



# Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2018-001216

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clydesdale Moving and Hauling Ltd. v. Parenteau et al*, 2018 BCCRT 687

**B E T W E E N :**

Clydesdale Moving and Hauling Ltd.

**APPLICANT**

**A N D :**

Jennifer Parenteau and Barry Parenteau

**RESPONDENTS**

**A N D :**

Clydesdale Moving and Hauling Ltd.

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

- 1) This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the applicant (and respondent by counterclaim) Clydesdale Moving and Hauling Ltd. (Clydesdale), due to its non-compliance with the tribunal's directions as required, as discussed below.
- 2) In its dispute application, Clydesdale says the respondents, Jennifer Parenteau and Barry Parenteau (the Parenteaus), failed to pay an outstanding invoice of \$493.50 for moving services, plus \$250 that Clydesdale paid to have the Parenteaus' dresser repaired. Clydesdale also seeks \$1,000 for "wasted company time".
- 3) The Parenteaus say that Clydesdale broke a dresser previously in mint condition, making it unusable. They say that Clydesdale did not repair the dresser. They say that both the replacement value and the repair cost of the dresser exceed the \$493.50 moving invoice, so they are not obligated to pay.
- 4) In their counterclaim, the Parenteaus seek to have the moving invoice reduced by \$100, as they say the time was inflated. They also seek \$524.13 for dresser replacement, \$250 for loss of use of the dresser, and \$1,000 for time spent on the dispute.
- 5) While it participated, Clydesdale was represented by its manager, Wade Morrison. The Parenteaus are represented by Jennifer Parenteau.

## **JURISDICTION AND PROCEDURE**

- 6) Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:

- a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
- 7) These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 3.1 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 8) Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
- 9) For the reasons that follow, I dismiss Clydesdale's claims, and allow the Parenteaus' counterclaims.

## **ISSUES**

- 10) The issues in this dispute are:
- 1) Should the dispute be heard without Clydesdale's further participation, due to its non-compliance?
  - 2) Is Clydesdale entitled to payment of \$493.50 for moving charges , \$250 for dresser repair, or \$1,000 for wasted company time?
  - 3) Are the Parenteaus' entitled to a \$100 reduction moving invoice, \$524.13 for dresser replacement, \$250 for loss of use of the dresser, or \$1,000 for time spent on the dispute?

## EVIDENCE AND ANALYSIS

### *Non-Compliance and Default*

- 11) My October 1, 2018 summary decision to hear the dispute without Clydesdale's participation due to its non-compliance was previously communicated to the parties by email through the tribunal facilitator (TF). The details supporting that decision are set out below.
- 12) Clydesdale failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the TF to contact its representative, Mr. Morrison, with a request for a reply.
- 13) Clydesdale filed its dispute application on February 19, 2018. The Parenteaus filed their counterclaim on April 30, 2018. Clydesdale did not file a Dispute Response to the counterclaim. As stated in tribunal rule 76, a named as a respondent to a dispute who fails to respond to a properly delivered Dispute Notice by the date shown on the notice is in default. The TF emailed Mr. Morrison on June 15, 2018, reminding him that he must respond to the counterclaim by June 18, but he did not respond. Thus, Clydesdale is in default with respect to the counterclaim.
- 14) Clydesdale participated in the initial facilitation process. The TF then made the following attempts to contact Clydesdale:
  - a) *June 17, 2018 email:* the TF instructed Mr. Morrison to provide evidence by June 28. He did not respond.
  - b) *July 3, 2018 email:* the TF asked Mr. Morrison to reply by July 8. Mr. Morrison replied that he had a family emergency, and he requested a postponement until after July 9.
  - c) *July 10, 2018 email:* The TF reminded Mr. Morrison that he had not yet provided evidence. Mr. Morrison replied, asking someone to get in touch with him. The TF replied on July 11, 2018. She forwarded Mr. Morrison copies of

the evidence provided by the Parenteaus, and said he had 5 days to review that evidence and prepare submissions.

- d) *August 7, 2018 email:* The TF instructed Mr. Morrison to reply by August 14. The email said that if he did not respond, the dispute could be decided using only the information already submitted.
- e) *August 20, 2018 email:* The TF reminded Mr. Morrison of the missed August 14 deadline, and instructed him to reply by August 23.
- f) *August 28, 2018 email and phone call:* The TF spoke to Mr. Morrison, and also sent a follow-up email to document the call. The TF said Mr. Morrison had until August 31 to reply.
- g) *September 10, 2018 email:* In an email titled, "FINAL WARNING", the TF instructed the respondent to reply by September 13. The email said Mr. Morrison was required to comply with the tribunal's instructions, and said that if he did not reply, a tribunal member could decide the dispute without his participation, and could dismiss or refuse to resolve the claim. The email included the text of section 36 of the Act.

***Should the dispute be heard without Clydesdale's further participation, due to its non-compliance?***

15) As referenced above, Clydesdale did not file a Dispute Response to the counterclaim and is in default. Although Mr. Morrison sent emails about a death in his family in early July 2018, he provided no further explanation about why he failed to communicate with the tribunal as required in August and September 2018. I find the tribunal staff made a reasonable number of attempts to contact Mr. Morrison. He was informed in writing at the beginning the facilitation process that he must actively participate in the dispute resolution process and respond to the tribunal's emails. Given that Mr. Morrison replied to the TF's emails of July 3 and 10, 2018, and spoke to the TF on the telephone, I find it is more likely than not that the respondent knew about the TF's subsequent contact attempts and failed to respond.

