



# Civil Resolution Tribunal

Date Issued: June 11, 2024

File: SC-2023-004469

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ferguson v. Bremner dbaTansi Communications*, 2024 BCCRT 527

B E T W E E N :

COLIN FERGUSON

**APPLICANT**

A N D :

CLIFFORD BREMNER (Doing Business As TANSI  
COMMUNICATIONS)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about unpaid wages.

2. In 2022 Colin Ferguson worked as a contractor for Clifford Bremner (doing business as Tansi Communications). In his Dispute Notice, Mr. Ferguson claimed \$1,000 in unpaid wages, \$1,000 in unpaid expenses, and \$1,500 in mental distress damages, for a total of \$3,500. In his Dispute Response, Mr. Bremner said he owed Mr. Ferguson between \$1,700 and \$1,750 for wages and expenses but denied that he owed him mental distress damages. Mr. Bremner has since paid Mr. Ferguson \$2,100, and Mr. Ferguson seeks the \$1,400 balance of his claim.
3. Both parties are self-represented in this dispute.

## **JURISDICTION AND PROCEDURE**

4. 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.
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 court.
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. Although the parties did not raise it, I considered whether the CRT has jurisdiction over this dispute. The Employment Standards Branch has exclusive jurisdiction over entitlements under the *Employment Standards Act*. However, in his Dispute Response Mr. Bremner said Mr. Ferguson worked for him as a contractor, and Mr. Ferguson does not dispute this. Since the *Employment Standards Act* does not apply to independent contractors, I find the CRT has jurisdiction to decide this dispute.

## **ISSUE**

9. The issue in this dispute is whether Mr. Bremner owes Mr. Ferguson \$1,400.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Ferguson must prove his claims on a balance of probabilities, which means more likely than not. Mr. Bremner did not provide evidence or submissions despite having the opportunity to do so. I have read the Dispute Notice, Dispute Response, and Mr. Ferguson's evidence and submissions, but I refer only to what I find relevant to explain my decision.
11. Mr. Ferguson started working for Mr. Bremner as a photographer and videographer on May 3, 2022. Mr. Bremner agreed to pay Mr. Ferguson \$1,500 every 2 weeks, plus more for more complex work. Mr. Ferguson moved into Mr. Bremner's home in May 2022 where he lived for free.
12. Mr. Ferguson says Mr. Bremner first missed a payment at the end of May 2022, and continued to miss payments or underpay him for the rest of that summer. Mr. Ferguson stopped working for Mr. Bremner at the end of the summer. In January 2023 Mr. Ferguson found a new job and moved out of Mr. Bremner's home.
13. Mr. Ferguson says that in January 2023, the parties agreed that Mr. Bremner owed him \$3,265 in wages and \$750 in work-related expenses, for a total of \$4,015. He says the parties agreed on a payment plan in which Mr. Bremner agreed to pay him

\$1,000 on February 15, 2023, \$1,000 on March 15, 2023, and \$2,015 on April 15, 2023. I find the emails in evidence support this arrangement.

14. Mr. Bremner paid Mr. Ferguson \$1,000 on February 16, 2023, and \$1,000 on March 17, 2023. I find that the \$2,000 in wages and expenses Mr. Ferguson claimed in his Dispute Notice are for the missed \$2,015 April 15, 2023 installment owing under the payment plan.
15. As noted above, after Mr. Ferguson submitted his evidence and arguments, Mr. Bremner paid him \$2,100. Neither party explained what this payment was for. However, based on Mr. Bremner's position in his Dispute Response, I find the \$2,100 payment was to cover his missed April 15, 2023 payment from the payment plan. So, I find Mr. Bremner has paid Mr. Ferguson all outstanding wages and expenses. Since Mr. Ferguson did not withdraw this part of his claim, I dismiss it.
16. I find the remaining \$1,400 Mr. Ferguson claims in this dispute is for mental distress damages. Mr. Ferguson says that Mr. Bremner's many broken promises to pay his wages during the summer of 2022 and the related mental and financial stress caused him to become depressed by September 2022. He says he started therapy in June 2023. In *Eggberry v. Horn et al*, 2018 BCCRT 224, the CRT found there must be some medical evidence to support a claim for mental distress. That decision is not binding on me, but I find it persuasive, and I adopt it here. Mr. Ferguson provided no medical or other documentary evidence to support his mental distress claim. Mr. Bremner says Mr. Ferguson already had mental health issues before he started working for him. Without more, I find Mr. Ferguson has failed to prove that he is entitled to mental distress damages. I dismiss this part of his claim.
17. I note here that Mr. Ferguson submitted receipts for storage expenses he incurred between June 2022 and April 2023, and for moving expenses he incurred in May 2023. It is unclear whether he intended to claim these amounts in this dispute. However, there is no indication that Mr. Bremner ever agreed to cover Mr. Ferguson's storage or moving expenses as part of their work arrangement. So, I find Mr. Ferguson has failed to prove he is entitled to reimbursement for these expenses.

18. 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. Although Mr. Ferguson was unsuccessful with his damages claim for mental distress, it was not until after he started this CRT dispute and submitted his evidence and arguments that Mr. Bremner paid him the \$2,100 in outstanding wages and expenses. In the circumstances, I find Mr. Ferguson is entitled to reimbursement of the \$175 he paid in CRT fees.

## **ORDER**

19. Within 14 days of the date of this order, I order Mr. Bremner to pay Mr. Ferguson \$175 as reimbursement of his CRT fees.
20. Mr. Ferguson is entitled to post-judgment interest, as applicable.
21. I dismiss the remainder of Mr. Ferguson's claims.
22. This is a validated decision and order. 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.

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Sarah Orr, Tribunal Member