



Civil Resolution Tribunal

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File: SC-2021-006354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tolmazoff v. Harness Racing B.C. Society*, 2022 BCCRT 471

B E T W E E N :

PAUL TOLMAZOFF

APPLICANT

A N D :

HARNESS RACING B.C. SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about whether a society should reimburse a member for alleged lost wages or expenses.
2. The applicant, Paul Tolmazoff, is a horse trainer and a member of the respondent society, Harness Racing B.C. Society (HRBC). Mr. Tolmazoff keeps horses stabled

at a horse racing track controlled by a corporation (GCGC) which is not a party in this dispute. Mr. Tolmazoff says HRBC attempted to suspend his membership and had GCGC bar him from the racetrack for 30 days. He claims reimbursement of \$4,800 for expenses which, I infer, is what Mr. Tolmazoff says he paid for someone else to train his horses during Mr. Tolmazoff's racetrack grounds ban.

3. HRBC acknowledges that it recommended GCGC ban Mr. Tolmazoff from its grounds, due to Mr. Tolmazoff's allegedly threatening Facebook posts. HRBC says GCGC was entitled to ban Mr. Tolmazoff from the racetrack grounds under its stable agreement.
4. Mr. Tolmazoff represents himself. HRBC is represented by a director (NH).

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
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. As explained below, I find this dispute is best decided under the CRT's small claims jurisdiction, rather than its society jurisdiction set out in CRTA section 129.

ISSUE

9. The issue in this dispute is whether HRBC must reimburse Mr. Tolmazoff for any expenses he paid during his 30-day ban from the racetrack and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one the applicant Mr. Tolmazoff must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
11. At the outset, I note Mr. Tolmazoff used the terms "wrongful dismissal" and "loss wages" in his application for dispute resolution. However, his requested resolution was for HRBC to reimburse him "money paid out" during his "suspension". Mr. Tolmazoff makes no further mention of income loss or wrongful dismissal in his submissions. Rather, Mr. Tolmazoff argues that he had to pay \$4,800 for someone else to train his horse while he was banned from the racetrack grounds. He says HRBC is responsible for his ban. So, I find Mr. Tolmazoff's substantive claim is for reimbursement of the cost of contracting out horse training during the 30-day period he was unable to train the horses at GCGC racetrack, rather than any claim for wrongful dismissal or lost wages.
12. I now turn to the facts in this dispute.

13. Based on Facebook postings submitted by HRBC, I find Mr. Tolmazoff posted comments that “we are storming the office this week” and “going in to take over this week”, in response to rumours that horse racing days would be reduced in the future. The postings did not indicate whether the office at issue belonged to HRBC, GCGC, or some other party. However, HRBC perceived the comments as a threat or intimidation attempt, which I find reasonable in the circumstances.
14. At the end of February 2021, HRBC sought to suspend Mr. Tolmazoff’s society membership for 30 days, starting on March 2, 2021. HRBC withdrew its notice of suspension on or before March 2, 2021. However, GCGC banned Mr. Tolmazoff from the racetrack grounds for 30 days, starting March 2, 2021. None of this is disputed.
15. Mr. Tolmazoff says HRBC director NH had GCGC keep Mr. Tolmazoff out of the racetrack. On behalf of HRBC, NH does not dispute this. In its submissions, HRBC acknowledges that it asked GCGC to ban Mr. Tolmazoff or recommended the ban to GCGC, because of Mr. Tolmazoff’s Facebook postings that HRBC says were threatening and inflammatory. Given this, I accept that HRBC either suggested or requested that GCGC temporarily ban Mr. Tolmazoff from the racetrack grounds.
16. Mr. Tolmazoff argues that HRBC is responsible for his economic losses while he was banned from the racetrack. Although he does not use these words, I infer his claim is based on the tort (civil wrong) of intentional interference with economic relations. This tort requires Mr. Tolmazoff to prove that HRBC committed an unlawful act against a third party (here, GCGC) which resulted in economic loss to Mr. Tolmazoff (see *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at paragraph 23). The tort also requires that the unlawful activity be independently actionable by the third party. In other words, GCGC must also have a legal basis to make a claim against HRBC for its actions.
17. I find Mr. Tolmazoff has not proven the required elements of intentional interference with economic relations. Although HRBC admits it asked GCGC to ban Mr. Tolmazoff from the racetrack grounds, I find such a request is not unlawful. Further, given Mr. Tolmazoff’s Facebook posts, I find the request was likely reasonable. I find no basis

on which GCGC would have an actionable claim against HRBC for asking, or even for demanding, that Mr. Tolmazoff be banned from the racetrack.

