



# Civil Resolution Tribunal

Date Issued: December 14, 2023

File: SC-2023-001781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hyman v. Thind*, 2023 BCCRT 1097

BETWEEN:

RANDOLPH-DALTON R-D HYMAN

**APPLICANT**

AND:

JAS THIND and BALI ENTERPRISES LTD. (Doing Business As MIX  
THE BAKERY)

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about wrongful termination and unpaid wages. The applicant, Randolph-Dalton R-D Hyman, worked at MIX the Bakery, the name under which Bali

Enterprises Ltd. (Bali Enterprises) does business. Jas Thind is the president of Bali Enterprises.

2. The applicant says they were wrongfully terminated by the respondents for raising issues about workplace safety. They also say they were not paid agreed-upon wages for deliveries. The applicant claims \$5,000 in damages for wrongful termination and breach of employment contract and \$499 for unpaid wages for catering deliveries.
3. The respondents say the applicant was not terminated but chose to quit. They also say the Employment Standards Branch (ESB) has exclusive jurisdiction to address the claim for unpaid wages. They ask me to dismiss the applicant's claims.
4. The applicant is self-represented. The respondents are represented by a lawyer, Burak Dukkancilar.
5. For the reasons that follow, I refuse to resolve the applicant's claim for unpaid wages and dismiss the applicant's claim for wrongful termination.

## **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.
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.
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.

### ***Parties***

10. The applicant brings their claim against Mr. Thind in his personal capacity, as well as against his company, Bali Enterprises.
11. At law, directors, officers, and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See: *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. I find the applicant does not allege that Mr. Thind personally committed a wrongful act independent of Bali Enterprises. So, I find Mr. Thind is not responsible for the applicant's claimed damages and I dismiss the applicant's claim for damages against Mr. Thind personally.

### ***Jurisdiction***

12. The applicant claims more than the CRT's small claims limit of \$5,000. While nothing prevents a party from providing evidence about debt or damages over \$5,000, the CRT can only make orders to a maximum of \$5,000 in damages. Since I dismiss the applicant's claim, nothing turns on this issue, and I do not need to address it further.
13. Under CRTA section 11(1)(a)(i), the CRT may refuse to resolve a claim or a dispute within its jurisdiction if it considers that the claim would be more appropriate for another legally binding process or dispute resolution process.
14. In a June 13, 2023 preliminary decision, a CRT vice chair considered whether the CRT has jurisdiction to address the applicant's claims for wrongful termination and/or unpaid wages. The vice chair found that the ESB has exclusive jurisdiction for

statutory benefits under the *Employment Standards Act* (ESA) but claims for wrongful dismissal could proceed under the common law. Similarly, the vice chair found the applicant could bring a claim for unpaid wages under their employment contract. I agree with the vice chair that the applicant's claims fall within the CRT's small claims jurisdiction.

15. However, on February 7, 2023, the applicant made a complaint to the ESB about their employment with Bali Enterprises. The preliminary decision does not mention the ESB complaint. I find the complaint was likely not before the vice chair at the time of the preliminary decision.
16. In the ESB complaint, the applicant specifically addresses unpaid wages for deliveries. They do not address wrongful termination. The respondents acknowledge the ESB process in their submissions. The applicant says the ESB investigation is ongoing for wages for deliveries.
17. I find there is potential overlap between the applicant's ESA entitlements to unpaid wages and common law damages for breach of contract. I find it would be inappropriate for the CRT to adjudicate the same subject matter for the same substantive claims before the ESB as it could result in inconsistent findings.
18. In *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457, the British Columbia Court of Appeal stated that where a decision must be made between proceeding with the ESB or another body (in that case, a court), the ESB is the better choice. I find the Court of Appeal's decision, which is binding on me, favours the ESB over the CRT where there is overlap. So, in these circumstances, I find the ESB is the appropriate process to resolve the claims for unpaid wages that the applicant already initiated. I refuse to resolve the applicant's claim for unpaid wages against Bali Enterprises that are before the ESB.
19. However, as the applicant's ESB complaint does not make a claim about wrongful termination, I resolve that claim below, consistent with the CRT's mandate for quick and efficient resolution of parties' disputes.

### ***Amended Dispute Notice – Personal Injury***

20. The applicant's original Dispute Notice included a claim about both their physical and mental health (personal injury claims).
21. The February 7 preliminary decision ordered that the applicant's Dispute Notice be amended so that their personal injury claims were separated from their other claims and paused. This was to allow a separate legal proceeding to conclude.
22. The applicant amended their Dispute Notice, as ordered, and the personal injury claims are not in the amended Dispute Notice before me. Further, during facilitation, the applicant advised CRT staff they were not proceeding with their claim for personal injury at the CRT.
23. Despite that, the applicant has made a number of arguments about personal injury in their submissions. As the personal injury claims are not before me, I do not make any findings about them in this decision.

### **ISSUE**

24. The issue in this dispute is whether the applicant is entitled to damages for wrongful termination or breach of employment contract.

### **EVIDENCE AND ANALYSIS**

25. In a civil proceeding like this one, the applicant 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.
26. An employee information sheet and attachments set out the employment agreement's basic terms. It variably showed the employer as Bali Enterprises or MIX the Bakery. It established the applicant was hired on November 7, 2022, and was

entitled to payment of \$19 per hour. It contained other terms about scheduling, payday, breaks and similar. It did not contain any terms about ending employment.

27. The applicant argues these documents are a job application and not a contract. However, the applicant does not provide any other contract setting out terms of their employment. While the applicant alleges a number of discussions with Mr. Thind, there is no evidence to support the parties had a meeting of the minds sufficient to form a separate contract.
28. The applicant undisputedly worked for Bali Enterprises from November 2022 to January 2023.
29. On January 29, 2023, the applicant emailed Mr. Thind about workplace concerns, including health, safety, and the work environment. The applicant also wrote that they were quitting and wanted to discuss their entitlements under relevant legislation, including the ESA. In their submissions, the applicant admits they wrote that they were quitting and says it was a result of their depressed and anxious state.
30. On January 30, 2023, Mr. Thind responded to say he was happy to meet with the applicant, but that he gladly accepted the resignation.
31. While it does not impact my decision, I also note that Mr. Thind says he later asked for a written confirmation of the applicant's resignation. On February 3, 2023, Mr. Thind says the applicant left a note on an envelope that said only "Resignation," "Jas," and "Feb 03." The applicant does not deny he provided the envelope. As the handwriting for Feb 03 is in a different colour and style, I find it was likely added by someone else. However, I accept that the applicant provided the envelope saying "Resignation."
32. I find the evidence shows the applicant quit on January 29, 2023, and Mr. Thind accepted their resignation. So, I find the applicant cannot now say they were wrongfully terminated, and I dismiss their claim.

33. 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. The respondent did not pay any fees to the CRT. The respondents made a claim for \$0 in dispute-related expenses. In the circumstances, I find this is the same as making no claim for dispute-related expenses, so I do not order any.

## **ORDERS**

34. I refuse to resolve the applicant's claims for unpaid wages under CRTA section 11(1)(a)(i).

35. I dismiss the applicant's claim for wrongful termination and this dispute.

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Christopher C. Rivers, Tribunal Member