



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. XHD Pacific Forex Service Ltd.*, 2025 BCCRT 380

BETWEEN:

JING WANG

APPLICANT

AND:

XHD PACIFIC FOREX SERVICE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. The applicant, Jing Wang, says the respondent, XHD Pacific Forex Service Ltd. (XHD), a money service business, defrauded them. Mrs. Wang says they lost 544,000 Chinese Yuan (RMB) when trying to convert RMB to Canadian dollars (CAD) through XHD's services. They claim the money they lost, but limit their claim

to \$5,000, the small claims monetary limit at the Civil Resolution Tribunal (CRT). Mrs. Wang is self-represented.

2. XHD denies Mrs. Wang's claim. It says that Mrs. Wang is a victim of a third party fraudster. It says that a hacker gained access to an XHD employee's WhatsApp account and directed Mrs. Wang to transfer the funds to the hacker's account. It says that Mrs. Wang ignored signs that they were dealing with a fraudster. XHD is represented by a consultant.
3. For the following reasons, I dismiss Mrs. Wang's claim.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought 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. In resolving disputes, the CRT must apply principles of law and fairness.
5. Section 39 of the CRTA 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.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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.

The CRT's Monetary Limit

8. As a preliminary matter, I note that Mrs. Wang says they lost 544,000 RMB. Mrs. Wang did not provide evidence of the value of 544,000 RMB in CAD, so I informed myself by consulting the Bank of Canada's online currency converter. I find that 544,000 RMB would have been equivalent to about \$102,000 CAD at the time of the alleged fraud. This is consistent with the correspondence in evidence which shows that Mrs. Wang told XHD (or the alleged fraudster) that they needed \$100,000 CAD.
9. The CRT's monetary limit for small claims disputes is \$5,000. This means that, if Mrs. Wang proves their claim, the most I can award them is only 5% of the amount they lost in this sad incident. The CRT regularly allows parties to bring small claims disputes worth more than \$5,000 if they abandon their claim to any amount above this monetary limit. However, I am not aware of a CRT dispute in which a party abandoned 95% of their claim.
10. Under section 10 of the CRTA, I must refuse to resolve a claim that I consider to be outside the CRT's jurisdiction. To satisfy myself that the CRT has jurisdiction over this dispute, I asked the CRT's case manager to confirm that Mrs. Wang understood they would be abandoning the portion of their claim over \$5,000 and that they would not be able to claim the remaining amount against XHD in any other Canadian court or tribunal. I also asked the case manager to let Mrs. Wang know that they can still apply to withdraw their dispute, if they wish.
11. The case manager reached Mrs. Wang by phone. He informed me that Mrs. Wang confirmed they are abandoning the portion of their claim over \$5,000, that they understand they would not be able to claim the remaining amount in any other Canadian court or tribunal, and that they wish to continue with the CRT's adjudication process. So, I am satisfied that I have jurisdiction over this dispute and have decided this claim on its merits.

Evidence

12. Mrs. Wang provided a video of a phone call they had with an XHD employee which is not in English. CRT rule 1.7(5) requires information and evidence relied on to be in English or translated to English. Since Mrs. Wang did not provide an English transcript of the conversation, I have not considered it in coming to my decision.

Defamation

13. I note that XHD says in its Dispute Response that Mrs. Wang published defamatory statements online, alleging that XHD devised a trap or deception to defraud them. Defamation is a common law tort (legal wrong). The two forms of defamation are slander (spoken) and libel (written). CRTA section 119 says the CRT does not have jurisdiction to resolve claims about slander or libel. So, I refuse to consider or resolve this allegation.

ISSUE

14. The issue in this dispute is whether XHD is responsible to pay Mrs. Wang \$5,000 for reimbursement of the misdirected money transfer.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant must prove their claim on a balance of probabilities. This means “more likely than not”. I have read all submissions and evidence before me, but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that Mrs. Wang submitted a Dispute Notice and evidence but did not provide submissions or reply submissions, despite having the opportunity to do so.

