



Civil Resolution Tribunal

Date Issued: September 11, 2023

File: SC-2022-005056

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Swanson v. Pacific Tugboat Adventures Inc.*, 2023 BCCRT 770

BETWEEN:

TOM SWANSON

APPLICANT

AND:

PACIFIC TUGBOAT ADVENTURES INC.

RESPONDENT

– and –

File: SC-2022-006292

BETWEEN:

JAMES CAREY HOLMES

APPLICANT

AND:

PACIFIC TUGBOAT ADVENTURES INC.

RESPONDENT

– and –

File: SC-2022-006720

B E T W E E N :

JO LORRAINE SWANSON

APPLICANT

A N D :

PACIFIC TUGBOAT ADVENTURES INC.

RESPONDENT

– and –

File: SC-2022-007605

B E T W E E N :

MARY ELIZABETH HOLMES

APPLICANT

A N D :

PACIFIC TUGBOAT ADVENTURES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision involves 4 linked disputes. In all 4 of these disputes, the respective applicant claims a \$5,000 refund for money they paid for a group fishing trip. In each dispute, the applicants make the same allegations against the named respondent, Pacific Tugboat Adventures Inc. (PTA). As noted below, the applicants all also rely on the same written argument and evidence and PTA's response to each dispute is the same in substance. So, I have issued a single decision for all 4 disputes.
2. The applicant in dispute SC-2022-005056 (5056), Tom Swanson, and the applicant, Jo Lorraine Swanson, in dispute SC-2022-006720 (6720), are spouses. Similarly, the applicant in dispute SC-2022-006292 (6292), James Carey Holmes (whose preferred name is Jim Holmes), and the applicant, Mary Elizabeth Holmes (whose preferred name is Mary Liz Holmes), in dispute SC-2022-007605 (7605), are spouses.
3. The applicants say they booked the fishing trip based on the services and amenities PTA advertised on its website. They say that PTA failed to deliver on its promise of a luxury fishing trip. In particular, the applicants say PTA did not provide a professional chef, friendly and experienced staff, fine wines, professional fishing guides, and 1 skiff (small fishing boat) for every 2 people as advertised. While each applicant paid more than \$5,000 USD for the trip, they each claim a \$5,000 refund from PTA, the small claims monetary limit at the Civil Resolution Tribunal (CRT). I find each applicant abandons any portion of their claim that falls above this \$5,000 monetary limit.
4. PTA admits that it was not able to provide some of the advertised services during the applicants' fishing trip due to circumstances out of its control. However, it says that it provided many things as promised. PTA argues none of the applicants are entitled to a \$5,000 refund.
5. The applicants are all self-represented. PTA is represented by its owner and principal, Brian Wurst.

JURISDICTION AND PROCEDURE

6. These are the CRT's 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.
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.

Preliminary Issues

10. Typically, parties to a CRT dispute are required to provide all the evidence and written argument that they intend to rely on in their dispute. Here, after reviewing the evidence and written argument submitted by the parties in the 4 linked disputes, it was apparent that the parties all appeared to proceed on the basis that they could rely on evidence and argument provided in 1 of the linked disputes in another dispute. Accordingly, and given the CRT's flexible mandate, at my request, CRT staff emailed the parties in all 4 linked disputes to confirm that they did not have any objection to me deciding each of the 4 linked disputes by relying on the evidence and written

arguments provided by the parties as a whole, given the parties' appeared to have proceeded with this expectation. The parties were also asked to advise if they believed there may be evidence or argument that they had not had an opportunity to review and respond to. Each of the 4 individual applicants responded confirming they agreed with the proposed approach and did not advise that there was evidence or argument they had not previously reviewed or not had an opportunity to respond to. PTA did not provide a response by the deadline provided. So, CRT staff emailed PTA advising that the applicants in the 4 linked disputes all agreed to the proposed plan and since PTA had not objected, we would proceed as proposed.