18. To the extent Mr. Tolmazoff argues HRBC misrepresented to GCGC that he was suspended from HRBC membership in an effort to have him banned from the racetrack grounds, I find the argument cannot succeed. First, there is no indication that HRBC told GCGC that it had suspended Mr. Tolmazoff's membership. Second, even if HRBC had shared that information with GCGC, I find GCGC was aware that HRBC withdrew the suspension before GCGC banned Mr. Tolmazoff from the property. This is based on a March 2, 2021 letter from Mr. Tolmazoff's lawyer to HRBC which Mr. Tolmazoff produced as evidence. In the letter the lawyer writes that he emailed GCGC to inform it that HRBC had withdrawn Mr. Tolmazoff's suspension. The lawyer copied GCGC's emailed response into the letter, which essentially said GCGC was banning Mr. Tolmazoff at HRBC's request, despite the suspension withdrawal. As neither party disputes the accuracy of the lawyer's description of events, and there is no contradictory evidence, I accept the letter accurately depicts the lawyer's communications with GCGC. I find GCGC did not rely on HRBC's withdrawn suspension in deciding to ban Mr. Tolmazoff from the racetrack grounds. So, I find any claim for misrepresentation has not been made out.
19. I have also considered whether HRBC could be liable for the tort of inducing GCGC to breach its contract with Mr. Tolmazoff. However, neither party provided any signed contract between GCGC and Mr. Tolmazoff. HRBC submitted an unsigned horse stall assignment agreement between a raceway company which HRBC says is run by GCGC. However, the agreement does not mention Mr. Tolmazoff, his horses, or GCGC directly, so I cannot conclude the agreement applies to Mr. Tolmazoff and GCGC. Even if the contract did apply, I find it contains a clause which allows the raceway to deny any person, including a horse trainer, permission to enter the racetrack grounds at any time. So, I find it unlikely that HRBC's request that GCGC temporarily ban Mr. Tolmazoff from the racetrack caused GCGC to breach any contract it had with Mr. Tolmazoff.

20. Finally, I considered whether Mr. Tolmazoff's claim could fall within the CRT's society jurisdiction. Keeping in mind the CRT's mandate which includes efficiency, I decided not to ask the parties for submissions about transferring this dispute to the CRT's society stream, given my analysis below.
21. To the extent Mr. Tolmazoff argues HRBC wrongfully suspended his society membership, I find such a claim could not succeed, as the parties agree that HRBC withdrew its membership suspension before the March 2, 2021 start date. So, I would have found HRBC's suspension was not the reason Mr. Tolmazoff had to pay someone else to train his horses. This supports my conclusion that this dispute falls within the CRT's small claims jurisdiction, rather than its societies jurisdiction.
22. CRTA section 129 gives the CRT jurisdiction over a claim concerning a society or director's action or decision in relation to a member, if the action or decision is "in respect to" the *Societies Act* (SA). The phrase "in respect of" is one with the widest possible scope. However, it is not a phrase of infinite reach, and when interpreting the phrase, consideration must be given to the wider context in which the words are found (*Sarvanis v. Canada*, 2002 SCC 28, at paragraphs 22 and 24). As noted above, I find Mr. Tolmazoff's claim is a tort claim for his extra horse training expenses.
23. However, as I explained in the non-binding CRT decision *Pang v. Little Mountain Residential Care & Housing Society* 2021 BCCRT 947, I find section 131(2) of the CRTA gives the CRT authority to consider claims over a society's allegedly unfairly prejudicial conduct. Mr. Tolmazoff did not, expressly or impliedly, frame his claim as a societies claim about unfairly prejudicial conduct so I have not asked the parties for submissions about transferring this dispute to the CRT's societies jurisdiction. I find this is consistent with the CRT's mandate, which includes efficiency.
24. Even if Mr. Tolmazoff had framed his claim against HRBC as one of unfairly prejudicial conduct, I would have dismissed the claim. To be successful in a claim for unfairly prejudicial conduct, Mr. Tolmazoff would have to establish that HRBC failed to meet his objectively reasonable expectations and that, on an objective basis, that failure involved prejudicial consequences to Mr. Tolmazoff (see *Dalpadado v. North*

Bend Land Society, 2018 BCSC 835). The focus is on the effect of the allegedly unfairly prejudicial conduct on the society member, rather than on the society's intention in its conduct (see *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748, citing *Nystad v. Harcrest Apt. Ltd.*, 1986 CanLII 999 (BC SC). As noted in *Dalpadado*, there must also be an element of inequity or unfairness to the conduct's effect.

25. In this dispute, I would have found any expectation Mr. Tolmazoff had that HRBC would not ask GCGC to temporarily ban him from the racetrack grounds would not be objectively reasonable. Given Mr. Tolmazoff's Facebook posts to "take over" and "storm the office", I would have found it objectively reasonable for HRBC or GCGC to take action to address those postings, including temporarily suspending Mr. Tolmazoff's rights to access the racetrack and grounds. I find Mr. Tolmazoff would not have succeeded in a society claim that HRBC acted in an unfairly prejudicial manner toward him, or that HRBC wrongly suspended his membership.
26. Overall, I find Mr. Tolmazoff has not proven HRBC is responsible for his training expenses through any civil wrong, by suspending his society membership, or by acting unfairly prejudicially toward him. So, I dismiss Mr. Tolmazoff's claims and this dispute.
27. 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. As Mr. Tolmazoff was unsuccessful in his claims, he is not entitled to reimbursement of his CRT fees or any dispute-related expenses. Even if he had been successful, I would not have ordered HRBC to reimburse Mr. Tolmazoff his claimed legal fees. This is because, under CRT rule 9.5 legal fees are generally only reimbursed in extraordinary circumstances, which I find is not the case here. As the successful party HRBC claimed no dispute-related expenses.

ORDER

28. I dismiss Mr. Tolmazoff's claims and this dispute.

Sherelle Goodwin, Tribunal Member