



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Bank of Nova Scotia Trust Company/La Societe de Fiducie Banque de Nouvelle-Ecosse v. Chamberlayne*, 2022 BCCRT 1240

B E T W E E N :

THE BANK OF NOVA SCOTIA TRUST COMPANY/LA SOCIETE DE
FIDUCIE BANQUE DE NOUVELLE-ECOSSE and
YASMIN WARDA

APPLICANTS

A N D :

MARCIA CHAMBERLAYNE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The Bank of Nova Scotia Trust Company/La Societe de Fiducie Banque de Nouvelle-Ecosse (BNS) issued a credit card to Marcia Chamberlayne. BNS says that Mrs. Chamberlayne defaulted on her credit card debt. BNS claims a principal

amount of \$2,967.06, plus 24.99% contractual interest. Yasmin Warda is an employee of a debt collections agency that BNS hired in relation to Mrs. Chamberlayne's alleged debt. Ms. Warda represents both applicants. The collections agency is not a party to this dispute.

2. Mrs. Chamberlayne says that the outstanding charges were all fraudulent. She denies owing anything after deducting the fraudulent charges. She also asks to be reimbursed for alleged overpayments, but she did not file a counterclaim. She asks me to dismiss BNS's claim. She is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether Ms. Chamberlayne owes the applicants the claimed credit card debt, and if so, how much she owes.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Before turning to the facts, I will briefly address Ms. Warda's claim. As mentioned above, she is an employee of BNS's collections agency. She does not explain why she would have a personal right to collect the debt. She is undisputedly not a party to the contract between Mrs. Chamberlayne and BNS. On that basis, I dismiss Ms. Warda's claim.
10. The following facts are undisputed. Mrs. Chamberlayne and BNS entered into a written contract on February 16, 2017. Under that contract, BNS issued Mrs. Chamberlayne a credit card, which initially had an \$1,100 limit. I discuss the contract's relevant terms below.
11. Mrs. Chamberlayne says that there were dozens of fraudulent charges on her card over the years, which far exceed the amount BNS claims in this dispute. She provided all her account statements and highlighted the charges she says were fraudulent. The first was dated March 27, 2017, about a month after her first

purchase. Mrs. Chamberlayne says that between February 2017 and February 2018, there were 17 fraudulent charges totaling \$1,155.11.

12. It is undisputed that in February 2018, Mrs. Chamberlayne reported 14 fraudulent charges on her credit card. BNS reversed 2 charges from November 2017 totaling \$109.70 in response. Mrs. Chamberlayne says that BNS ignored the rest of her fraud allegations. I return to this issue below.
13. Also in February 2018, BNS issued Mrs. Chamberlayne a new credit card. According to Mrs. Chamberlayne, the fraudulent charges started again almost immediately. Mrs. Chamberlayne says that between February 2018 and July 2020, there were 67 fraudulent charges totaling \$3,467.68.
14. According to BNS's records, Mrs. Chamberlayne did not report any of these allegedly fraudulent charges until July 2020. At that time, BNS reversed 7 charges from March and April 2020 totaling \$353.09. By then, Mrs. Chamberlayne had stopped using the card. She had made her last payment on June 2, 2020.
15. Mrs. Chamberlayne says that the \$4,636.24 in allegedly fraudulent charges far exceeds BNS's claimed outstanding principal (\$2,967.06). I calculate the allegedly fraudulent charges to be \$4,160, but I find nothing turns on this because either way it is over \$2,967.06.
16. I find that the burden is on Mrs. Chamberlayne to prove that the disputed charges were fraudulent, and that she is therefore not responsible for them. BNS argues that Mrs. Chamberlayne made the disputed charges. It argues that there is nothing inherently suspicious about the charges, which it says are from legitimate online businesses (such as Groupon). BNS also relies on Mrs. Chamberlayne's failure to promptly report the disputed charges as evidence that they were not fraudulent.
17. Mrs. Chamberlayne says that she tried to dispute the fraudulent charges. As mentioned above, she says that the fraud department only reversed 2 disputed charges in February 2018 even though she reported 14. In general, she says that she would often sit on hold for hours without getting through to a BNS employee.

When she did connect, she says that BNS would just transfer her between departments without helping. As for her failure to notice the fraudulent charges sooner, she says that her online password often did not work, so she could not always promptly review charges.

