



Civil Resolution Tribunal

Date Issued: October 12, 2022

File: SC-2021-009643

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. WK Travel Inc.*, 2022 BCCRT 1116

BETWEEN:

SUHUA WANG and JOHN POSTMA

APPLICANTS

AND:

WK TRAVEL INC. and CHINA EASTERN AIRLINES CORPORATION
LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about entitlement to a flight refund. The applicants, Suhua Wang and John Postma, each purchased airline tickets through the respondent travel agent, WK Travel Inc. (WK). The flights were with the respondent airline, China Eastern Airlines Corporation Limited (CEA).

2. The applicants say that after they cancelled their flight the respondents each refused to provide a refund. They seek a total of \$1,573.82 from both respondents. This consists of \$1,430.34 for the 2 tickets plus \$143.48 for a booking fee charged by WK.
3. The respondents deny liability. WK also says it already refunded the \$143.48 booking fee, though it submits it had no obligation to do so.
4. The applicants are self-represented. The respondents are represented by their employees or principals.
5. For the reasons that follow, I find the applicants have proven part of their claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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

10. The issue in this dispute is whether any respondents must refund the applicants the cost of their airline tickets or booking fee.

BACKGROUND, EVIDENCE AND ANALYSIS

11. 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.
12. The key facts are essentially undisputed. WK's booking confirmation document shows the following. On January 12, 2020, the applicants purchased 2 airline tickets through WK for flights operated by CEA. WK referred to itself as OneTravel in the documents. The applicants paid WK \$1,176.22 USD in total, broken down as follows: \$1,069.32 USD for the 2 tickets, \$29.90 USD for WK's assistance, and \$77 USD for travel insurance. The applicants were scheduled to depart Vancouver on May 1 and return May 18, 2020.
13. WK's booking confirmation stated that once purchased, "most tickets are non-refundable and non-transferable". It also said that service fees were non-refundable in any event.
14. The document also contained a website link to further terms and conditions that I find include the terms and conditions document submitted by WK as evidence. The terms and conditions noted that refunds were only available if the airline's fare rules, policies, and procedures allowed for it. However, the parties did not provide a copy of CEA's rules, policies, or procedures.

15. On March 27, 2020, CEA issued a notice to its passengers. It said that due to the COVID-19 pandemic, it would cancel certain flights between March 29 and May 2, 2022. I find from the listed flights numbers, routes, and dates, that this included the applicants' flight. The notice said that passengers should contact their travel agent or CEA's customer service line and choose either a full refund or to exchange the tickets for credit.
16. I find that the March 2020 notice is the best evidence of CEA's terms and conditions for cancelling the flights. I reach this conclusion in part because no parties provided documents showing any other terms that might apply. Further, the parties also acted on this document and treated it as binding. CEA cancelled flights under it and the applicants acted on the notice. As shown in WK's email and CEA's documents, on April 2, 2020, the applicants cancelled their flights through WK after receiving the notice. They chose to receive a credit and not a refund. The booking documents show WK also charged the applicants a \$70 USD cancellation fee on that date.
17. CEA submits that the applicants only had 1 year to use the travel credit. However, the March 2020 notice does not say this, nor does any other document in evidence. WK's email did not say that the applicants had a time limit to use the travel credit. So, I find it unproven that the applicants had only 1 year to use their travel credit.
18. CEA's internal emails show that on April 3, 2021, the applicants requested a refund. CEA refused by email on April 5, 2021. It said that the applicants had opted for a credit on April 1, 2020, and had failed to use it or request a refund by the alleged deadline of April 1, 2021. I conclude from this that CEA cancelled the credit.

Must any respondents refund the applicants the cost of their airline tickets or booking fee?

19. As noted above, I find CEA cancelled the applicants' flight under the terms of the March 2020 notice. It is undisputed that the applicants decided to opt for credit with CEA for future flights. I find that CEA breached the parties' contract by cancelling the credit because it had "expired", even though this was not a term of its agreement with

the applicants. I find a refund of the cost of the tickets is an appropriate measure of damages.

20. The booking sheet shows CEA charged \$1,069.32 USD for 2 tickets. I find this equal to the applicants' claim for \$1,430.34 CAD for the tickets, as no party said another amount would be more appropriate. The amount also appears reasonable on its face. I order CEA to pay this amount.
21. This leaves WK's liability. The applicants did not explicitly state why WK should be liable, but I infer they allege that WK should be liable as CEA's agent. Under the law of agency and the doctrine of alternative liability, an applicant may sue both the agent and principal. However, it may only obtain a judgment against one or the other, and not both. See, for example, *Dan Gamache Trucking Inc. v. Encore Metals Inc.*, 2008 BCSC 343 at paragraphs 21 to 22. As I have found CEA liable for the tickets, I find the claims against WK for the tickets should be dismissed.
22. I also reach this conclusion in part for the following reasons. WK did not cancel the flights in March 2020. The cancellation notice came directly from CEA. WK did not offer or cancel the credit in dispute. There is no indication WK guaranteed any of CEA's services. It is also undisputed that WK forwarded the applicants' ticket money to CEA.
23. This leaves the \$77 USD insurance, \$70 USD cancellation fee, and \$29.90 USD traveler assist fee charged by WK only. These amounts total \$176.90 USD. It is undisputed that WK provided the applicants with a refund equal to this amount. I find that the applicants' claim for \$143.48 CAD in booking fees charged by WK was included in this refund. So, I find WK has already returned this amount and dismiss this claim.
24. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the damages award of \$1,430.34 from April 5, 2021, the date of CEA's breach, to the date of this decision. This equals \$14.90. I order CEA to pay this.

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 \$125 in CRT fees. The applicants also requested reimbursement of \$30.58 in courier fees for serving the respondents. The applicants supported this claim with a credit card statement and delivery receipt, so I order CEA to pay this amount as well.

ORDERS

26. Within 30 days of the date of this order, I order CEA to pay the applicants a total of \$1,600.82, broken down as follows:

- a. \$1,430.34 as damages for breach of contract,
- b. \$14.90 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$155.58, for \$125 in CRT fees and \$30.58 for dispute-related expenses.

27. The applicants are entitled to post-judgment interest, as applicable.

28. I dismiss the applicants' remaining claims, including all claims against WK.

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.

David Jiang, Tribunal Member