



# Civil Resolution Tribunal

Date Issued: August 19, 2024

File: SC-2023-007243

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abonita v. Berce*, 2024 BCCRT 793

B E T W E E N :

RACHEL PERPETUA ARELLANO ABONITA

**APPLICANT**

A N D :

LIMA BERCE, VICTOR HALLARE and AIDA HALLARE

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. The applicant, Rachel Perpetua Arellano Abonita, co-owned a condominium (the property) in the Philippines with her husband, MA, and the respondent, Lima Berce. The applicant and MA sold their 50% interest in the property to the respondents, Victor Hallare and Aida Hallare. MA is not a party to this dispute.

2. The applicant says that the property's mortgage payments and insurance premiums are still being withdrawn from her bank account. The respondents say that they tried to update the automatic debit payments but were unable to do so. However, they say they have repaid the applicant for the mortgage and insurance payments.
3. The respondents initially filed a counterclaim against the applicant, but withdrew it before the tribunal decision process. So, only the applicant's claims are before me to decide.
4. The applicant initially claimed \$1,502.51 for the mortgage payments and insurance premiums. However, in submissions, the applicant acknowledges that the respondents have now paid this amount.
5. The applicant also asks for an order that the respondents apply to refinance the property and discharge her from the mortgage. For the reasons explained below, I refuse to resolve this claim as I find it is outside the jurisdiction of the Civil Resolution Tribunal (CRT).
6. The applicant represents herself. Aida Hallare represents the respondents.

## **JURISDICTION AND PROCEDURE**

7. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, none of the parties requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, as noted, I find the CRT does not have jurisdiction to order the applicant's remaining requested remedy. So, I find an oral hearing would serve no purpose, and I decided to hear this dispute through written submissions.

## **ISSUES**

9. The issues in this dispute are:

- a. Does the CRT have jurisdiction to order the respondents to refinance the property and discharge the applicant from the mortgage?
- b. If so, should I order the respondents to do so?

## **EVIDENCE AND ANALYSIS**

10. In this civil proceeding, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. As noted, the respondents have undisputedly reimbursed the applicant for the mortgage and insurance payments. A bank statement in evidence shows that the Hallares paid \$1,502.51 by e-transfer on September 5, 2023. While the bank statement shows that the Hallares made this payment to MA, and not to the applicant directly, the applicant acknowledges that this requested resolution has been settled. As the applicant did not formally request to withdraw this portion of her claim, I dismiss it as I find it has been resolved.
12. As for the applicant's request that the respondents refinance the property and discharge her from the mortgage, I find that this remedy is not within the CRT's small claims jurisdiction. It is a request for injunctive relief, which is an order that a party do or stop doing something. CRTA section 118 only provides for injunctive relief in limited circumstances, including the recovery of personal property, or specific performance of an agreement relating to personal property or services.
13. Here, I find the applicant's requested remedy is clearly not for the recovery of personal property. I also find it is not a request for specific performance of an agreement relating to personal property or services. First, while the parties

undisputedly have an agreement for the property's purchase, I find this is an agreement relating to real property, not personal property.

14. Second, the applicant says the respondents' failure to update the automatic debit information for the mortgage is a breach of the parties' purchase agreement. However, she does not ask for an order that the respondents update the debit information to comply with the agreement. Instead, she asks for an order that the respondents refinance the property and discharge her from the mortgage. She does not say that this was required under the terms of the parties' agreement, but rather that this is an appropriate remedy for the respondents' failure to update the automatic debit information. So, even if the CRT had jurisdiction to order specific performance of an agreement relating to real property, I find that is not what the applicant is requesting. Rather, she is requesting injunctive relief for the respondents' alleged contractual breach.
15. I find no other provision in the CRTA permits me to make the order the applicant is requesting. CRTA section 10(1) says that the CRT must refuse to resolve a claim that it considers is not within the CRT's jurisdiction. Under this section, I refuse to resolve the applicant's claim for an order that the respondents refinance the property and discharge her from the mortgage.
16. 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. Here, while I have refused to resolve the applicant's remaining claim, I note that the respondents undisputedly did not pay the applicant's claimed monetary remedy until after the applicant started this CRT dispute. In the circumstances, I find it appropriate to order the respondents to reimburse the applicant for the \$75 CRT application fee. As I have refused to resolve the applicant's remaining claim, I direct CRT staff to refund the applicant's \$50 tribunal decision process fee.
17. The applicant claimed various dispute-related expenses including legal fees, photocopying, registered mail, and courier fees. However, the applicant provided no

evidence in support of these amounts, so I dismiss her claim for dispute-related expenses as unproven. The respondents did not claim dispute-related expenses.

## **ORDERS**

18. Within 30 days of this decision, I order the respondents to pay the applicant \$75 in CRT fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. Under CRTA section 10, I refuse to resolve the applicant's claim for the respondents to apply for refinancing and to discharge her from the mortgage.
21. I dismiss the applicant's remaining claims.
22. 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 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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Alison Wake, Tribunal Member