



Civil Resolution Tribunal

Date Issued: July 10, 2023

File: SC-2022-006385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clerihue v. Chhetri*, 2023 BCCRT 581

BETWEEN:

TREVOR CLERIHUE

APPLICANT

AND:

GOVINDA CHHETRI and EASYWAY LENDING GROUP INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment of a cheque. The applicant, Trevor Clerihue, took a \$970.50 cheque to the respondent, Easyway Lending Group Inc. (Easyway), to cash it. It is undisputed Easyway's employee, the respondent Govinda Chhetri, told Mr. Clerihue that Easyway would only give him \$100 immediately, and that Mr. Clerihue

could come back and collect the balance when the cheque had cleared. It is also undisputed that when Mr. Clerihue returned to collect the balance, Govinda Chhetri refused to give him the money. Mr. Clerihue claims \$860, the cheque balance less Easyway's \$10 fee, without explaining why he does not claim the remaining 50 cents. Given my decision below, I find nothing turns on this.

2. The respondents deny Mr. Clerihue's claim. They say Mr. Clerihue's cheque was returned to them marked "payment stopped", meaning they did not receive the funds. So, the respondents say they owe Mr. Clerihue nothing, and it is Mr. Clerihue who owes them \$100 plus a \$7 returned cheque charge. The respondents also say Mr. Clerihue caused \$500 or \$800 worth of damage to Easyway property when he came to collect the balance and was told the cheque had been returned. So, the respondents ask for \$507, without explaining the discrepancy between this amount and the \$607 or \$907 they say Mr. Clerihue owes them. The respondents have not filed a counterclaim, so I infer they request a set-off against any amount I award to Mr. Clerihue, which I address below.
3. Mr. Clerihue is self-represented. Govinda Chhetri represents the respondents.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
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. In Easyway's Dispute Response, Easyway alleges Mr. Clerihue harassed the respondents by coming onto Easyway's premises and being violent, leaving negative reviews online that personally attack Govinda Chhetri, and sending Govinda Chhetri threatening Facebook messages. I note there is no recognized tort of harassment in British Columbia (see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473). Even if there were such a recognized tort, the remedy Easyway seeks, which is that I order Mr. Clerihue to stop harassing the respondents, is what is known as "injunctive relief". I do not have jurisdiction or authority under the CRTA to grant that form of injunctive relief. So, I would decline to order that remedy in any event.

ISSUE

9. The issue in this dispute is whether either or both of the respondents owe Mr. Clerihue \$860 for the balance of his cheque.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Clerihue must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument I find is necessary to explain my decision. Govinda Chhetri provided submissions and evidence for both respondents in this dispute.

11. I begin with the undisputed facts. Mr. Clerihue was issued a cheque by a government department dated January 19, 2022. As summarized above, around January 24, 2022, Mr. Clerihue took the cheque to Easyway to cash it. The respondents gave Mr. Clerihue \$100 and told him he could collect the balance in approximately 3 days once the cheque had cleared. For personal reasons that I do not need to detail here, Mr. Clerihue forgot about the cheque for about 6 months. When he returned to collect the balance in August 2022, the respondents refused to give him any money.
12. At the outset, I dismiss Mr. Clerihue's claims against Govinda Chhetri personally, who, as mentioned above, is undisputedly Easyway's employee. Corporations are distinct legal entities, separate from their officers, directors, and employees. Corporations' employees acting in the course of their employment are not personally liable unless they have committed a wrongful act independent of that of the corporation (see *XY, LLC v. Zhu*, 2013 BCCA 352). There is no evidence Govinda Chhetri committed an independent tort (wrong) separate from Easyway regarding Mr. Clerihue and the cheque cashing. So, I dismiss Mr. Clerihue's claims against Govinda Chhetri in his personal capacity and focus the rest of this decision on Mr. Clerihue's claims against Easyway.
13. The respondents say a copy of Mr. Clerihue's cheque was returned to Easyway on January 26, 2022 marked "payment stopped", so Easyway never received any money for the cheque. In support of their assertion, the respondents submitted a copy of the returned cheque showing on January 25, 2022, the payment was stopped. The respondents also submitted a copy of Easyway's bank statement showing on January 24, 2022 a \$970.50 e-deposit was made into a CIBC account and on January 26, 2022 \$970.50 was withdrawn from the same account due to a stopped payment on a returned cheque.
14. For his part, Mr. Clerihue says the cheque was cashed and Easyway received the money. Although he did not articulate the legal basis for his claim, I find it is grounded in the tort of conversion. Conversion involves wrongfully holding on to another person's property (here, money) and claiming title or ownership of that property. To

prove conversion, Mr. Clerihue must show Easyway committed a wrongful act involving handling, disposing of, or destroying his personal property, and that the act was intended to or actually interfered with his right or title to the property (see *Li v. Li*, 2017 BCSC 1312 at paragraph 214).

15. Mr. Clerihue submitted an August 4, 2022 letter from the government department saying it had reviewed his file and found an overpayment may have occurred. The letter explained that Mr. Clerihue was issued a cheque on January 19, 2022, which he declared lost or stolen on January 21, 2022. It said the department then issued Mr. Clerihue a replacement cheque on January 21, 2022 but that both cheques were in fact cashed, resulting in a \$970.50 overpayment. Mr. Clerihue says he has entered into a repayment agreement with the department for the overpayment.
16. Mr. Clerihue says the government department's letter proves the January 19, 2022 cheque was cashed and Easyway is wrongfully withholding his money from him. Mr. Clerihue submitted an identical copy of the cheque to the one submitted by the respondents, except it does not show the payment was stopped. Mr. Clerihue says this also shows the cheque was cashed.
17. Based on the evidence before me, I find Easyway deposited Mr. Clerihue's January 19, 2022 cheque on January 24, 2022 into a CIBC account, but 2 days later the transaction was reversed because the payment was stopped. I find that the stop payment on the January 19, 2022 cheque aligns with Mr. Clerihue reporting the cheque lost or stolen on January 21, 2022 and being issued a replacement cheque that same day.
18. Mr. Clerihue does not explain why he attempted to cash the January 19, 2022 cheque after he reported it lost or stolen and was issued a replacement cheque, but I find this does not matter for the purposes of this dispute. I find it is clear that when he tried to cash the cheque with Easyway, the transaction was reversed because he had reported the cheque lost or stolen, and so Easyway did not receive the money. I find Easyway does not have money from the January 19, 2022 cheque to give to Mr.

Clerihue. So, I find Mr. Clerihue has not proven Easyway converted his personal property and I dismiss his claim.

19. I turn to the respondents' request for compensation. The respondents say Mr. Clerihue owes them \$507 for the money Easyway advanced him on January 24, 2022, the returned cheque charge, and damage he caused to Easyway's property. As noted above, the respondents did not file a counterclaim, so I infer they ask for a set-off against any amount I award to Mr. Clerihue. As I have not ordered an award to Mr. Clerihue, there is nothing to set off, so I find I do not have to consider this issue.
20. 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. The respondents were successful but did not pay CRT fees. In addition to asking for the \$100 they advanced Mr. Clerihue on January 24, 2022 and the \$7 returned cheque charge as a set-off, the respondents claim these amounts as dispute-related expenses. I find these are not dispute-related expenses as they are not amounts the respondents incurred in responding to this dispute. So, I dismiss the respondents' claim for dispute-related expenses.

ORDER

21. I dismiss Mr. Clerihue's claims, the respondents' claim for dispute-related expenses, and this dispute.

Megan Stewart, Tribunal Member