



Civil Resolution Tribunal

Date Issued: December 11, 2024

File: SC-2023-009677

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singhal v. 2282476 Ontario Ltd. dba U To Vacation*, 2024 BCCRT 1261

B E T W E E N :

MANOJ SINGHAL

APPLICANT

A N D :

2282476 ONTARIO LTD. (Doing Business As U TO VACATION)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Manoj Singhal, booked a vacation package with the respondent, 2282476 Ontario Ltd. (Doing Business As U To Vacation) (UTO). Dr. Singhal says UTO breached the parties' contract, and he seeks \$5,000 in damages for "loss of opportunity."

2. UTO says it followed its policies and guidelines, and the terms of the contract, so is not at fault. UTO also says Dr. Singhal agreed to take a travel credit, which he used to book another trip.
3. Dr. Singhal is self-represented in this dispute. UTO is represented by an employee.
4. For the reasons set out below, I allow Dr. Singhal's claim.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
6. 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. 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. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

8. Is Dr. Singhal entitled to damages from UTO, and if so, how much?

EVIDENCE AND ANALYSIS

9. As applicant in this civil dispute, Dr. Singhal must prove his claims on a balance of probabilities. This means more likely than not. I have read all the provided evidence and submissions, but refer only to what is necessary to explain my decision.
10. Although it had the opportunity to do so, UTO did not provide evidence in this dispute other than its brief submission.
11. An invoice in evidence shows that on July 26, 2022, Dr. Singhal booked a vacation package for himself and his wife through UTO's website. The trip included flights from Seattle, and was a 10 day tour of Japan and China departing November 6, 2023. The total price was \$1,598 USD, and Dr. Singhal paid a deposit upon booking and the remaining balance on August 9, 2022.
12. Dr. Singhal says he called UTO in August 2022 and January 2023 about extending the date on their return flights by 7 days. According to Dr. Singhal, UTO said he could do this for an additional fee anytime before 180 days before the departure date. Dr. Singhal said he called UTO on April 10, 2023 to select the return flight date, and was informed by UTO employee SL that UTO had cancelled Dr. Singhal's booking for the November 2023 trip because he had failed to respond to a February 16, 2023 email.
13. Dr. Singhal provided a copy of an April 10, 2023 text chat with SL, conducted through UTO's online portal. That chat confirms that UTO had cancelled the booking because Dr. Singhal did not respond to its email. SL wrote that UTO assumed that since Dr. Singhal did not respond he was not taking the trip, and UTO did not receive all the required documents, specifically two waiver forms. The text chat shows that Dr. Singhal attempted to send UTO the signed waiver documents on April 10, but UTO would not accept them.
14. In its correspondence, UTO says it sent the disputed email on February 16 and Dr. Singhal opened it on February 17 and 18. Dr. Singhal says he did not receive the

email until April 10, after he requested a copy when he found out that UTO had cancelled his booking.

15. There is no copy of a February 16, 2023 email in evidence. There is only one copy of the alleged email in evidence, and it shows that UTO sent it to Dr. Singhal on April 10, 2023. That email included the following information:

- China had reopened to tourists following Covid, and tours with less than 6 days in China would go ahead.
- Customers had until February 26, 2023 to confirm their participation in booked tours by clicking on a linked poll.
- If they wished to proceed with their tour, customers must upload all documents and payments, including liability waiver forms and passports to their accounts by February 26, 2023.
- If customers did not want to go on their booked tours, they should let UTO know by clicking on the linked poll.
- If customers did not complete the linked poll and did not submit all required documents by February 26, 2023, their payments would be forfeited.

16. I find UTO has not proved it sent this email to Dr. Singhal until April 10, 2023. Again, there is no copy of a February 16 email in evidence. There is also no evidence before me showing that Dr. Singhal opened the email on February 17 or 18, as UTO asserted.

17. Also, even if Dr. Singhal had received and opened the email as UTO claimed, I find it is bound by the terms of its original contract. Those terms are set out in UTO's invoice, which shows Dr. Singhal's booking and payments, and includes a section titled "terms and conditions". The terms and conditions contain the following relevant provisions:

- Full or final payment and travel documents including a valid passport and signed risk assumption waiver form are due 180 days before the tour departure date.
- Passengers are required to settle the final payment and submit valid passport copies/necessary documents before the deadline or immediately when the suppliers, airlines, hotels will be or are at a stop sale.