11. As a respondent in all 4 of the linked disputes, I find PTA has had an opportunity to review and respond to the evidence and argument submitted by each applicant in their respective disputes. I find the substance of PTA's written argument in response to each of the disputes is essentially the same. PTA also noted in its written argument provided in disputes 5056 and 6292 that it wanted those arguments to be used in all 4 disputes, suggesting that PTA was responding to all 4 disputes as a whole. So, I find there is no prejudice or procedural unfairness in proceeding with deciding these 4 linked disputes by relying on the evidence and argument provided by the parties as a whole.
12. Next, in PTA's written argument, Mr. Wurst says that he has lost his company. PTA's evidence includes a document certifying that it was voluntarily dissolved under the *Business Corporations Act* (BCA) on March 27, 2023. Under section 346(1)(a) of the BCA, a legal proceeding commenced against a company before dissolution, such as this dispute, may be continued as if the company had not been dissolved. Further, while PTA is now undisputedly out of business and dissolved, there is no evidence before me that it has made any filings under the *Bankruptcy and Insolvency Act* that would preclude the applicants from bringing or continuing these disputes. So, I find the applicants' claims against PTA can proceed.

ISSUE

13. The issue in this dispute is whether the applicants are each entitled to a refund of \$5,000, or some other amount, for an unsatisfactory fishing trip.

EVIDENCE AND ANALYSIS

14. In civil proceedings like these, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision. As noted above, in deciding each of the 4 linked disputes, I have relied on the evidence and submissions provided by the parties as a whole.
15. The following facts are undisputed. The applicants and 8 others booked a 6 day/5 night “Follow the Fish Adventure” aboard the M.V. Parry (tugboat) with PTA. The trip took place between June 26, 2022 and July 1, 2022. PTA’s April 27, 2022 invoice in evidence shows it charged the group \$68,150 USD as a whole. This amount included \$60,950 USD (including tax) for the all-inclusive fishing trip plus \$600 USD a person for roundtrip airfare to and from Vancouver and the tugboat. The applicants do not seek any refund with respect to the airfare. Based on this invoice, I find each participant owed PTA \$5,079.17 USD for their share of the fishing trip, excluding airfare.
16. The invoice notes Mr. Swanson paid PTA \$6,696 USD by cheque in December 2021 and an additional \$6,696 USD by cheque in March 2022. I infer these payments were for Mr. Swanson’s and Ms. Swanson’s share of the fishing trip’s cost and airfare. The invoice also notes Jim Holmes paid PTA \$6,696 USD by cheque in January 2022 and an additional \$5,679 USD by cheque in April 2022. I infer these payments were for Jim Holmes’ and Mary Liz Holmes’ share of the fishing trip’s cost and airfare. The invoice shows that the 12 participants collectively overpaid PTA and a \$1,137.50 USD refund was owed by PTA. Based on applicants’ submissions, I find it likely that PTA refunded a total of \$1,137.50 USD to the trip participants as a group and each participant ultimately paid \$5,079.17 USD for their share of the trip’s cost, plus airfare.

While the evidence shows that Ms. Swanson and Mary Liz Holmes did not pay any amounts to PTA themselves, I find Mr. Swanson and Jim Holmes paid PTA on their spouses' behalf, as their agents, making all 4 applicants privy to the contract with PTA.

17. As noted above, the applicants say they booked the fishing trip based on PTA's trip description on its website. The applicants provided screenshots of PTA's website that they captured on July 3, 2022 and January 18, 2023 that they say represents what the website set out when they reviewed it, prior to booking the trip. PTA also provided website screenshots, a brochure, and other documents which, in large part, reflect the same information as that found in the applicants' screenshots. Based on these documents and the parties' submissions, I find it is undisputed that the fishing trip the applicants purchased included the following key elements:

- a. Accommodations onboard the tugboat, including a room for every 2 people,
- b. 5 star meals prepared by a professional chef including "sea to table" meals of fresh Dungeness crab and wild salmon,
- c. Premium wines and decadent desserts,
- d. Everything needed for fishing including rods, reels and tackle, and
- e. 6 skiffs (that could accommodate 2 or 3 anglers) with radios and fish finders.

