



Civil Resolution Tribunal

Date Issued: January 12, 2024

File: SC-2022-009783

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ma v. Record Removal Services of Canada*, 2024 BCCRT 31

B E T W E E N :

QIAO LING MA

APPLICANT

A N D :

RECORD REMOVAL SERVICES OF CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Qiao Ling Ma hired Record Removal Services of Canada (RRSC) to assist her with completing a waiver application to allow her to enter into the United States from Canada. Ms. Ma says RRSC delayed completing her application. As a remedy, she seeks a \$1,987.67 refund for the fee she says she paid to RRSC. Ms. Ma is self-represented.

2. RRSC denies Ms. Ma is entitled to a refund. It says that any delays were due to Ms. Ma's actions, including her failure to pay its fee in full, or otherwise related to the COVID-19 pandemic and out of its control. RRSC is represented by an employee or principal.

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.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing.
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.

ISSUE

6. The issue in this dispute is whether Ms. Ma is entitled to a refund from RRSC and, if so, how much?

EVIDENCE AND ANALYSIS

7. As the applicant in this civil proceeding, Ms. Ma must prove her claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

8. In June 2021, Ms. Ma hired RRSC to assist her with preparing a waiver application which, if approved, would allow her to enter into the United States. In a June 10, 2021 letter, RRSC set out the fees and services it would provide Ms. Ma if she hired it. In particular, the letter said that RRSC's service fee for preparing Ms. Ma's waiver application was \$1,987.67, tax inclusive. RRSC confirmed that Ms. Ma had already paid \$76.84 by credit card on June 8, 2021. The letter said Ms. Ma was to pay the remaining balance with 3 monthly payments, starting on June 8, 2021, as follows: first payment of \$712.28 followed by 2 monthly payments of \$599.28.
9. RRSC's letter further detailed that its fee included the following services: arranging for fingerprints to be taken, preparing documents, case research and follow up, court record searches, preparing documents to submit for the waiver application, postage, and administrative assistance.
10. Ms. Ma signed the letter on June 18, 2021, confirming she accepted the terms set out in it. I find this letter became the parties' contract. The evidence shows that RRSC provided Ms. Ma with information about where to go to have her fingerprints taken, which she did in June 2021. Then, on July 8, 2021, RRSC informed Ms. Ma that her \$712.28 payment could not be processed and had been declined. RRSC asked her to make this payment so that it could move forward with her application.
11. Ms. Ma says that she has since paid RRSC in full, but RRSC delayed preparing her waiver application and demanded that she pay \$225.99 before it would proceed further with her file. She says that RRSC told her it would take between 3 to 6 months to obtain her waiver and RRSC failed to meet those timelines.
12. RRSC says that Ms. Ma still owes it \$225.99. It says that her failure to pay this outstanding balance, plus Ms. Ma's alleged repeated address changes and the COVID-19 pandemic were the cause of any delays. It further says, and the evidence shows, that it provided Ms. Ma with the final paperwork for her waiver application for her to sign and return in February 2023 in any event.

13. Bank statements in evidence show that Ms. Ma sent 2 e-transfers of \$599.28 on July 9, 2021 and August 9, 2021. Though the bank statements do not say who these payments were made to, given the amounts and the payment dates, I find it more likely than not that these payments were sent to RRSC. Other than the \$76.84 Ms. Ma undisputedly paid to RRSC by credit card on June 8, 2021, the evidence does not show what further payments Ms. Ma made.
14. On January 10, 2022, RRSC emailed Ms. Ma that it had received some of the documents needed from third parties to proceed with her application but that she still had an outstanding balance owing of \$225.99 which needed to be paid before it could proceed further. Based on this email, I find it likely that Ms. Ma made one or more further payments to RRSC which are not shown in the evidence before me. However, while Ms. Ma says she has paid RRSC in full, the difficulty is that the evidence does not support this assertion.
15. As noted, the burden is on Ms. Ma to prove her claims. Here, I find that she has failed to prove that she paid RRSC the \$1,987.67 she was required to pay under the parties' contract. So, I find it was Ms. Ma, and not RRSC, that breached the parties' contract. Since I have found that Ms. Ma has failed to show that she paid RRSC in full, I find RRSC had no obligation to complete her waiver application paperwork, which, as noted above, it did complete in any event in February 2023. As RRSC ultimately satisfied its obligations under the contract, despite not being paid in full, I find Ms. Ma received the full value of the contract and is not entitled to any refund. I dismiss her claim accordingly. RRSC did not counterclaim for the outstanding \$225.99, so I make no orders about it.
16. 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. As the successful party, I find RRSC is entitled to reimbursement of \$25 for its paid CRT fees. Ms. Ma did not pay any CRT fees and neither party claims any dispute-related expenses, so I award no further reimbursement.

ORDERS

17. With 14 days of this decision, I order Ms. Ma to pay RRSC \$25 in CRT fees. RRSC is entitled to post-judgment interest, as applicable.
18. I dismiss Ms. Ma's claims.
19. 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