Background

16. In late October 2023, Mrs. Wang needed to wire transfer RMB from their bank account in China to CAD in a bank account in Canada. Mrs. Wang says they needed \$100,000 CAD for emergency purposes.
17. On October 30, 2023, Mrs. Wang attended XHD's storefront to ask about its exchange rates. Mrs. Wang was greeted by XHD's employee, L, who explained XHD's money exchange operating procedures and contract. I review the procedures in further detail below.
18. Mrs. Wang did not sign a contract with XHD while at the store. I infer that this is because they needed to first open a Canadian bank account that could receive a wire transfer from a bank in China.
19. During or shortly after Mrs. Wang's discussion with L at XHD's store, L added Mrs. Wang as a contact on her personal WhatsApp account. XHD says L added Mrs. Wang in case Mrs. Wang needed to ask L further questions.
20. XHD provided screenshots of the WhatsApp conversation between L and Mrs. Wang. The conversation is in Chinese, but XHD provided English translations. Mrs. Wang does not dispute the translations, so I accept them as accurate. I will now summarize the important parts of the conversation.
21. In the evening of October 30, 2023, L messaged Mrs. Wang, asking if they had opened a Canadian bank account. On Tuesday, October 31, Mrs. Wang messaged L to say that they needed to book an appointment to open an account and that they could not get an appointment until Friday. L responded to say that Mrs. Wang should instead consider transferring the funds the following week. I infer that L suggested this since Friday evening in BC would be a Saturday morning in Beijing, and outside of normal business hours. I find that Mrs. Wang likely understood this, as they replied, "Yes".

22. While the conversation between Mrs. Wang and L's WhatsApp account continued on November 2 and 3, XHD says that on November 2, L's account was compromised by a hacker and that L was not responsible for any further messages with Mrs. Wang until the evening of Friday, November 3.
23. XHD does not provide evidence or explain how L's WhatsApp account was hacked. However, since Mrs. Wang did not provide submissions or a reply in this dispute, they have not contested XHD's assertion that a hacker compromised L's account. For this reason, I accept XHD's assertion about the hacker's existence. So, I will differentiate between L and the hacker in my description of the facts.
24. On Thursday, November 2, the hacker asked Mrs. Wang if they had opened an account and quoted a 5.443 exchange rate. Mrs. Wang repeated that they had an appointment with the bank on Friday and that they would let the hacker know once they opened the account.
25. On Friday, November 3, Mrs. Wang opened a Canadian bank account. At 4:55 p.m., Mrs. Wang asked the hacker, "Today what rate". The hacker responded at 6:41 p.m. to say, "Cannot transfer today". I pause to note that this was a skilled comment by the hacker as it was entirely consistent with L's earlier messaging about not being able to transfer on Friday.
26. However, 11 minutes later, the hacker quoted an exchange rate of 5.445 and asked, "What amount you need". Mrs. Wang said \$100,000 CAD. After a brief exchange, the hacker and Mrs. Wang agreed on an exchange rate of 5.44 and to do the transfer that evening, with the money arriving in Mrs. Wang's Canadian account on Saturday.
27. About 20 minutes later, the hacker provided Mrs. Wang an account number for a bank in China and told them to transfer 544,000 RMB to that account.
28. At 8:27 p.m., Mrs. Wang sent the hacker a picture of a phone showing a warning screen, advising caution about online wire transfer fraudsters. I infer that this is a warning message from Mrs. Wang's Chinese bank that automatically appears

before a customer makes a large transfer. Mrs. Wang asked the hacker why they were receiving this message. The hacker advised Mrs. Wang how they should answer the bank's questions so that the transfer could proceed.

29. At 8:31 p.m., Mrs. Wang sent the hacker an image showing that the transaction was successful.
30. The hacker asked Mrs. Wang if they wanted to transfer more and that they can still transfer "200,000" today. Mrs. Wang said, "Transfer this amount first, will transfer in a few days, too much at once not good."
31. Over the next hour, Mrs. Wang followed up with the hacker to confirm when they would send over the contract and if they were sure the money would arrive the next day.
32. At 9:45 p.m., Mrs. Wang received two messages: "?" and "What". XHD says that these messages were sent by L, who realized at this point that her WhatsApp account had been compromised. L sent Mrs. Wang a screenshot showing that their WhatsApp conversation with Mrs. Wang was empty. L said, "Call police. It is really not me."
33. Mrs. Wang says they lost the 544,000 RMB, which XHD does not dispute. XHD says it filed a police report in Canada and that Mrs. Wang filed a police report in Beijing. However, the parties do not know the identity of the third party hacker. I infer that there is faint hope of collection and that the money is likely gone forever.