18. The parties disagree about whether the fishing trip package the applicants purchased included professional guides or was self-guided. The applicants say that PTA advertised and agreed to provide 1 fishing guide for every 6 participants. PTA, on the other hand, says the trip was self-guided, relying on screenshots from its website from April 2023. The applicants suggest PTA updated its website to say the tugboat cruise it offered would be self-guided sometime after they started these disputes. Notably, PTA does not argue that it made any updates to its website between December 2021, the time the applicants likely booked the fishing trip, to January

2023, the latest website screenshot the applicants provided. So, I find the screenshots the applicants provided likely represent what the website advertised when they booked the fishing trip. The screenshots provided by applicants notably do not include any references to the advertised trip being “self-guided”. So, I find the trip the applicants purchased was not a self-guided trip and that PTA likely updated its website sometime after the applicants brought these CRT disputes. The screenshots the applicants provided said PTA would provide available staff for on-water supervision, local knowledge and personal instruction, that guests could choose between running their own skiffs or being accommodated in the guided boat for private instruction, and that PTA would supply everything for the saltwater angler, including a guide. Based on these descriptions, I find the trip the applicants purchased included an unspecified number of guides or other qualified staff that would be available to provide private instruction and on-water supervision. Lastly, based on the screenshots of PTA’s websites the applicants provided, I find PTA advertised the fishing trip as a luxury cruise. I turn to the relevance of this below.

19. The applicants’ evidence also included screenshots of PTA’s advertised fishing trips from another website, fishlodges.com, and on its Facebook page. However, there is no evidence that the applicants relied on the advertisement or statements on these websites when booking the trip. So, I find it unproven that any of the amenities and services advertised on these 2 websites were included in the fishing trip the applicants purchased.

Breach of Contract

20. I turn now to the applicants’ claims that PTA failed to provide the advertised and agreed upon services and amenities. The applicants allege that PTA did not have a professional chef on board the tugboat and that the provided meals were substandard. PTA admits that it did not have a professional chef during the applicants’ trip, due to sudden and unforeseen staffing changes. Mr. Wurst undisputedly ended up cooking the meals for the participants during the trip. There is no evidence that Mr. Wurst has any cooking training and PTA does not argue that he is a qualified

chef. Based on PTA's submissions, I am satisfied that it breached its contract with the applicants by failing to provide a professional chef to prepare the advertised 5 star meals. The applicants say the meals PTA provided were well below the advertised quality. Given the undisputed lack of a professional chef on board the tugboat during the applicants' trip, I find it likely the meals PTA provided were not the advertised and agreed upon 5 star quality meals, in breach of the parties' agreement.

21. Next, the applicants say the wine was also not as advertised. They say that PTA provided only boxed wine that it served in decanters. PTA says that the wine it provided was of excellent quality, specially ordered from the Okanagan Valley. It says it purchased the wine in boxes due to space constraints on the tugboat. I find it unproven that the wine PTA provided was of a lower quality than advertised just because it was purchased in boxes instead of bottles. So, I find this allegation unproven.
22. The applicants also allege that the onboard staff was not as experienced as advertised. PTA admits that it had to hire a captain (Captain R) on short notice after running into issues with its previous boat captain. The applicants say that Captain R, who undisputedly had never piloted the tugboat before, was "a great person but had no local knowledge of fishing". PTA says that Captain R was a certified boat captain and qualified to do the job he was hired for, despite never having been on the tugboat before. I do not find the fact that this trip being Captain R's first time on the tugboat means he did not have the proper experience to pilot the tugboat. I also find it unproven that Captain R did not have adequate knowledge of local fishing as the applicants allege. The applicants also allege that the hostess, VW, who is Mr. Wurst's spouse, was unqualified. Other than making this bare allegation, which PTA specifically disputes, the applicants provided no specifics about VW's alleged shortcomings during the trip. So, I find it unproven that VW was an unqualified hostess.
23. The only other staff on board during the fishing trip were Mr. Wurst and C, the deckhand PTA hired on short notice who had undisputedly never been on a boat

