

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *109829 Canada Inc. v. RBC Financial Services Inc.*, 2024 NSSM 46

**Date:** 20240404

**Docket:** 529663

**Registry:** Halifax

**Between:**

109829 Canada Inc.

*Claimant*

v.

RBC Financial Services Inc.

*Defendant*

**Adjudicator:** Eric K. Slone

**Heard:** March 26, 2024, via zoom

**Decision:** April 4, 2024

**By the Court:**

[1] The Claimant in this case, 10982954 Canada Inc., carries on business as a resort known as Blue Bayou Resort in northern Cape Breton, Nova Scotia. The resort offers “glamping” (short for glamorous camping) accommodations.

[2] The Claimant launched this case naming as the defendant RBC Wealth Management Financial Services Inc., which is an arm of the Royal Bank of Canada. After getting partway through the case, I became concerned that the Claimant had named the wrong entity and should have named the Royal Bank of Canada as the defendant. Counsel for the defendant did not object to an amendment to the style of cause to reflect that. It is a technicality only.

[3] The Defendant will be referred to hereafter as “RBC” or the Defendant. The Claimant will be referred to as either “the resort” or the Claimant.

[4] The claim arises from the making of a large number of reservations for rooms at the resort in the summer of 2023, by an individual on behalf of a group. That person’s identity is unimportant, and he will simply be referred to as “the client”.

[5] Some of the facts are undisputed. On May 15, 2023, the client called the resort and inquired about booking 18 units for two days at the resort for August 3<sup>rd</sup> and 4<sup>th</sup>, 2023. There is no direct evidence before me of what was discussed during that phone call, but the client was directed to book on the resort’s website.

[6] Eighteen units for two days is a significant piece of business for the resort, especially at high season. And the loss of income from such a booking at the last minute would be hard to replace.

[7] There is also no dispute that a 50% deposit for the booking was required, which was in the amount of \$4,967.20, which was charged on the client’s Visa card. This card was issued by RBC, which is how RBC enters the picture.

[8] The parties do not dispute that the client called the resort to cancel his bookings on July 27, 2023. What is ultimately in dispute is what was the applicable cancellation policy, and whether or not the client cancelled within the allowable time frame in order to have his deposit refunded. What is more directly in dispute in this claim is whether RBC had a right to make that decision.

[9] The cancellation policy is communicated to the client in the confirmation email that they receive after booking. It is the wording of this policy that creates

some uncertainty. I will quote the applicable language (with some minor correction of typos in the interest of readability):

Cancellations: need to cancel? If you need to cancel your reservation, please call 647-995-1633 before your **one week deadline** to receive your deposit refund, minus a \$50 plus HST cancellation admin fee. Allow us 24 hours to process refund. Text and/or email notifications of cancellations are not acceptable. Getting a cancellation confirmation email for your cancellation is the proof that you have cancelled. Make sure that you get a confirmation when cancelling. We accept cancellation up to **eight days** before your stay to get your full refund minus \$50 plus HST admin fee. If you cancel on that eighth day, you have to do so prior to 5 PM on that day. Cancellations documented by the office that are less than one week prior to scheduled arrival date MAY to our discretion be rescheduled within 12 months without penalty and upon availability.... (**Emphasis added**)

[10] Based on when the client called the resort to cancel, he either was or was not entitled to a refund, depending only upon whether one interprets the cancellation policy to be seven days or eight days. If the client was entitled to cancel within seven days, then he got in under the wire. If it is eight days, he was a day late and would forfeit the deposit.

[11] The reason that RBC gets involved in this dispute, is that the client launched a complaint to Visa, which has a process for questioning charges that the client considers to be improper. This is a fairly complex set of procedures that involves the issuing bank, Visa itself, and a trust company identified as Peoples Trust Company that was behind the Stripe payment processing system. RBC reviewed the client's assertions, and the available documentation, and concluded that the client was correct and should have received his refund. As such, the disputed amount was debited to the resort's account and refunded to the client. RBC contends that it no longer has the resort's money, and it suggests that the resort's remedy, if it wishes to pursue it, is to sue the client directly.

