



# Civil Resolution Tribunal

Date Issued: July 23, 2025

File: SC-2024-004701

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aparaschivei v. Skyland Travel Inc.*, 2025 BCCRT 1030

B E T W E E N :

EDUARDO APARASCHIVEI and RODICA APARASCHIVEI

**APPLICANTS**

A N D :

SKYLAND TRAVEL INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about reimbursement for a cancelled vacation package.
2. Eduardo Aparaschivei bought a vacation package to Cancun, Mexico for himself and Rodica Aparaschivei from Skyland Travel Inc. for \$6,208.92. WestJet Airlines Ltd., the flight operator, cancelled the outbound flight, and re-booked the applicants

on a different flight. WestJet is not a party to this dispute. The applicants did not accept this itinerary change, and ultimately, cancelled their trip. WestJet refunded the applicants \$908.92 for the flight, and their insurer paid them \$2,000 under their travel insurance policy. The applicants claim the balance of the package's purchase price, which is \$3,300.

3. Skyland disputes the applicants' claim. It says the applicants decided to cancel their trip despite being offered alternative flights and despite Skyland informing them the hotel portion of the package was non-refundable, as set out in the payment invoice.
4. Mr. Aparaschivei represents the applicants. Skyland is represented by its owner.

## **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. 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 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 an oral hearing is not necessary in the interests of justice.
7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. 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.

## ISSUE

9. The issue in this dispute is whether Skyland must reimburse the applicants \$3,300 for the balance of their cancelled vacation package price.

## EVIDENCE AND ANALYSIS

10. 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 only refer only to information I find necessary to explain my decision.
11. In December 2023, Mr. Aparaschivei booked a vacation package for the applicants with Skyland. On January 17, 2024, the day of travel, WestJet cancelled the applicants' direct Vancouver-Cancun flight after a 12-hour delay at the airport, including five hours on the tarmac. WestJet re-booked the applicants on a flight later that evening.
12. The replacement flight included an eight-hour stopover in Calgary. The applicants say they did not accept the replacement flight because they were exhausted, which I find is reasonable in the circumstances. Since Skyland was unable to offer an acceptable flight to the applicants' destination, the applicants say it should have offered a voucher for future redemption toward travel services, or a refund. Skyland did neither, so the applicants say it breached the parties' contract.
13. Skyland says WestJet gave the applicants the option to choose a flight other than the replacement flight. But, it says the applicants decided to cancel the flight instead. In these circumstances, Skyland says it did nothing wrong, and is not responsible to reimburse the applicants the balance of their vacation package cost.

### ***The parties' contract***

14. The first question is what did the parties contract for? I find they agreed that Skyland would arrange a vacation package, including flights and accommodation,

for the applicants for a single price. In essence, Skyland was providing the applicants with peace of mind by taking the hassle out of organizing the vacation. So, I find that unlike in *Bridges v. Classic Sports Tours Ltd.* 2004 BCPC 366, Skyland was not acting as WestJet's agent, but rather was providing its own service to the applicants.

15. Next, the contract documentation. Skyland refers to the invoice it gave the applicants when they paid for the vacation package as the contract. The applicants refer to their e-tickets from WestJet, which they received some time after that, as the contract. I find both documents form the contract. This is because the invoice warns that it is not an electronic travel document, which would be emailed later. I find this advisory incorporated by reference the e-ticket into the invoice's terms. I also find it is common knowledge that an e-ticket has its own terms and conditions setting out the parties' rights and responsibilities about the services provided.

16. The invoice's relevant terms are:

- a. Once your package is confirmed, all monies paid become 100% non-refundable.
- b. Vacation packages and flight schedules are prepared in advance and on occasion require modification due to changing travel conditions. Even after confirmation of your reservation, all airlines and tour operators reserve the right to amend, introduce operational changes (including but not limited to stops before your final destination or return home...), consolidate or even cancel flights at any time. All changes and cancellations are beyond the control of (Skyland); therefore, any additional costs incurred due to disruption of travel arrangements are the sole responsibility of the passengers.

17. The e-ticket's relevant terms are:

- a. No shows – If a guest does not use the confirmed flights indicated on the ticket and does not notify WestJet Vacations (...) all continuing or return flights in the ticket will be cancelled (...) if a guest does not check into their

hotel on the original arrival date, subsequent nights will be cancelled without a refund or credit.

