



Civil Resolution Tribunal

Date Issued: September 29, 2022

File: SC-2022-000523

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Total Credit Recovery Limited v. Van Beest*, 2022 BCCRT 1072

B E T W E E N :

TOTAL CREDIT RECOVERY LIMITED

APPLICANT

A N D :

ELINOR L VAN BEEST aka ELINOR LOUISE VANBEEST

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, Total Credit Recovery Limited (Total Credit), says the respondent, Elinor L Van Beest aka Elinor Louise VanBeest, failed to make cell phone payments pursuant to her cellular service contract with a third party, RCCI. Total Credit says RCCI assigned Elinor Van Beest's debt to Total Credit in April 2019. Total Credit now seeks payment of \$1,629.73 as principal plus annual contractual interest of 26.82%.

2. Elinor Van Beest disputes responsibility for the alleged debt. She says this is her daughter's dispute, and says "the company" never sent a general bill, email or letter explaining the charges.
3. Elinor Van Beest is self-represented. Total Credit is represented by KA, who I infer is an authorized employee or principal.

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.

ISSUE

8. The issue in this dispute is to what extent, if any, Elinor Van Beest owes Total Credit \$1,629.73 for unpaid cellular services.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Total Credit must prove its claims on a balance of probabilities (meaning more likely than not). Elinor Van Beest did not provide any evidence in this dispute, despite being provided with the opportunity to do so. I have read all the parties' submissions and Total Credit's evidence but refer only to what I find relevant to provide context for my decision.
10. Total Credit says Elinor Van Beest is responsible to pay the claimed \$1,629.73 in debt based on her contract with RCCI. RCCI is not a party to this dispute. The evidence shows that Elinor Van Beest entered into a cellular service contract RCCI on March 5, 2018. The signed contract is in evidence. Although Elinor Van Beest says this is her daughter's dispute, she did not explain why the signed contract is in her name. She also did not deny signing the contract. In the absence of any further explanation, I find the evidence shows that Elinor Van Beest entered into the contract with RCCI, not her daughter.
11. Total Credit says RCCI assigned Elinor Van Beest's alleged debt under the contract to Total Credit on April 5, 2019. However, Total Credit did not provide any documentary evidence in support of this, such as an agreement between RCCI and Total Credit, or other documentary evidence. Therefore, I find the evidence does not show that RCCI assigned Elinor Van Beest's alleged debt to Total Credit.
12. As discussed above, Total Credit bears the burden of proving its claim. The problem here is that without evidence that RCCI assigned Elinor Van Beest's alleged debt to Total Credit, there is no evidence that Elinor Van Beest has any legal obligation to pay any debts owing under her contract with RCCI to Total Credit. So, I find that Total Credit's claim is unproven and I dismiss it.

13. I note the evidence also suggests that the limitation period to bring this claim may have expired. However, given that I have already dismissed this dispute for other reasons, I find it is not necessary for me to address this issue.

CRT fees and expenses

14. 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. As Total Credit was unsuccessful in this dispute, I dismiss its fee claim. Elinor Van Beest did not pay any CRT fees and neither party claimed any dispute related expenses, so I award none.

ORDER

15. I dismiss Total Credit's claims and this dispute.

Leah Volkers, Tribunal Member