



Civil Resolution Tribunal

Date Issued: June 14, 2024

File: SC-2022-009301

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ali v. Gill*, 2024 BCCRT 554

BETWEEN:

IFSHAD ALI and NAFIZA NAZMEEN ALI

APPLICANTS

AND:

SIMRAN GILL and AMEET KALIRAI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about addiction counselling services. The applicants, Mr. Ifshad Ali and Mrs. Nafiza Nazmeen Ali, say they hired the respondents, Simran Gill and Ameet Kalirai, to help a family member. The applicants allege that both respondents committed fraud and misrepresented their services. They claim a refund of \$4,750.

2. Miss Gill denies liability. She says Ameet Kalirai is responsible for taking the money. She also says she was only involved because Ameet Kalirai coerced and threatened her. Ameet Kalirai did not file a Dispute Response and is in default.
3. Mr. Ali represents the applicants. A lawyer, Mandeep Randhawa, represents Ms. Gill.
4. For the reasons that follow, I find the applicants have proven their claim against both respondents.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

The Applicants' Late Evidence

9. The applicants provided as late evidence a January 15, 2023 recording between Mrs. Ali and Miss Gill. Miss Gill did not object to the late evidence and had an opportunity to provide submissions about it. I find the late evidence is relevant, so I allow it and refer to it below.

ISSUE

10. The issue in this dispute is whether the respondents must refund \$4,750 for addiction counselling services.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. 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. As noted above, Ameet Kalirai did not file a Dispute Response and provided no evidence or submissions.
12. It is undisputed that Mrs. Ali first heard about the respondents while listening to a radio show. The respondents said they offered services in connection with substance abuse and mental health.
13. Mrs. Ali contacted the respondents. The parties met on October 30, 2022. They documented their agreement in 2 emails dated October 31, 2022. Miss Gill said that the respondents would provide an 8-week program for the applicants' family member. The life coaching program included self-care routines, in-person assessment, access to both respondents by text or phone, and therapy homework.
14. The respondents directed their correspondence to Mrs. Ali. However, it is undisputed that both applicants contracted for the services. So, I find this was the case.

15. I also find that the applicants contracted with both respondents. This is because the respondents were both present at the October 30, 2022 meeting, and the emails show both respondents specifically agreed to be available to communicate with the family member. So, I find both respondents were obligated to perform the contract.
16. I also find that the parties did not agree on any a total price for the respondents' services. Instead, the evidence shows that the respondents invoiced the applicants from time to time for their services. The invoices are as follows: 1) an October 31, 2022 invoice for life coaching costing \$2,250, 2) a November 4, 2022 invoice for dopamine and serotonin receptor testing costing \$1,800, and 3) a November 4, 2022 invoice for brain biochemistry testing for \$1,287. These invoices total \$5,337. E-transfer documents show that from November 1 to 10, 2022, the applicants transferred a total of \$4,750 to Ameet Kalirai. This equals the claim amount.
17. Although the applicants alleged misrepresentation and fraud, I find the issue is whether the respondents breached the contract. I find they did so for the following reasons.
18. The applicants say the respondents failed to provide the contracted services. I have no difficulty concluding that was the case. In the recorded phone call Miss Gill admitted the respondents had no intention of performing the contract. She also said she would pay back the money, though it would take time.
19. The respondents also provided the applicants a May 11, 2022 invoice from "Relieve Medical Centre" to justify the testing costs in the November 4, 2022 invoices. I find this document was fraudulent. Miss Gill admitted this was the case in the phone call. The applicants also provided a Google Maps search showing the address on the invoice was for "Seymour Dermatology". Given the discrepancy, I find this supports my finding.
20. Miss Gill says that she did not receive the money. However, I find that since she contracted with the applicants, she is still liable to them regardless of whether Ameet Kalirai or Miss Gill received the payments.

21. Finally, Miss Gill says that Ameet Kalirai threatened her and coerced her into the scheme. I find that Miss Gill essentially argues she entered into the contract under duress. Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position. For duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive, or coercive manner. See *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442 at paragraph 50, citing *Lei v. Crawford*, 2011 ONSC 349.
22. Here, the applicants were not in a superior bargaining position. They unknowingly contracted with parties that had no intention to honour their obligations. There is no submission or indication the applicants exerted pressure on Miss Gill or acted inappropriately at any point. As the applicants did nothing wrong, I find duress does not apply to allow Miss Gill to avoid her obligations to the applicants.
23. Miss Gill's submissions about duress suggest that she may have a claim for indemnity against Ameet Kalirai. However, she did not file such a claim, and even if she did, it does not change her liability to the applicants. I make no findings about whether a claim against Ameet Kalirai would be successful.
24. Given the above, I find that both respondents breached the contract. I order them to refund the applicants a total of \$4,750.
25. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the refund of \$4,750 from November 10, 2022, the date of applicants' last payment, to the date of this decision. This equals \$347.19.
26. 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. I find the applicants are entitled to reimbursement of \$175 in CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of \$5,272.19, broken down as follows:
- a. \$4,750 as a refund,
 - b. \$347.19 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
28. The applicants are entitled to post-judgment interest, as applicable.
29. 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.

David Jiang, Tribunal Member