- b. Cancellations made less than three (3) days before departure for destinations in Mexico (...) will result in a full forfeit.

### ***Skyland's alleged breach of contract***

18. The applicants say the following. After WestJet cancelled the original flight on January 17, they returned home, and tried, unsuccessfully, to call Skyland. Mr. Aparaschivei cancelled the replacement flight he got by email to avoid going into “no show” status. Choosing another flight on his own was not an option without Skyland confirming the hotel was still available. However, when Mr. Aparaschivei spoke with a Skyland representative on January 18, they told him the flight would be refunded, and he would have to claim through his insurance provider to be compensated for the hotel portion of the package.
19. Skyland disagrees. It says on January 17 when Mr. Aparaschivei contacted its office, a representative told him they would re-book the applicants on the next available flight at no extra cost, or cancel the reservation further to the applicable terms and conditions. Skyland was unable to re-book the applicants on another carrier due to lack of availability. When Mr. Aparaschivei spoke with a Skyland representative the next day, he explained he had cancelled the replacement ticket WestJet had issued. The representative contacted WestJet to see if there were other options but because of the cancellation, there were none. The representative advised Mr. Aparaschivei he would be refunded for the flights, but not the hotel. In addition to his insurance, the representative told him he may be able to make an additional claim for compensation through WestJet.
20. While imperfect, I find the evidence better supports the applicants' position for the following reasons.
21. After the original flight was cancelled, Skyland could not re-book the applicants on a different carrier. So, WestJet booked them on its next best available flight through

Calgary. Later, that flight was undisputedly cancelled as well, so it would not have resolved the applicants' problems even if it had been acceptable to them.

22. To avoid going into "no show" status and having their return tickets cancelled, the applicants had to choose a different flight or cancel their reservation. I find choosing a different flight would have risked them arriving in Cancun and discovering their hotel room was no longer available, since they would not have checked in on their original arrival date.
23. The replacement flight email WestJet sent the applicants indicated that if they had booked with a travel agent and wanted to cancel, they should do so by contacting the travel agent directly. It is undisputed that by the time WestJet sent that email, it was late on January 17, and no one was answering the phone at Skyland's office. In these circumstances, I find it was reasonable for the applicants to cancel their replacement flight online, and try to sort things out with Skyland the next morning. There is no documentary evidence establishing that by cancelling the replacement flight, the applicants were cancelling the whole package.
24. I find Skyland fundamentally breached the parties' contract to arrange a vacation package when it did not provide the applicants with any other flight options on January 18. The court in *Bhullar v. Dhanani*, 2008 BCSC 1202 explained that a fundamental breach is a breach that destroys the contract's whole purpose, and makes its further performance impossible. Such a breach entitles the non-breaching party to cancel the contract and sue for damages.

### ***Damages***

25. Generally, damages for breach of contract are meant to put the innocent party in the position they would have been in had the contract been performed. See *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. These are called "expectation damages".
26. In the case of a fundamental breach, the innocent party may claim damages based on their out-of-pocket losses, rather than the ordinary measure of expected

performance. See *Bhullar v. Dhanani* at paragraphs 42 to 45, and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211. In other words, “put me in the position I was in before the contract was made.”

27. WestJet refunded the applicants \$908.92 for their flights, though that price is not stated anywhere on the invoice or in the e-tickets. The applicants’ insurers paid out \$2,000 on the applicants’ claim for the balance of the vacation package price. Skyland says the applicants could have made an additional claim under the *Air Passenger Protection Regulations*, but they applied through WestJet using the wrong portal. It is unclear whether such a claim would have been successful.
28. In these circumstances, I find the applicants made sufficient efforts to mitigate their losses, and are entitled to the outstanding amount they paid for their package, which is \$3,300. I order Skyland to pay the applicants this amount.

## **INTEREST, CRT FEES, AND DISPUTE-RELATED EXPENSES**

29. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$3,300 from January 18, 2024, the date of the breach, to the date of this decision. This equals \$222.51.
30. 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 the applicants were successful, I find they are entitled to reimbursement of \$175 in CRT fees. Neither party claims dispute-related expenses.

## **ORDERS**

31. Within 30 days of the date of this decision, I order Skyland to pay the applicants a total of \$3,697.51, broken down as follows:
- a. \$3,300 in damages,

- b. \$222.51 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

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

33. 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.

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Megan Stewart, Tribunal Member