before. At the beginning of the trip, the applicants say Mr. Wurst announced that the trip would be self-guided. PTA does not dispute this. Mr. Wurst says that he and C did all they could to help the applicants. However, there is no suggestion that PTA attempted to provide the private instruction and on-water supervision it advertised and agreed to provide. I find PTA likely did not provide these things given Mr. Wurst's announcement that the trip would be self-guided. So, I find PTA breached the parties' contract by failing to provide the advertised guides to provide private instruction and on-water supervision.

24. Next, the applicants allege PTA provided only 5 skiffs instead of the advertised 6 and that only 2 or 3 were operable during all 5 days of the trip. Mr. Swanson included this complaint in a July 8, 2022 email to Mr. Wurst in which he also said that his skiff took 45 minutes each way to fish in open water. The applicants also allege there were issues with the radios on board the skiffs.
25. PTA denies that there were only 5 skiffs. It says there were 7. PTA admits there was a small issue with some electronics on 1 of the skiffs but says that issue was solved by providing a handheld marine radio instead. The applicants do not dispute that PTA provided substitute handheld radios but say these radios had "no range". PTA provided a copy of its pilot logbook in evidence. I infer the notes in this logbook were made by Captain R. These notes say that 6 skiffs were out fishing on June 29 and 4 skiffs went out on June 30. Given the notation on June 29 that all 6 skiffs were out, I find PTA likely had 6 skiffs, not 5 as alleged. Notably, while the applicants say there were only 5 skiffs and either 2 or 3 were operable all 5 days, the applicants do not say that they were unable to fish during the trip as a result, or that they had to share their skiff with more than 1 or 2 other people. Similarly, while the applicants allege the substitute handheld radios PTA provided had no range, they provided no evidence that they personally had any difficulty or encountered any issues while using the provided radios. Lastly, while the Swansons allege their skiff worked slower than it should have, I am unable to find that their skiff had any quality issues. This is because I find the issue of whether their skiff took 45 minutes each way to fish in open water meant the skiff was inadequate is a technical matter that requires expert evidence to

prove, and there is none here. So, I find there was no breach by PTA with respect to the skiffs it provided to the applicants.

26. Lastly, the applicants say PTA failed to move the tugboat more than once to “follow the fish”. The applicants suggest that they and the other trip participants caught minimal fish as a result. PTA says there were times when it offered to take people in groups to new locations, but Mr. Swanson refused to come along because he wanted PTA to move the entire tugboat. PTA says this was not possible at the time. While PTA did not explain why it was not possible for it to move the entire tugboat, on balance, I am not satisfied that PTA breached any contractual term by failing to move the tugboat more than once.
27. While I accept that the applicants and the other trip participants did not catch many fish during the trip, I find PTA made no guarantees about how many fish the participants might catch. PTA’s website screenshots that the applicants provided said that trophy chinook salmon are most abundant in late July and early August, halibut fishing is “very productive” in this region, and coho runs become thick in August. As noted, the applicants’ trip was in late June, early July. So, I find the applicants, having viewed the website when booking their trip, should have known that by booking the trip outside of these timeframes, the fish may not be as abundant. So, I find no breach of contract by PTA for its alleged failure to “follow the fish” or for the small quantity of fish caught by the applicants and their group.
28. In conclusion, I find that PTA breached its contract with the applicants by failing to provide a professional chef and 5 star cuisine and by failing to have experienced staff on board to provide private instruction and on-water supervision during the trip. I address the appropriate remedy further below.

Alleged Misrepresentation

29. The applicants also allege PTA misrepresented the trip on its website. While I have found above that PTA failed to provide some of the advertised services and

amenities, I find it unproven that PTA fraudulently or negligently misrepresented the trip.

30. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item (see *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16). A negligent misrepresentation occurs when a seller makes a representation that is untrue, inaccurate or misleading, the seller breaches the standard of care in making the misrepresentation, and the buyer reasonably relies on the misrepresentation to their detriment (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
31. Here, I find PTA made various representations about the fishing trip on its website that the applicants relied on in deciding to book the trip and some of those representations ended up being untrue. However, I find it unproven on the evidence before me that PTA made these representations recklessly or knowing they were false. I also find it unproven that PTA knew or should have known at the time the applicants purchased the trip, that it would not be able to provide a professional chef and experienced staff for private instruction and on-water supervision. I find the evidence shows PTA likely had the intention of providing these things but ultimately was unable to do so. So, I find it unproven that PTA fraudulently or negligently made any representations.

Remedy

32. I turn now to the appropriate remedy for PTA's failure to provide a professional chef, the advertised 5 star meals, and experienced staff to provide private instruction and on-water supervision. As noted above, the applicants each claim a \$5,000 refund. The applicants did not break down their \$5,000 claims or provide evidence of how much the trip they received was worth. I find the professionally prepared meals and assistance from staff while fishing were part of the advertised luxury that PTA agreed to provide. I accept the applicants' submissions that the professionally prepared cuisine was an important part of the trip for them and the other participants, and find

it was similarly advertised by PTA as a key component. I also find the lack of guides and other experienced staff to assist the applicants made for more work for them while fishing, having to cut and refresh bait themselves, among other things. I find that the lack of experienced staff equated to a less luxurious trip than the applicants paid for, and less enjoyment on their part as a result. So, on a judgment basis I find each applicant is entitled to \$1,000 in damages for PTA's contract breaches.

33. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are each entitled to pre-judgment interest on the \$1,000 from June 26, 2022, the starting date of PTA's breaches, to the date of this decision. This equals \$40.60.
34. 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. Since the applicants were partly successful in their claims, I find they are each entitled to reimbursement of half their paid CRT fees. So, I find Mr. Swanson is entitled to \$100, Ms. Swanson is entitled to \$62.50, Jim Holmes is entitled to \$87.50, and Mary Liz Holmes is entitled to \$100. I dismiss PTA's claim for reimbursement of the \$50 CRT fee it paid to cancel a default decision in dispute 5056. None of the parties claim any dispute-related expenses, so I award none.

ORDERS

35. In dispute 5056, within 30 days of the date of this decision, I order PTA to pay Mr. Swanson a total of \$1,140.60, broken down as follows:
 - a. \$1,000 in damages for breach of contract,
 - b. \$40.60 in pre-judgment interest under the COIA, and
 - c. \$100 in CRT fees.
36. In dispute 6292, within 30 days of the date of this decision, I order PTA to pay Jim Holmes a total of \$1,128.10, broken down as follows:

- a. \$1,000 in damages for breach of contract,
 - b. \$40.60 in pre-judgment interest under the COIA, and
 - c. \$87.50 in CRT fees.
37. In dispute 6720, within 30 days of the date of this decision, I order PTA to pay Ms. Swanson a total of \$1,103.10 broken down as follows:
 - a. \$1,000 in damages for breach of contract,
 - b. \$40.60 in pre-judgment interest under the COIA, and
 - c. \$62.50 in CRT fees.
38. In dispute 7605, within 30 days of the date of this decision, I order PTA to pay Mary Liz Holmes a total of \$1,140.60, broken down as follows:
 - a. \$1,000 in damages for breach of contract,
 - b. \$40.60 in pre-judgment interest under the COIA, and
 - c. \$100 in CRT fees.
39. The applicants are each entitled to post-judgment interest, as applicable.
40. I dismiss PTA's claim in dispute 5056 for reimbursement of its paid CRT fees.
41. 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.

Nav Shukla, Tribunal Member