[12] For me, at first blush, the issue is not whether RBC is holding the Claimant's money, but rather whether it unlawfully took the money from the Claimant's account. The legal theory that might best describe this type of claim would be the tort of conversion.

[13] The Supreme Court of Canada outlined the elements of conversion in *Boma Manufacturing Limited v Canada Imperial Bank of Commerce*, 1996 CanLII 146 (SCC), [1996] 3 SCR 727 at paragraph 31:

31. The tort of conversion involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession. The tort is one of strict liability, and accordingly, it is no defence that the wrongful act was committed in all innocence.

[14] RBC argues that a claim in conversion cannot succeed for two reasons:

(A) RBC acted with legal authority; and

(B) the Claimant has failed to prove that it had a right to possession of the deposit.

[15] On the question of legal authority, RBC argues that within the scheme of the Visa system, it had the authority, if not the obligation, to initiate a process to resolve the dispute between the customer and the merchant.

[16] In order to accept Visa payments, a merchant must agree to be bound by the Visa Core Rules and Visa Product and Service Rules. These rules are lengthy and complicated, but applicable nonetheless.

[17] Section 11.1.2 of the Visa Rules defines an issuer's responsibility to cardholders as it relates to dispute resolution:

An issuer must resolve cardholder disputes under the Visa rules by extending to cardholders all protections provided on any visa card under applicable laws or regulations and by utilizing the issuers customary practice to resolve cardholder disputes, regardless of which type of visa card was used.

[18] An entire section of the rules, 11.10.8, relates to disputes about cancelled merchandise or services.

[19] This essentially put RBC in the position of having to offer a dispute resolution process, which it did. The court heard from two employees of RBC who deal with such disputes. The process that applied was referred to as pre-arbitration, which is not a term that is familiar to me. It was all done online, but it cannot be said that all parties did not have an opportunity to put forward their position. I am not about to criticize this process and suggest that it should be more rigorous, given the volume of complaints that credit card issuers must handle.

[20] In substance, the argument communicated by the client was that he believed

that the cancellation policy allowed him to cancel within seven days. RBC concluded that the policy document was ambiguous, and that any ambiguity should have been resolved against the resort on the principle of *contra proferentem* - which is the doctrine that resolves ambiguity against the interest of the party that drafts the applicable provision.

[21] As such, RBC argues, the resort has not established that it had a legal right to retain the deposits.

## Discussion

[22] I am not sure what I would do if I disagreed with RBC's interpretation of the cancellation policy. In such a situation, I would have to ask myself whether the resort nevertheless surrendered its right to have its cancellation policy enforced and not overridden by an informal process such as applied here.

[23] However, I agree that RBC came to the correct conclusion. There was no evidence of what was said between the resort and the client before the reservation was made, and there is no evidence that the client sought out the cancellation policy in advance of making the reservation. The documents placed in evidence were confirmation emails containing the language which mentions in one place the words "one week deadline", and in another place "up to eight days." Anyone casually reading the cancellation section of the confirmation email would likely see the "one week deadline" language and would not necessarily read on.

[24] Mr. Poitras argued that the language in his policy is clear and unambiguous. He is wrong. And the ambiguity, such as it is, must be resolved against the interest of the party who drafted the ambiguous language. Mr. Poitras could not point to any reason why the words "one week" appear in the policy. Words are presumed to have meaning.

[25] As such, I cannot find that RBC converted the disputed funds. It was compelled by the system to recognize the complaint by the cardholder, and it had the obligation to draw in the merchant, namely the resort, into its process. The resort, if it wants to continue to accept Visa cards, must be prepared to participate in the dispute resolution process that is laid out in the documents, and to abide by its decisions. The Visa rules are lengthy, running to almost 1,000 pages, but they are available online and are indexed. Merchants such as the resort have access to those rules to become acquainted with their rights and obligations as merchants accepting Visa cards.

[26] For all the above reasons, I find that RBC acted appropriately in finding that

the client did not have to forfeit its deposits, and the funds were appropriately returned to the client and debited to the resort's account.

**ORDER**

[27] As such, for all of the above reasons, the claim must be dismissed.

Eric K. Slone, Small Claims Court Adjudicator