The law

34. Both parties say that this case is about fraud, although they characterize the fraud differently. Mrs. Wang implies that XHD colluded with the holder of the Chinese bank account to implement a scam against them. XHD denies this and says that the fraud was committed by the third party hacker. Given that Mrs. Wang has not disputed XHD's claim about the hacker's existence, I accept XHD's account. So, I will not consider Mrs. Wang's allegation of fraud further.

35. However, even if it was a third party hacker who committed the fraud, the law is clear that XHD may still be held liable for Mrs. Wang's loss in certain circumstances.
36. The BC Supreme Court recently dealt with a case of an unknown third person defrauding the innocent parties of a proceeding in *Apex Aluminum Extrusions Ltd. v. KD Sales & Service Limited*.¹ There, the plaintiff sent an invoice to the corporate defendant. The defendant asked for payment information to wire transfer the funds, which the plaintiff provided. However, a third party fraudster posing as the plaintiff's employee intervened, and sent fake emails with different wiring instructions. The defendant followed these instructions, and wired the money into a bank account presumably controlled by the fraudster. The plaintiff sought to recover the missing funds.
37. The court in *Apex* found the applicable test was as follows: "where two suffer for the fraud of a third, *the one who most enabled that third party to create the fraud should bear the loss*".² In applying that test, the court was informed by the approach in *St. Lawrence Testing & Inspection Co. Ltd. v. Lanark Leeds Distribution Ltd.*³ There, the court asked:

Where a computer fraudster assumes control of Victim A's email account and, impersonating Victim A, issues instructions to Victim B, who then transfers funds intended for Victim A (or a third party) to the fraudster's account, is Victim A liable for the loss?

38. The court found the answer was "no" unless:
- a. The parties have a contract that i) authorizes Victim B to rely on email instructions from Victim A and, ii) assuming compliance with the contract, shifts liability for a loss due to fraudulent payment instructions to Victim A.

¹ *Apex Aluminum Extrusions Ltd. v. KD Sales & Service Limited*, 2023 BCSC 2529.

² See *Apex*, at paragraphs 52 and 105, citing *Canadian Imperial Bank of Commerce v. Peaker* (1989), 41 B.C.L.R. (2d) 139, [1989] B.C.J. No. 2044 (emphasis in original).

³ *St. Lawrence Testing & Inspection Co. Ltd. v. Lanark Leeds Distribution Ltd.*, 2019 CanLII 69697 (ON SCSM)

- b. There is evidence of willful misconduct or dishonesty by Victim A.
- c. There is negligence on the part of Victim A.

39. In *Apex*, the court found there was no contractual term authorizing reliance on email instructions and shifting liability from the defendants to the plaintiff, nor was there evidence of misconduct or dishonesty by the plaintiff. It considered whether the plaintiff had been negligent in connection with its computer or email system, or by not taking further steps when the individual defendant called the plaintiff immediately before completing the wire transfer. It concluded the plaintiff had not been negligent. Since the individual defendant was “the one party dealing with the fraudster (albeit unknowingly)”, they were best placed to “recognize potential indicia of fraud (for example, changed or unusual payment instructions)”.⁴ The court found the defendants liable for the missing funds.

40. In this dispute, I note that XHD has not necessarily suffered as a result of the fraud, as they were not owed the money but merely providing a wire transfer service. However, I still find that this test is applicable in the circumstances, as XHD would suffer a loss because of the fraudster if I find them liable for the misdirected payment in this dispute.

Must XHD pay Mrs. Wang \$5,000 for the misdirected money transfer?

41. The decision in *Apex* is binding on me. So, I find the question to be answered is whether Mrs. Wang or XHD most enabled the fraudster. I first apply the *St. Lawrence* approach, as it was endorsed by the court in *Apex*.

42. I find that there is no evidence of willful misconduct or dishonesty by XHD. Further, I find that Mrs. Wang has not proven XHD was negligent. In *Campbell v. Asaph*, the court found a “successful hack” is not in itself proof of negligence.⁵ While this decision is not binding on me, I agree with this conclusion. I find the fact of the hacking of L’s WhatsApp account does not, on its own, prove XHD was negligent.

⁴ See *Apex*, at paragraph 107.

⁵ *Campbell v. Asaph*, 2024 NSSM 48 (CanLII), at paragraph 16.

Mrs. Wang has not alleged that XHD's negligence caused the hacking and I have no evidence or submissions before me to explain how or why L's account was hacked. Ultimately, I find it is Mrs. Wang's burden to prove that XHD was negligent, and that they have taken no steps to prove this.

