



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Habib v. D.W. Cholin Inc.*, 2024 BCCRT 1183

BETWEEN:

MICHAEL HABIB and SAMUEL GUINDI

APPLICANTS

AND:

D.W. CHOLIN INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. The applicants, Michael Habib and Samuel Guindi, chartered a bus from the respondent, D.W. Cholin Inc., for a round trip from Vancouver to Kelowna, BC. The applicants say that the bus's air conditioning was not working for part of the trip, the driver was rude, the bus broke down, and the respondent refused to return them to Vancouver. They claim a full refund.

2. The respondent says the bus's air conditioning was working. It says it refused to drive back to Vancouver because individuals travelling with the applicants damaged the bus.
3. The applicants are lawyers who are representing themselves. The respondent is represented by its principal.

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.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format. Neither party requested an oral hearing, however, in some respects the parties call into question the credibility of the other's evidence. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the BC Court of Appeal recognized that oral hearings are not necessarily required where credibility is in issue. It depends on the advantages of an oral hearing and cross-examination balanced against the CRT's mandate to resolve disputes in an accessible, speedy, economical, informal, and flexible manner. In this case, both parties provided documentary evidence to support their respective accounts of what happened. The applicants provided multiple witness statements, and I find there is little benefit to having these witnesses repeat this evidence in an oral hearing. I find that the advantages of an oral hearing do not outweigh the benefits of resolving this dispute through written submissions. So, I have decided this dispute on the documentary evidence and written submissions before me.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did the respondent breach the parties' contract?
 - b. If so, what are the applicants' damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants 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.
10. The parties agree that the applicants chartered a bus with the respondent to take their church group from Vancouver to Kelowna on July 21, 2023, and back to Vancouver on July 24, 2023. The applicants provided the respondent's "Confirmed Order" which shows that the total cost was \$4,137. The applicants paid the respondent \$4,137 before the trip. The order is addressed to Mr. Habib and Mr. Guindi paid the respondent, so I find that both of the applicants contracted with the respondent for the bus charter.
11. The applicants say the bus needed repairs in Hope which delayed their trip over an hour. They say the air conditioning did not work during the trip from Hope to Kelowna and the bus was very hot. They say the bus driver was rude, aggressive, and made disparaging comments about their religion. The applicants provided their own witness statements and seven witness statements from members of the applicants' church group to confirm this account.

12. The respondent says the bus's air conditioning was working when the applicants travelled to Kelowna. It provided a copy of an invoice for "AC recharge" which was due on May 28, 2023. The respondent says this is proof that the air conditioning was serviced shortly before the trip. It provided a weather report for July 21, 2023, which shows that the temperature during the trip was around 34 degrees. It says it could not bring the bus's temperature below 25 degrees because its air conditioning can only cool to 9 degrees below the outside temperature.
13. On balance, I prefer the applicants' evidence. The applicant provided nine witness statements which confirm the applicants' claims. I find that the respondent's invoice for an "AC recharge" was likely to refill the bus's refrigerant. The respondent does not deny that the bus needed repairs in Hope. This indicates that the bus was not in good working order. So, I accept that the air conditioning broke during the second half of the trip. The applicant provided emails from the bus driver which are rude, aggressive, and disparage the applicants' religion. I find this reflects a pattern of behaviour, so I accept that the bus driver was rude, aggressive, and made disparaging comments about the applicants' religion during the trip to Kelowna.
14. The respondent's bus broke down after arriving in Kelowna. The applicants provided Mr. Habib's text messages with the bus driver as evidence. On July 23, 2023, the bus driver wrote that the bus was not safe to drive, no mechanic was available, and the respondent's other buses were in use. The applicants hired another bus company for their return trip to Vancouver. They provided an invoice which shows they paid \$2,473.80 for the return trip.
15. The respondent says it refused to take the church group back to Vancouver because the church group damaged its bus, did not wear their seat belts when travelling to Kelowna, and because Mr. Habib threatened the bus driver. It provided photos which show a fire extinguisher on a bus seat and some ceiling panels which were removed. It says the church group caused this damage.
16. I do not accept the respondent's allegations that the applicants or their church group damaged the bus, did not wear seat belts, or threatened the bus driver. The

respondent says in its Dispute Response that the bus driver noticed the bus damage during the post-trip inspection in Kelowna. However, the bus driver sent text messages to Mr. Habib after arriving in Kelowna and none of these messages mention bus damage, seat belts, or threatening behaviour as reasons for cancelling the return trip. The respondent only said the bus was damaged after the applicants requested a refund.

17. I note that the respondent provided a copy of its terms and conditions which it says allowed it to cancel the return trip. The applicants admit they signed a contract but say they were not provided with a copy and question whether the respondent changed the contract's terms. The terms and conditions provided by the respondent are dated September 25, 2023, which is after the parties made their contract. So, I find that the respondent's terms and conditions were not part of the parties' contract and do not apply to this dispute.
18. In summary, I find that the parties agreed to charter the respondent's bus for a round trip from Vancouver to Kelowna at a cost of \$4,137. I find it was an implied term that the bus would be in good working order and that the bus driver would behave professionally. I find that the respondent breached the contract because the bus's air conditioning broke for part of the trip, the bus driver was rude, aggressive, and made disparaging comments about the applicants' religion, and the respondent did not return the church group to Vancouver.
19. I turn to the applicants' damages. Damages for breach of contract are intended to put the non-breaching party in the position they would have been in had the contract been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39).
20. The applicants say that they should receive a full refund of \$4,137 because the respondent's failure to return them to Vancouver was a fundamental breach of the contract. I disagree. A fundamental breach occurs when a party fails to fulfill a primary contractual obligation in a way that deprives the other party of substantially the whole benefit of the contract (see *Bhullar v. Dhanani*, 2008 BCSC 1202). The

respondent did take the applicants and their church group to Kelowna which was a benefit to the applicants.

21. The contract required the respondent to return the applicants and their church group to Vancouver. The respondent refused to do this, so the applicants paid \$2,473.80 to another bus company to complete their trip. I find this was a reasonably foreseeable consequence of the respondent breaching the contract. So, I order the respondent to pay the applicants \$2,473.80.
22. I found above that the respondent breached the contract by not providing a bus with working air conditioning and because the bus driver was rude, aggressive, and made disparaging comments about their religion. The applicants say, in the alternative to a fundamental breach, that they should receive \$526.20 for these breaches, for a total of \$3,000 in damages. I agree that \$526.20 is a reasonable amount of damages in the circumstances. So, I order the respondent to pay the applicants \$526.20.
23. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$2,473.80 from August 23, 2023, the date the invoice from the second bus company was due, to the date of this decision. This equals \$156.74. Section 2(e) of the COIA says that no interest is awarded on non-pecuniary (pain and suffering) damages, so I award no interest on the \$562.20.
24. 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 find the applicants were successful and are entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order the respondent to pay the applicants a total of \$3,331.74, broken down as follows:

- a. \$3,000 as damages,
- b. \$156.74 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

26. The applicants are entitled to post-judgment interest, as applicable.

27. 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.

Peter Mennie, Tribunal Member