18. She says that despite these challenges, she opened new fraud claims in October and December 2020, but nothing came of them. She also says that at some point (she does not say when), she spoke with someone else from the fraud department about her ongoing issues, but they did not “correct” anything. She says that she did not keep detailed records of these calls because she saw no reason to at the time.
19. Mrs. Chamberlayne also relies on the fact that the disputed charges are in foreign currencies. I accept BNS’s explanation that the charges were from online purchases.
20. I find Mrs. Chamberlayne’s explanations for her lack of action vague and unpersuasive. While her alleged difficulties with getting copies of her statements could explain some delay in reporting fraudulent charges, I find that it does not explain the more than 2-year gap between her first and second fraud reports. I also find it implausible that she was unable to speak to anyone from BNS’s fraud department for over 2 years. She also does not say why she did not report the fraudulent charges in writing.
21. I find it particularly noteworthy that Mrs. Chamberlayne does not say anything in her submissions about the fact that only 7 of the 67 allegedly fraudulent charges were reversed in July 2020. Given that she specifically mentioned that BNS had ignored some of her February 2018 reports, her silence about what happened in July 2020 suggests that she only reported 7 fraudulent charges (which BNS reversed). This, in turn, supports the conclusion that the rest of the charges were genuine.
22. Also, as BNS points out, there are several different companies that Mrs. Chamberlayne alleges made fraudulent transactions with both her credit cards. I agree with BNS that this suggests that Mrs. Chamberlayne made these purchases.

23. On balance, I find it more likely than not that Mrs. Chamberlayne made the disputed purchases.
24. BNS also argues that the parties' contract required Mrs. Chamberlayne to report any fraudulent charges either immediately or within 30 days of a statement date. Given my conclusion, I find it unnecessary to address these arguments.
25. I turn then to BNS's claimed amount. The last statement is dated November 17, 2020. It had a balance of \$3,238.34. BNS says that \$2,967.06 of this was principal and the rest (\$271.28) was interest. Mrs. Chamberlayne does not dispute this calculation, so I accept it.
26. Under the parties' contract, the interest rate on purchases was 19.99% per year. However, the parties' contract allowed BNS to increase that rate to 24.99% if Mrs. Chamberlayne missed 2 minimum payments in a 12-month period, which would take effect 3 months after the second missed payment. Mrs. Chamberlayne did not make minimum payments in July or August 2020. The interest rate on the November 2020 statement was 19.99%. I find that BNS was entitled to increase the interest rate on November 18, 2020, the next day, because it is the third month after Mrs. Chamberlayne's final payment. I find that BNS is entitled to 24.99% interest on the \$2,967.06 principal from November 18, 2020, to the date of this decision. This equals \$1,480.91. I therefore find that Mrs. Chamberlayne owes a total of \$1,752.19 in contractual prejudgment interest.
27. As for post-judgment interest, under section 48(3) of the CRTA, the *Court Order Interest Act* (COIA) applies to the CRT. Under section 7 of the COIA, a judgment bears simple interest at the government banker's prime lending rate, which is adjusted every 6 months (it is currently 3.7%). Section 8 allows the court (or the CRT) to order a different interest rate. BNS asks for an order for 24.99% post-judgment interest to reflect the rate in the parties' agreement.
28. In *Radiant Global Logistics Inc. v. Border Express Services Ltd.*, 2018 BCSC 1817, the court said that exceptions under section 8 of the COIA should be unusual. There

is nothing unusual about this dispute, which is about a consumer debt to a major bank. Notably, the COIA says that a party is entitled to prejudgment interest at whatever rate the parties agreed to, but it does not say the same thing in the provisions about post-judgment interest. I find that BNS is entitled only to post-judgment interest as calculated under section 7 of the COIA.

29. 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 find BNS is entitled to reimbursement of \$200 in CRT fees. BNS did not claim any dispute-related expenses. I dismiss Mrs. Chamberlayne's claim for reimbursement of CRT fees.

ORDERS

30. Within 30 days of the date of this order, I order Mrs. Chamberlayne to pay BNS a total of \$4,919.25, broken down as follows:

- a. \$2,967.06 in debt,
- b. \$1,752.19 in contractual prejudgment interest, and
- c. \$200 in CRT fees.

31. BNS is entitled to post-judgment interest under section 7 of the COIA.

32. I dismiss Ms. Warda's claims.

33. 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.

Eric Regehr, Tribunal Member