



# Civil Resolution Tribunal

Date Issued: August 3, 2022

File: SC-2021-008915

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1107199 B.C. Ltd v. Tosh*, 2022 BCCRT 875

BETWEEN:

1107199 B.C. LTD and RITA LICHIMO

**APPLICANTS**

AND:

CHARIECE TOSH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an electronic money transfer. The applicant, Rita Lichimo, is the director of the corporate applicant, 1107199 B.C. Ltd. (110). The applicants says they mistakenly transferred \$5,000 to the respondent, Chariece Tosh. The applicants seek repayment of the \$5,000 they say they sent in error.

2. I will refer to Chariece Tosh as the respondent because they declined to provide a preferred pronoun or title when asked. The respondent denies liability. They say they never received the funds.
3. Mrs. Lichimo represents the applicants. The respondent is self-represented.
4. For the reasons that follow, I find the applicants have proven their claims.

## **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. Some of the evidence in this dispute amounts to a "they said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

## **ISSUE**

9. The issue is whether the respondent must reimburse the applicants \$5,000.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I will start with determining whether the applicants sent the money to the respondent, as alleged. Mrs. Lichimo says she originally intended to transfer \$5,000 from 110 to herself through online banking. She says she mistakenly selected the respondent as the recipient. A bank statement shows that on September 28, 2021, 110 electronically sent \$5,000 to someone named "Riece". I note this partially matches the respondent's first name.
12. To explain the transaction, Mrs. Lichimo, on behalf of 110, asked BlueShore Financial Credit Union (BlueShore) for more details about the transaction under CRT rule 8.2. This rule allows a party to request evidence from another person using the Summons Form. BlueShore was 110's financial institution.
13. BlueShore completed the Summons Form. It attached a document that shows the recipient of the funds was the respondent. The document also included the recipient's

email address. It is undisputed that the respondent previously used this email address, though the respondent disputes using it recently.

14. BlueShore's document identified the sender as "DB-SYS Technologies Inc., Rita Lichi", rather than 110. So, I asked the parties for submissions on why the sender's stated name differed from what is in the bank statement. Mrs. Lichimo provided an undated letter from BlueShore's employee or representative, JS. The letter confirmed that the sum of \$5,000 was sent from 110's bank account to the email address mentioned above. Further, JS explained that Mrs. Lichimo's bank card could be used to make transactions for her own personal accounts and those of DB-Sys Technologies Inc. Consistent with this, Mrs. Lichimo submitted that BlueShore's document was referring to her bank card, which could be used to access 110's account.
15. I find this reasonably explains what happened and why the sender's name in the document was not 110. Accordingly, I am also satisfied that the applicants are the proper claimants in this dispute. I note that the respondent did not reply to the applicants' subsequently submitted evidence or submissions though they had the opportunity to do so.
16. The document also shows that the sender sent \$5,000 at 1:32 pm and the money was deposited by the recipient about 30 minutes later. Based on BlueShore's evidence, I am satisfied that the applicants sent \$5,000 to the respondent through email from 110's account, and the respondent deposited it. BlueShore gave no indication that the money never arrived or was sent to someone else. Given the above, I find it proven that the respondent received \$5,000 from the applicants through a mistaken transaction.
17. The respondent says they stopped using the above-noted email address and "updated" it in October 2020. I find this submission unpersuasive as they did not say they lost access to the previous email address or that someone else had taken control over it. They provided no evidence that someone else accepted the money using the old email address.

18. The respondent correctly points out that BlueShore's document has a "TD" logo next to the named recipient. They says this means the recipient must have deposited it into a TD bank account. The respondent says this proves they did not receive the funds. In support of this submission, the respondent provided a printout that shows that, as of May 12, 2022, they had 1 bank account and 6 RESP accounts with TD. They also provided a September 2021 bank statement for the TD bank account. It does not show the deposit of \$5,000.
19. While I acknowledge this evidence, the printout only says what bank accounts the respondent had as of May 2022. It does not say what accounts the respondent held as of the transaction date of September 28, 2021. So, I put little significance on this evidence and do not find it convincing.
20. In summary, I find the respondent received \$5,000 from the applicants. I turn back to the chronology. The same day of the transfer, Mrs. Lichimo sent an email to the respondent. She explained that she sent the money in error and asked for its return. She sent more emails on September 29, 30, and October 20, 2021. The respondent did not reply to any of them.

***Must the respondent reimburse the applicants \$5,000?***

21. Several CRT decisions have considered the law regarding mistaken electronic money transfers. These decisions generally apply the law of unjust enrichment. The legal test requires an applicant to prove that 1) the respondent was enriched, 2) the applicant suffered a corresponding deprivation, and 3) there is no juristic reason for the enrichment of one at the expense of the other. See, for example, *Connell v. Dreger*, 2021 BCCRT 1312, and my past decision of *Geometry Integrated Health Ltd. v. Meier*, 2022 BCCRT 678. Although previous CRT decisions are not binding on me, I find their reasoning persuasive and applicable to this dispute.
22. Here, I find it proven that the respondent was enriched by the claimed amount of \$5,000. I find that the applicants suffered a corresponding deprivation as the senders.

23. The respondent says the applicants owe her money from a previous tenancy that ended on January 18, 2020. They say the applicants acted in a threatening and discriminatory manner. However, the respondent did not file a counterclaim. The respondent also says they are “not requesting compensation for these actions”. So, I find there is no juristic reason for the enrichment. I therefore find it proven that the respondent was unjustly enriched by \$5,000 and order them to pay the applicants this amount.
24. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the award of \$5,000 from September 28, 2021, the date the applicants notified the respondent of the error, to the date of this decision. This equals \$24.93.
25. 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 in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$175 in CRT fees.
26. The applicants also claimed \$25 as reimbursement for money paid to BlueShore to complete the Summons Form. This was key evidence, so I find the applicants are entitled to reimbursement of \$25 in dispute-related expenses.

## **ORDERS**

27. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$5,224.93, broken down as follows:
  - a. \$5,000 as damages for unjust enrichment,
  - b. \$24.93 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$200, for \$175 in CRT fees and \$25 for dispute-related expenses.
28. The applicants are entitled to post-judgment interest, as applicable.

29. 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. 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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David Jiang, Tribunal Member