- 16) Mr. Morrison also provided no evidence in support of Clydedale's claims.
- 17) The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
- a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
- 18) First, this dispute does not affect persons other than the named parties.
- 19) Second, given the TF's attempts at contact and Mr. Morrison's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant. In making this finding, I particularly note that Clydesdale has effectively abandoned its claim for \$493.50 in moving charges and \$250 in dresser repair costs by not providing copies of the claimed invoices or any other supporting evidence.
- 20) Third, I see no prejudice to the Parenteaus in hearing the dispute without Clydesdale's participation. The prejudice to Clydesdale from proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the Parenteaus would be left without a remedy for their counterclaim, which would be unfair to them.
- 21) Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful

for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from Clydesdale.

22) In weighing all of the factors, I find dispute should be heard without Clydesdale's further participation. In making this finding, I put significant weight on the following factors:

- a. the extent of the non-compliance is significant;
- b. the applicant is not prejudiced; and
- c. the need to conserve the tribunal's resources.

### ***Clydesdale's Claims***

23) Having decided to hear the dispute without Clydesdale's participation, I will now address the merits of the dispute. Clydesdale claims \$493.50 for moving charges, \$250 for dresser repairs, and \$1,000 for time spent dealing with the dispute.

24) Under section 36(3)(b) of the Act, an applicant's dispute may be dismissed due to non-compliance. Due to the significant non-compliance by Clydesdale, as outlined above, I find it is appropriate to dismiss its claims for that reason.

25) I also note that Clydesdale provided no evidence, such as invoices or other records of time and expenses, to support claims \$493.50 for moving work performed, \$250 for dresser repairs, and \$1,000 for "company time wasted". In a civil claim such as this, the applicant bears the burden of proving each of its claims, on a balance of probabilities. As it provided no evidence, Clydesdale has not met this burden of proving its claims.

26) Clydesdale's Dispute Notice says the Parenteaus signed a damage liability waiver, then stole the documents after signing them. The Parenteaus deny this allegation. As Clydesdale provided no proof to support this accusation, I do not accept it.

27) Finally, I would not order payment for Clydesdale's time spent in dealing with the dispute in any event. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees.

28) For all of these reasons, Clydesdale's claims are dismissed.

### ***Counterclaim - Default***

29) As explained above, Clydesdale did not file a Dispute Response in response to the Parenteaus' counterclaim, as required under tribunal rule 76. Clydesdale is therefore in default with respect to the counterclaim. Under rule 78, when the tribunal makes a default decision and order, it will generally assume liability, and resolve the dispute without the respondent's participation. I have assessed the value of the Parenteaus' claims below.

### ***\$100 Reduction in Moving Invoice***

30) In their counterclaim, the Parenteaus sought a \$100 reduction in the moving invoice, as they say they were overcharged. Since I have found above that Clydesdale is not entitled to payment of that invoice, any reduction in the invoice is moot. The Parenteaus' are not required to pay the moving invoice, so I make no further order about it.

### ***Dresser Replacement***

31) The Parenteaus claim \$524.13 for the replacement cost of the dresser. They say it was in mint condition before the move, and that Clydesdale's employees ripped a front leg off during the move and misaligned the bottom drawer. The Parenteaus say the dresser is unusable and irreparable, because it no longer stands on its own, and it was used by their child and could fall on her with a missing or unstable leg.

32) The Parenteaus provided photos of the broken dresser, plus a website printout showing that the identical dresser costs \$524.16, including delivery and taxes.



While this is \$0.03 more than the amount claimed, I rely on the website information in assessing the value of the dresser.

- 33) Based on the evidence before me, plus the assumption of liability against Clydesdale due to being in default, I find that the Parenteaus are entitled to payment of \$524.16 for the dresser. They are also entitled to pre-judgment interest on this amount, from January 27, 2018, under the *Court Order Interest Act* (COIA). This equals \$5.30.

### ***Loss of Use***

- 34) I find that the Parenteaus are not entitled to \$250 for loss of use of the dresser. While they say their daughter was inconvenienced by having to stack her clothes on her closet floor since the dresser was damaged, there was no financial cost to this inconvenience, which I find was relatively minor. Moreover, any frustration over the lack of dresser is more than offset by the fact that the Parenteaus will not have to pay for any of Clydesdale's moving services.

### ***Time Spent on the Dispute***

- 35) The Parenteaus claim \$1,000 for time spent on the dispute. As stated above, the tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. For that reason, I do not order compensation for time spent on the dispute.

### ***Tribunal Fees***

- 36) Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the Parenteaus were successful in this dispute, I find they are entitled to reimbursement of \$175 in tribunal fees. Clydesdale was not successful, so I find it is not entitled to any reimbursement.

## ORDERS

- 37) I order that Clydesdale's claims are dismissed.
- 38) I order that within 30 days of this decision, Clydesdale pay the Parenteaus a total of \$704.46, broken down as:
- a) \$524.16 for dresser replacement,
  - b) \$5.30 in pre-judgment interest under the COIA, and
  - c) \$175 in tribunal fees.
- 39) The Parenteaus are also entitled to post-judgment interest under the COIA.
- 40) Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
- 41) Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a

tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kate Campbell, Tribunal Member