



Civil Resolution Tribunal

Date Issued: April 23, 2025

File: SC-2023-012487

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keung v. WestJet Airlines Ltd.*, 2025 BCCRT 506

B E T W E E N :

EDDIE KEUNG and MICHELLE KEUNG

APPLICANTS

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about compensation for a delayed flight. The applicants, Eddie Keung and Michelle Keung, say they purchased a one-way ticket from Swoop Inc. (Swoop). They say that WestJet dissolved Swoop and assumed its assets and liabilities. So, they claim \$1,510 in compensation under the *Air Passenger Protection Regulations* (APPR) against WestJet for the delay.

2. WestJet denies liability. It says it did not contract with the Keungs or operate their flight. It also says Swoop is a separate legal entity from WestJet. It also denies the Keungs are entitled to compensation under the APPR.
3. Mr. Keung represents the Keungs. A senior claims specialist represents WestJet.
4. For the reasons that follow, I dismiss the Keungs' claims.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (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. These are the CRT's formal written reasons.
6. 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.
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.

ISSUE

9. The issue in this dispute is whether WestJet must pay the Keungs up to \$1,510 in compensation for flight delay.

BACKGROUND, EVIDENCE, AND ANALYSIS

10. In a civil proceeding like this one, the Keungs as 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.
11. The background facts are undisputed. Internal business documents show that on January 27, 2023, the Keungs purchased 2 tickets from Swoop. Swoop scheduled the flight to depart from Toronto on July 14, 2023, at 7:40 a.m. Ultimately, the plane left the ground several hours later, at 3:09 p.m. The Keungs arrived at their planned destination of Kelowna.
12. On July 15, 2023, the Keungs emailed Swoop to request compensation for the delay. On July 26, 2023, Swoop said that it had reviewed the Keungs' claims. They said the Keungs were not eligible for compensation as the delay was due to an operational decision within its control for safety reasons. I note that in the emails, the authors identified themselves as representatives of Swoop and did not refer to WestJet at all.

Must WestJet pay the Keungs up to \$1,510 in compensation for flight delay?

13. As noted above, WestJet says it is not the proper party for this dispute. So, I will consider this argument first.
14. The Keungs say that Swoop is a wholly-owned subsidiary of WestJet. WestJet does not dispute this. The CRT has previously held this to be the case. See *Qi v. Swoop Inc.*, 2023 BCCRT 709 at paragraphs 14 to 16. So, I find WestJet owns Swoop.

15. The shareholder of a corporation, even a sole shareholder, is not liable for the debts of the company. It is a fundamental principle of corporate law that a parent corporation is not ordinarily liable for the obligations of its subsidiary. See *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.*, 2011 BCSC 1072 at paragraph 98 to 99 (*Emtwo*). This separation of liabilities is sometimes referred to as the corporate veil.
16. In *Emtwo*, the court conducted a lengthy analysis to consider exceptions to this principle. It concluded that to lift the veil and impose the contractual liability of a subsidiary on a parent requires more than the exercise of total control by the parent over the subsidiary. The corporate veil will not be pierced absent conduct akin to fraud. See *Emtwo* at paragraph 128.
17. The Keungs cited many authorities to justify piercing the corporate veil in this dispute. Some of these were dated and not binding. Some were irrelevant. In any event, I find the relevant authorities cited are consistent with *Emtwo*. The element of conduct akin to fraud is required to pierce the veil. There is no allegation or proof of such conduct in this dispute. So, I find that WestJet is not liable for Swoop's obligations, even though it wholly owns Swoop.
18. The Keungs say that WestJet amalgamated with Swoop. They submit that under section 273(3) of the *Business Corporations Act* WestJet is liable. From my review, I find this subsection does not exist. In any event, a company search shows that Swoop amalgamated into WestJet Vacations Inc. on December 4, 2024. This differs from WestJet's legal name of WestJet Airlines Ltd. So, I find it unproven that WestJet amalgamated with Swoop, or that Swoop and WestJet otherwise became one legal entity.
19. The Keungs also say that WestJet is liable because it "integrated" with Swoop. As evidence, they provided, among other things, WestJet's press releases that say it integrated with Swoop in October 2023. This date is after the Keungs purchased their tickets.

20. I find the term “integration” is legally ambiguous and insufficient to assist the Keungs. At a minimum, there is no evidence that WestJet voluntarily assumed Swoop’s legal liabilities, and WestJet denies this in submissions. And, as I stated earlier, total control by the parent over the subsidiary is an insufficient reason by itself to pierce the corporate veil.
21. Aside from this, the Keungs did not identify any specific claim against WestJet. Their allegations are about Swoop’s conduct. Given this, I dismiss the Keungs’ claims.
22. 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 dismiss the Keung’s claims for reimbursement of CRT fees. The parties did not claim reimbursement of any specific dispute-related expenses.

ORDER

23. I dismiss the Keungs’ claims.

David Jiang, Tribunal Member