18. I find that by paying the deposit and final tour price, Dr. Singhal agreed to the terms set out in the invoice. So, I find this is the contract between the parties.
19. UTO's invoice shows that Dr. Singhal had already paid in full by August 9, 2022. Dr. Singhal says he uploaded their passports at the time of booking in July 2022. UTO has not proved otherwise, so I accept this is true. So, it appears that UTO cancelled the trip because Dr. Singhal did not click on the emailed poll, and did not provide signed waiver forms before April 10, 2023. However, I find that these were not terms required in the original contract between the parties, as set out in the terms and conditions in UTO's invoice.
20. I find the disputed February 16 email set out additional terms which were not included in the original contract, and in fact changed some of the original terms. As explained above, the contract said Dr. Singhal had to provide all documents, including waiver forms, 180 days before departure. This would have been May 10, 2023. So, I find Dr. Singhal was not in breach of the contract when UTO cancelled his booking.
21. There is no term in the contract that required Dr. Singhal to respond to an email or online poll. The contract says UTO could require documents earlier than 180 days before departure if "suppliers, airlines, hotels will be or are at a stop sale." However, the contract does not define "stop sale", and UTO provided no evidence that any suppliers, airlines, or hotels were at "stop sale."

22. Finally, I agree with Dr. Singhal that UTO owed him a duty of care. In *Eminov v. Travel 2000 Agency*, 2018 BCCRT 575, a CRT Vice Chair found that the standard of care owed by a travel agency to its customer was to provide the customer with reasonable information so he could make an informed choice.
23. Prior CRT decisions are not binding on me, but I find the reasoning in *Eminov* persuasive, and I apply it here. UTO's invoice shows that UTO had 2 phone numbers for Dr. Singhal. I find UTO owed Dr. Singhal a duty to contact him in a manner other than email before cancelling his already-paid trip. If UTO had simply called Dr. Singhal, he could have provided the waiver forms and proceeded with the trip.
24. For these reasons, I find UTO breached its contract with Dr. Singhal.

Damages

25. The usual remedy for breach of contract is to put the party who suffered the breach in the position they would have been in if the breach had not occurred.
26. After UTO cancelled Dr. Singhal's booking for the November 2022 trip, it was not able to re-book him on that trip. Dr. Singhal agrees that UTO issued a \$1,598 USD travel credit for the price of the trip, which he used to partially pay for an October 2024 trip to Thailand that he had already booked before his November 2022 trip booking was cancelled. So, I find Dr. Singhal is not entitled to a refund, which he does not claim in any event. Instead, Dr. Singhal requests \$5,000 in damages for loss of opportunity.
27. Dr. Singhal says that as a replacement, he booked a different trip to Japan in September 2022 with another tour operator. He says this tour was longer in duration, but did not include all the services that were offered with the UTO trip, such as tour guides. He also says the trip did not include China, and was in September instead of November, so the weather was too hot.
28. The evidence shows that Dr. Singhal paid \$5,397.99 USD for this alternative trip.

29. Based on the much higher price of the alternative trip, I find that \$5,000 CDN in damages is appropriate. The alternative trip cost Dr. Singhal \$3,799.99 USD more than the original trip, or approximately \$5,383.99 CDN. The CRT's small claims limit is \$5,000, so I order UTO to pay Dr. Singhal \$5,000 in damages.
30. The *Court Order Interest Act* (COIA) applies to the CRT. I find Dr. Singhal is entitled to pre-judgment interest from June 6, 2023 (the date of his final payment for the alternative trip). This equals \$380.86.
31. 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. As Dr. Singhal was successful in this dispute, I find he is entitled to reimbursement of \$175 in CRT fees. Dr. Singhal also claimed \$8 for a business registry search and \$12.27 for the cost of registered mail to serve the CRT Dispute Notice on UTO. He provided receipts for these expenses, which I find were reasonable in the circumstances. So, I order reimbursement of \$20.27 in dispute-related expenses.

ORDERS

32. I order that within 30 days of this decision, UTO must pay Dr. Singhal a total of \$5,576.13 broken down as follows:
 - a. \$5,000 in damages,
 - b. \$380.86 in pre-judgment interest under the COIA, and
 - c. \$195.27 in CRT fees and dispute-related expenses.
33. Dr. Singhal is entitled to post-judgment interest under the COIA, as applicable.

34. 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 BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair