



# Civil Resolution Tribunal

Date Issued: May 26, 2022

File: SC-2021-007018

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lu v. Hsu*, 2022 BCCRT 620

BETWEEN:

RONG LU

**APPLICANT**

AND:

HSIU-CHIN HSU

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Rong Lu, worked as a barista at La Cuisson Café. La Cuisson Café is the business name of 2 café locations operated by Caspersnoopy Enterprises Ltd. (Caspersnoopy) and Shanshan Café Enterprises Ltd. (Shanshan), respectively. The

respondent, Hsiu-Chin Hsu, owns these companies. Neither of the companies are named as parties to this dispute.

2. Rong Lu says they were fired in March 2020 and did not receive their last paycheque, regular wages, overtime, annual vacation pay, statutory holiday pay, compensation for length of service, training wages and other compensation. They claim \$5,000. Mr. Hsu generally denies Rong Lu's claims and says there are cheques waiting for Rong Lu to collect.
3. Both parties are self-represented. For the reasons set out below, I dismiss Rong Lu's claims.

## **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. 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. 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. The CRT does not have jurisdiction over an employee's claim for statutory entitlements under the *Employment Standards Act* (ESA). The ESA gives the Director of Employment Standards (DES) exclusive jurisdiction over such claims. On October 27, 2020, Rong Lu filed an ESA complaint against Caspersnoopy and Shanshan carrying on business as La Cuisson Café. The DES found Rong Lu's complaint was filed outside of the 6-month time limit established by the ESA and declined to investigate the complaint. Rong Lu appealed that decision to the Employment Standards Tribunal (EST), which on January 27, 2022 confirmed the DES's decision (see *Rong Lu (Re)*, 2022 BCEST 10).
9. Some aspects of Rong Lu's claim appear to relate to ESA entitlements such as statutory holiday pay. Other aspects of her claim may be rooted in her employment contract and therefore may not be subject to the ESA's 6-month time limit. Given that CRTA section 10(2) allows a claim to be amended to remove the issues that are beyond the CRT's jurisdiction, I find the CRT has jurisdiction over some aspects of Rong Lu's claim and I can adjudicate this dispute. Ultimately, because I dismiss the claim for other reasons, it is not necessary to determine precisely which aspects of the claim I can decide.

## **ISSUE**

10. The threshold issue in this dispute is whether Mr. Hsu employed Rong Lu or should otherwise be personally responsible for the claimed \$5,000. Because I find Mr. Hsu has no personal liability, I dismiss the claim without addressing the other issues.

## EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Rong Lu must prove their claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. Mr. Hsu says Rong Lu was employed by Caspersnoopy and Shanshan doing business as La Cuisson Café. There is no written employment contract in evidence, but Rong Lu's wage statements, T4 statements and Record of Employment documents all describe their employer as either Caspersnoopy or Shanshan. Given the evidence, I am satisfied that Rong Lu's employment contract was with Caspersnoopy and Shanshan doing business as La Cuisson. Rong Lu does not dispute this, nor do they ask to amend the Dispute Notice to reflect the correct employer.
13. The common law concept of privity of contract says that as a general rule, a contract cannot give rights or impose obligations on a person who is not a party to the contract. Corporations are separate legal entities from their directors and officers. So, while Rong Lu's employment contract may have imposed obligations on Caspersnoopy and Shanshan, I find it did not impose obligations Mr. Hsu.
14. Rong Lu does not explain why they brought this claim against Mr. Hsu personally rather than Caspersnoopy and Shanshan. In general, an owner of a corporation is not liable for the corporation's debts. It is up to Rong Lu to show that Mr. Hsu is personally responsible for her claimed \$5,000, either under the employment contract or in some other way. Because Mr. Hsu was not Rong Lu's employer and Rong Lu has not offered any other explanation why Mr. Hsu is legally responsible for the claimed amounts, I dismiss Rong Lu's claims.
15. 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 Rong Lu was unsuccessful, I dismiss their claim for \$175 for CRT fees. Mr. Hsu was successful but did not pay any CRT fees.

16. Mr. Hsu claims \$2,170 in dispute-related expenses. This includes \$588 for an annual membership to a legal defence provider and \$1,582 for accounting services to review Rong Lu's submissions and payroll documents. The accounting invoice was billed to La Cuisson Café, while the legal membership does not identify the customer. On balance, I find these expenses were incurred by one or both of Caspersnoopy and Shanshan, not Mr. Hsu personally, so I find he cannot claim these expenses. I also refuse to allow the annual membership given there is no evidence the service was used in this dispute. I dismiss Mr. Hsu's claim for dispute-related expenses.

## **ORDER**

17. I dismiss Rong Lu's claims, Mr. Hsu's claim for dispute-related expenses, and this dispute.

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Micah Carmody, Tribunal Member