hall had sold the same cards to other people. He expressed his concerns to Mr. Hall on June 15, 2021, and Mr. Hall "unsent" much of his message history with Mr. Younes, including the photos he used to sell the cards. Mr. Younes found this suspicious as well, although he had already saved copies of the photos in question. Mr. Younes also says that he did not get a video showing Mr. Hall packaging the cards, which he had for previous transactions. Instead, he got a photo showing a closed box addressed to Mr. Younes at a post office, ready to be shipped.
16. The package was delivered on June 21, 2021. By then Mr. Younes believed that Mr. Hall had scammed him, so he took a video of himself opening the box. I accept that this video is genuine, for 2 reasons. First, the box appears to be taped in the same

way in the video as in the photo Mr. Hall sent before it was shipped. Second, Mr. Younes says he opened it less than 10 minutes after picking it up at the courier. The tracking information in evidence shows that Mr. Younes picked it up at 2:22 pm on June 21, 2021, and the time on Mr. Younes's watch in the video is around 2:30. I find it unlikely that Mr. Younes would have been able to open, repack, and reopen the package in that short amount of time. The package included only a basketball card and a baseball card. There were no Pokémon cards at all. I address Mr. Hall's response below.

17. Turning to Mr. Khiabani's claim, he sent Mr. Hall a Facebook message on June 13, 2021, after Mr. Hall had posted a card for sale. Mr. Khiabani agreed to the \$260 price and e-transferred Mr. Hall this amount later on June 13, 2021. Mr. Khiabani received the package from Mr. Hall on June 16, 2021. Mr. Khiabani says that the valuable Pokémon card he bought was not there. Instead, there were several Pokémon cards that he says are worth "a few cents or dollars each". Mr. Khiabani provided a photo of what appears to be roughly 15 Pokémon cards beside the opened package. He sent a message to Mr. Hall that he had received the wrong cards, but Mr. Hall never responded.
18. The applicants say that I should not believe the respondents because they are defendants in a BC Supreme Court action against the Director of Civil Forfeiture. In that action, the Director of Civil Forfeiture makes several allegations against the respondents of criminal activity, which are unrelated to this dispute. At this point, these are nothing more than allegations. So, I have not considered the existence of this lawsuit in assessing Mr. Hall's credibility.
19. Mr. Hall's submissions are difficult to follow, and generally fail to address the only issue in this dispute, which is whether he sent the applicants the cards they bought. Much of Mr. Hall's evidence is about past customers who have been happy with their purchase. I find that this is irrelevant to whether Mr. Hall sent the right cards to the applicants for the purchases at issue in this dispute. Mr. Hall also focused on Mr. Younes's efforts on Facebook to find other disappointed buyers to join this CRT

dispute, which he considers slanderous. Mr. Hall did not make a counterclaim, and in any event, the CRT has no jurisdiction (or legal authority) over defamation claims. Only the BC Supreme Court can hear defamation claims. I find that Mr. Younes's activities after the sale are irrelevant.

20. It is not entirely clear what Mr. Hall says happened with the 2 sales at issue. At one point, Mr. Hall seems to suggest that the applicants may have received the wrong cards because "sometimes mail gets lost or mixed" and "people make mistakes". He never explicitly says that he sent the right cards to either applicant, although he does describe their accusations as "false". It is unclear, however, whether this denial is about their allegation that they received the wrong cards or their allegation that Mr. Hall is a "scammer". He also did not provide packaging videos for the 2 sales at issue, although his evidence of past sales to other customers shows that he often took them.
21. On balance, I find that the applicants have both proven their claims. For Mr. Younes's claim, I find that the unpackaging video is clear evidence that he received something different from what he bought. In addition, I find that Mr. Hall's failure to acknowledge or address this evidence in his lengthy submissions undermines his credibility overall. Mr. Hall's failure to provide an explanation of what happened, or to explicitly deny the applicants' allegations, suggests that he knows he sent the wrong cards, whether it was on purpose or not.
22. Mr. Khiabani does not have the same "smoking gun" evidence because he did not record himself unpackaging the cards. However, given that Mr. Hall does not say anything about Mr. Khiabani's photo or what cards he sent Mr. Khiabani, I find that the photo likely shows what Mr. Khiabani received. I note again that he contacted Mr. Hall immediately after opening it to complain about receiving the wrong cards. I find Mr. Hall's failure to respond telling.
23. As for the appropriate remedy, both applicants ask for a full refund. I acknowledge that the cards that the applicants received may have marginal market value, although there is no concrete evidence of how much. However, on a judgment

basis, I find that a full refund is appropriate for both applicants. They both paid for high value Pokémon cards and received items that held little or no value to them.

24. I therefore order Mr. Hall to pay Mr. Younes \$975 and Mr. Khiabani \$260.
25. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are both entitled to pre-judgment interest from the day they sent their respective e-transfers to the date of this decision. For Mr. Younes this equals \$3.38. For Mr. Khiabani this equals \$0.88.
26. 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. Mr. Younes paid the CRT fees for the applicants, so I find he is entitled to reimbursement of \$125 in CRT fees. I also find he is entitled to be reimbursed \$12 for registered mail as a dispute-related expense. Mr. Khiabani did not claim any dispute-related expenses.

## **ORDERS**

27. Within 30 days of the date of this order, I order Mr. Hall to pay Mr. Younes a total of \$1,115.38, broken down as follows:
  - a. \$975 in damages,
  - b. \$3.38 in pre-judgment interest under the COIA, and
  - c. \$137 for \$125 in CRT fees and \$12 in dispute-related expenses.
28. Within 30 days of the date of this order, I order Mr. Hall to pay Mr. Khiabani a total of \$260.88, broken down as follows:
  - a. \$260 in damages, and
  - b. \$0.88 in pre-judgment interest under the COIA.
29. I dismiss the applicants' claims against Ms. Robinson.

30. The applicants are each entitled to post-judgment interest, as applicable.
31. 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.
32. 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