



Civil Resolution Tribunal

Date Issued: November 22, 2024

File: SC-2023-004324

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Falvo v. King*, 2024 BCCRT 1182

BETWEEN:

RAFFAELE FALVO

APPLICANT

AND:

DUANNE KING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers, Vice Chair

INTRODUCTION

1. This dispute is about a cell phone bill.
2. The applicant, Raffaele Falvo, added the respondent, Duanne King, to the applicant's cell phone plan. The applicant says the respondent financed a new cell

phone through the plan. The respondent then cancelled their plan, leaving the applicant with the respondent's service charges and outstanding phone financing.

3. The Civil Resolution Tribunal (CRT) has authority to award up to \$5,000 in its small claims jurisdiction. The applicant argues his damages are higher than the CRT's small claims limit, but restricts his claim to the \$5,000 maximum. He claims \$1,386.41 for the current cell phone balance, \$90 in non-sufficient funds (NSF) fees, \$120.24 in late payment fees, \$240 in pawn fees, and \$3,163.35 in punitive damages.
4. The respondent says they only agreed to buy the phone because the applicant said the respondent could use it with the respondent's new provider. They ask me to dismiss the applicant's claim.
5. Both the applicant and respondent are self-represented.
6. For the reasons that follow, I allow the applicant's claim in part.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

9. CRTA section 42 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.
10. Where permitted by CRTA section 118, 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.
11. I note the applicant says the respondent agreed to pay for damages during the course of CRT settlement discussions. However, the parties did not come to a consent agreement and the applicant proceeded to the CRT's decision phase. There is no evidence before me the respondent agreed to pay the applicant's damages. So, I have not depended on the applicant's statements regarding the respondent's alleged agreement during that process.

ISSUES

12. The issues in this dispute are:
 - a. What, if anything, does the respondent owe the applicant for the applicant's cell phone bill?
 - b. What, if anything, does the respondent owe the applicant for the applicant's additional debts allegedly arising from the unpaid cell phone bill?
 - c. Is the applicant entitled to punitive damages?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant must prove his 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.

14. In or around early 2023, the applicant and respondent met each other under difficult circumstances. After knowing each other for a period of time, they entered an informal shared living arrangement. During that time, the applicant says he placed the respondent on the applicant's "Friends and Family" cell phone plan. This allowed the respondent to finance and use a new phone.
15. After a further period of time, the parties had a disagreement that ended their informal living arrangement and the respondent's inclusion in the cell phone plan. The respondent switched to another provider.
16. Undated text messages show the respondent telling the applicant to sell the phone. The applicant says he cannot as it "belongs to Rogers." A later text message shows the applicant had the cell phone but sent it to the respondent. The respondent says they received it in a non-functional (bricked) state.
17. The parties disagree over who actually removed the respondent from the cell phone plan. The applicant accuses the respondent of impersonating him to a cell phone representative, which the respondent denies.
18. Regardless, a partial phone bill in evidence shows the applicant owed the cell phone provider \$1,221.01. Of that amount, \$1,120.13 was for the balance owing on the new phone after two small reductions for cancelled phone insurance and cell phone service. The phone balance and credits are all annotated with the name "DWAYNE," which I find is the respondent.
19. On March 27, 2023, the cell phone provider withdrew \$1,037.09 from the applicant's bank account. This amount is obviously less than the total bill, but I infer was all the applicant's available money and put him into overdraft.
20. The parties communicated by text message over the following days. The applicant asked the respondent to pay him back for the phone bill and said he would face additional NSF charges otherwise. The respondent asked for the phone bill and said they understood their obligation was limited to \$200 for a "canceled contract."

21. The applicant provided the respondent the phone bill showing the charges I outlined, as well as a partial copy of his bank statement, showing the withdrawal. The applicant explained, by text, that the majority of the phone bill was not cancellation fees, but the balance owing on the phone.
22. Text messages on April 1 and 2 show the applicant becoming increasingly concerned, asking for partial payments and explaining how he would suffer cascading NSF fees and late charges. The respondent did not immediately answer.
23. At some point between April 2 and April 7, the respondent agreed to send an unspecified amount of money. From context, I infer this was intended to be a payment for the phone bill. Despite the applicant's numerous follow-up messages, the respondent never replied.

Cell Phone Bill

24. I find the evidence proves the respondent must pay the applicant the device balance.
25. The respondent does not deny that the applicant arranged for the respondent's phone. There is no suggestion the applicant did so without the respondent's knowledge and permission. If the respondent had not wanted the phone in first place, I would have expected them to clearly say that in their response.
26. Furthermore, on at least one occasion, during a conversation about the phone bill, the respondent agreed by text to send money to the applicant. I find this shows the respondent acknowledged their obligation to the applicant for the phone. The respondent now has the phone. There is no suggestion the phone is physically damaged or that the applicant was responsible for "bricking" the phone.
27. So, I find the evidence establishes the respondent owes the applicant \$1,120.13 for the cell phone bill.

NSF Fees, Late Fees, and Pawn Fees

28. The applicant made a number of other claims with respect to damages that he says flow from the respondent's failure to promptly pay the cell phone bill. However, I find I do not need to consider these amounts, since the applicant did not provide any documentary evidence to support them.
29. The only document the applicant provided is an undated email from a collection agency that says they are entitled to collect a bill owing to the cell phone provider in excess of \$3,000. There is no documentary chain to establish how the bill rose to over \$3,000, nor to specifically link it to the respondent's debt.
30. While the applicant says he could not provide documentary evidence to support his other claims due to the time that had passed, I find this does not relieve him of his burden. Without documentary evidence, I am unable to make a finding, on a balance of probabilities, about the amounts of any NSF, late fees, or pawn fees. So, I dismiss this aspect of the applicant's claim.

Punitive Damages

31. Punitive damages are to punish a "morally culpable" respondent and are usually granted only for malicious and outrageous acts.¹ Punitive damages should be resorted to in only exceptional cases and with restraint.²
32. Here, I acknowledge the applicant says he faced financial hardship arising from the respondent's failure to pay for the phone. However, even if true, I find the respondent's actions would not rise to the level of malicious or outrageous such that punitive damages would be appropriate.
33. To the extent that the applicant argues the respondent raised malicious or outrageous allegations about the applicant's character in submissions, I find each of the parties made comments about irrelevant issues that did not advance the

¹ See: *Honda Canada Inc. v. Keays*, 2008 SCC 39, at paragraphs 62 and 68 and *Chalmers v. AMO Canada Company*, 2010 BCCA 560, at paragraph 29.

² See: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, at paragraph 69.

litigation. That said, there is nothing in either party's submissions that would cause me to consider punitive damages.

34. So, I dismiss the applicant's claim for punitive damages.

FEES, INTEREST, AND DISPUTE-RELATED EXPENSES

35. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$1,120.13 cell phone bill from March 27, 2023, the date the bill was due, and most of it paid, to the date of this decision. This equals \$92.13.

36. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, while the applicant was successful, he did not pay any CRT fees or claim any dispute-related expenses, so I order none.

ORDER

37. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,212.26, broken down as follows:

- a. \$1,120.13 in debt, and
- b. \$92.13 in pre-judgment interest under the *Court Order Interest Act*.

38. The applicant is entitled to post-judgment interest, as applicable.

39. I dismiss the applicant's remaining claims.

40. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Vice Chair