



Civil Resolution Tribunal

Date Issued: June 14, 2024

File: SC-2023-002698

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Gao*, 2024 BCCRT 544

BETWEEN:

LI WANG

APPLICANT

AND:

WENYING GAO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This is a dispute about a vacation deposit. The applicant, Li Wang, says they paid the respondent, Wenying Gao, a \$1,000 deposit for a vacation that never took place. The respondent agrees the applicant paid the deposit, but says the applicant chose not to

attend the vacation. The applicant asks for a refund of the \$1,000 deposit and also claims \$2,000 for missed work or mental distress.

2. The applicant is represented by a non-legal advocate, Qing Xu. The respondent is self-represented.

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. 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.
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.
6. 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.

ISSUES

7. The issues in this dispute are:
 - a. Is the applicant entitled to a refund of the \$1,000 deposit?

- b. Is the applicant entitled to \$2,000 for loss of work or mental distress?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove their 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 that I find relevant to provide context for my decision.
9. None of the documents provided by the parties were in English. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. The applicant provided no translation of their evidence, and I place no weight on that document. However, I accept the translations provided by the respondent of her documents, as the applicant had time to review them and did not dispute the respondent’s translations.
10. In their submissions, the applicant referred to character evidence about the respondent from third parties. However, this evidence is unsupported and hearsay. It is also not relevant to the issues in this case. So, I do not rely on it in coming to my decision.
11. The following facts are undisputed:
 - a. The applicant paid the respondent a \$1,000 deposit in June 2022.
 - b. This deposit was for a trip to take place starting July 10, 2022.
 - c. The applicant messaged the respondent multiple times leading up to the trip and did not receive a response. I address the messages’ contents below.
 - d. The respondent says she did not respond to these messages because the “Vancouver network” was down on July 8, 2022.
 - e. The applicant and a friend, LY, went to the respondent’s house the night before the trip was scheduled to start. At some point, the respondent called the police.

12. The applicant says they were not given a travel plan or meeting place for the trip, only photos of a hotel. The respondent says she provided the name and time of the hotel, and a complete itinerary before the deposit was paid. The respondent says the applicant did not show up at the “gathering spot”, but does not say where that spot was. However, the respondent did not provide any evidence of this itinerary, only some receipts for a bus tour and hotel booking.
13. When a party fails to provide relevant evidence without a good explanation, an adverse inference may be appropriate. An adverse inference is when a decision maker, like the CRT, assumes that a party failed to provide evidence because the missing evidence would not have supported their case. Here, I find it is appropriate to draw an adverse inference against the respondent for not providing the itinerary she says she gave to the applicant or further details about the gathering spot. I find that this was likely because either there was no itinerary, or the respondent did not provide an itinerary to the applicant.
14. The applicant says they messaged the respondent “many times” that if there was no trip, they wanted their deposit back. The respondent undisputedly never responded, so the applicant went to the respondent’s house. The applicant says while they were at the respondent’s house, the respondent would still not give details about the trip or return their deposit. The respondent says only that the applicant and a man came to her house to “make a scene” and she was forced to call the police. Since it was the day before the trip, I find the applicant acted reasonably by going to the respondent’s house for further details when she didn’t respond by message.

Is the applicant entitled to a return of the \$1,000 deposit?

15. While the applicant does not use this language, I find they allege the respondent fundamentally breached the parties’ contract by not providing an itinerary or meeting place for the trip.
16. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, in a way that deprives the other party of substantially the whole benefit of the contract.

See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC). Put another way, a fundamental breach is one that destroys the whole purpose of the contract and makes further performance of the contract impossible. See *Bhullar v. Dhanani*, 2008 BCSC 1202. If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform any more terms of the contract. See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23. So, if the respondent fundamentally breached the contract, the applicant was entitled to terminate the contract, refuse to continue with the trip, and demand a refund of the deposit.

17. Though not explicitly laid out in their submissions, I find the parties did not have a formal written contract. So, I must decide if it was an implied term that the respondent provide an itinerary or meeting place for the trip.
18. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down. The court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are founded on a common presumed intention of the parties. In other words, an implied term must be something that both parties would have considered obvious when they entered into the contract. See *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216, at paragraphs 25 to 32.
19. Applying this legal test, I find it was an implied term of the parties' contract that the respondent would give the applicant an itinerary or meeting place for the trip. As the organizer of the trip, this was an obvious requirement. So, by not providing either, I find the respondent breached this implied term.
20. Was this a fundamental breach? I find that it was, as there would have been no other way for the applicant to participate in the trip the respondent planned. Since the trip was the whole purpose of the parties' contract, I find the applicant was entitled to terminate the contract and demand a refund of the deposit.
21. So, as the respondent fundamentally breached the parties' contract, I find that the respondent must refund the applicant \$1,000.

Is the applicant entitled to \$2,000 for loss of work or mental distress?

22. The applicant claims a further \$2,000 for loss of work due to mental distress for the week following the vacation. The respondent does not specifically dispute this. However, I infer from her position it was the applicant who cancelled the vacation, and the respondent says the applicant is entitled to any damages.
23. In general, when a party breaches a contract, the other party cannot be compensated for mental distress. There are 2 main exceptions. First, a party may get significant compensation when the contract's main purpose was "peace of mind", such as vacations or wedding photography. Second, a party may get more modest compensation where part of the contract's purpose was for a "psychological benefit". In these cases, the party may be compensated for inconvenience and discomfort that goes beyond mere frustration or disappointment (see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30). I find as a contract for a vacation, this was a "peace of mind" contract.
24. The applicant does not provide any evidence of their employment, but says their rate of pay is \$30 per hour for 8 hours per day for a job from July 20 to 26, 2022. The applicant says they missed work because they got sick after sleepless nights from anxiety after the trip didn't happen. They say their family doctor advised them to take medication to help sleep at night, and not think about the trip. However, the applicant does not say which days they missed. The applicant did not provide any pay stubs or a letter from their employer showing the missed work, and did not provide any supporting documents from their family doctor. I find the applicant has not proven any wage loss.
25. However, I accept that the loss of the trip caused some mental distress to the applicant. As I find the contract was a "peace of mind" contract, I find the applicant is entitled to compensation. On a judgment basis, I find the applicant is entitled to \$250 for mental distress resulting from the breach of the parties' contract.

26. The *Court Order Interest Act* applies to the CRT. However, section 2(e) says that there is no court order interest on non-pecuniary damages arising from personal injury or death. While there was no physical injury in this case, the court has given this exclusion a broad interpretation. For example, in *Dhillon v. Jaffer*, 2013 BCSC 1860, the court did not award interest on mental distress damages arising from a lawyer's negligence. I therefore find that the applicant is not entitled to interest on the mental distress damages. However, the applicant is entitled to pre-judgment interest on the deposit from July 9, 2022, the date the respondent refused to return the deposit, to the date of this decision. This equals \$78.87.
27. 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. As the applicant was mostly successful, I find the applicant is entitled to reimbursement of their CRT fees, which is \$125. Neither party claimed any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Wenying Gao to pay Li Wang a total of \$1,453.87, broken down as follows:
- a. \$1,000 in damages as reimbursement for the vacation deposit,
 - b. \$250 for mental distress,
 - c. \$78.87 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$125 in CRT fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

Amanda Binnie, Tribunal Member