43. This leaves the issue of whether there was a contract enabling Mrs. Wang to rely on the WhatsApp instructions from the hacker. XHD says that Mrs. Wang never signed a contract and never engaged its services. While it is undisputed that Mrs. Wang never signed a contract with XHD, I find that Mrs. Wang did intend to engage XHD's services, so it is appropriate to consider their entire engagement with XHD, not just the unsigned contract.
44. For the following reasons, I find that XHD's exchange process does direct its customers to use and rely on phone communications.
45. First, XHD does not say that it was unusual for L to add Mrs. Wang as a contact on her personal WhatsApp account or that L acted negligently by doing so. This indicates that it was part of XHD's standard operating procedure.
46. Second, the nature of the exchange services involves XHD providing its customers RMB to CAD quotes and arranging "safe RMB accounts" in the evening, outside regular business hours in Canada (to accommodate standard business time in Beijing). Given the time of day, I find it likely that quotes would occur through phone or text, rather than in-person.
47. Third, once an exchange rate has been agreed to, XHD's procedure instructs the XHD employee to complete information in the wire transfer contract (presumably the negotiated exchange rate) and confirm the details with the customer by phone.
48. Given that XHD's standard exchange process includes the use of phones to finalize exchange rates, account information, and the wire transfer contract itself, I find that XHD's standard process leaves it vulnerable to being held liable for an attack by a third party hacker. However, I find that I cannot hold XHD liable in this case. This is because Mrs. Wang did not follow the rest of XHD's standard process, which did

include safeguards against fraud. For the following reasons, I find that Mrs. Wang, not XHD, most enabled the fraudster.

49. First, I find that Mrs. Wang disregarded XHD's transfer protocols and the need to sign a contract. In their Dispute Notice, Mrs. Wang explained their understanding of the transfer process. This understanding is largely consistent with the process set out in the wire transfer process documentation that XHD provided. Mrs. Wang says they knew they needed to sign a contract.
50. XHD says that L explained XHD's client verification protocols, which included providing copies of documents such as a passport, driver's licence, and bank statements, and Mrs. Wang would need to provide information about the source and purpose of the funds. Mrs. Wang does not dispute that XHD informed them of these required steps, so I accept that it did.
51. Despite understanding XHD's wire transfer process, Mrs. Wang deviated from these procedures while corresponding with the hacker. On review of the correspondence, I find the hacker did not work hard to convince Mrs. Wang to go through with the transaction without following these protocols. Mrs. Wang asked about the contract both before and after they made the wire transfer. The hacker largely brushed off or avoided the issue of the contract. Mrs. Wang says that they transferred the money "based on trust". Given the amount of money at stake, I find Mrs. Wang acted recklessly by not following XHD's protocols.
52. Second, I find that Mrs. Wang did not sufficiently question the hacker when they contradicted L's previous statements about not being able to transfer the funds on a Friday. I previously found that Mrs. Wang understood that the transfer could not occur on a Friday afternoon in BC (Saturday in China). The hacker did not provide any explanation as to why it was suddenly possible to transfer the funds on Friday evening, and Mrs. Wang did not ask for one. I find this should have raised Mrs. Wang's suspicions.

53. Third, I find that Mrs. Wang ignored their Chinese bank's warning message about online wire fraudsters. I find that this should have raised their awareness to the possibility they were speaking to a hacker, and prompted them to verify the party they were corresponding with by another means.
54. In summary, I find Mrs. Wang was negligent in the handling of their own money. They were the party dealing with the fraudster and best placed to recognize the signs of fraud. I find Mrs. Wang most enabled the fraudster. So, I dismiss Mrs. Wang's claim.
55. 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. Mrs. Wang was unsuccessful, so I dismiss their claim for tribunal fees. XHD did not pay tribunal fees.
56. XHD claims \$375 in dispute-related expenses for the preparation of bilingual evidence reports and provided an invoice for this amount. I find this to be a reasonable expense and directly related to the dispute. However, bearing in mind how much Mrs. Wang has already lost while trying to use XHD's services and that I have found XHD's process left it vulnerable to this kind of hacking, I decline to add to Mrs. Wang's losses. I dismiss XHD's reimbursement claim.

ORDER

57. I dismiss Mrs. Wang's claim and this dispute.

Peter Nyhuus, Tribunal Member