Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-007517

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Disha Delivery Inc. v. West Coast Closets Inc.,* 2019 BCCRT 572

B E T W E E N :

Disha Delivery Inc.

APPLICANT

A N D :

West Coast Closets Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for moving services. The applicant Disha Delivery Inc. says the respondent West Coast Closets Inc. owes $1,260 for 2 deliveries, $322.55 for supplies it says it bought expecting continued work with the respondent, and $200 for lost time slots that had been booked by the respondent but went unused.

2. The respondent says the applicant gave a $100 flat rate per delivery and never suggested any modification to that rate before the deliveries in question, despite their expressly alerting the applicant that the next delivery was larger than prior ones and inviting negotiation for alternate pricing.

3. The applicant is represented by Jacob Jeremy Arnold, who I infer is a principal. The respondent is represented Marc Low, a director and the husband of Louise Low who dealt with the applicant. For the reasons that follow, I allow the applicant's claims in part.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a

court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 9.3(2), 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.

ISSUE

8. The issue is whether the parties agreed to moving services rate charged by the applicant, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. There is no formal written contract between the parties. As discussed below, I find the parties' emails formed the substance of their agreement.

11. On August 31, 2018, the applicant's agent emailed in response to the respondent's inquiry about delivery rates, and wrote "**our base price for delivery is $100 each, and can go up slightly if the items occupy a large amount of our delivery truck**" (my bold emphasis added). The applicant suggested having a manager contact the respondent about a "price cap or adjusted rate for being a frequent customer". There is no documentary evidence of such further discussions, as discussed below.

12. The applicant's first delivery for the respondent was on September 6, 2018. That same day, the applicant emailed the respondent to say the delivery went great and attached their $100 flat rate invoice. The applicant wrote "please let us know whenever you would like the next [delivery] done". There was no mention of any possible change in rate from the $100 base rate.

13. On September 17, 2018 the respondent emailed the applicant and said, “I have a big delivery for next Monday please!”, referring to September 24. In the email, the respondent attached the design, noting in the body of the email “it is quite a few closets”. The applicant’s agent responded that the respondent was “all booked in”. Significantly, the applicant’s agent made no mention of any different rate other than the $100 flat rate set out in its August 31 email. The applicant submits that this September 17 email showed the job was “indeed much larger than any job” done in the past and “justifies why it cost more to complete”. That appears to be true. However, the applicant does not explain why in its response email it did not address the respondent’s clear invitation to review the size of the load and why it did not suggest any different rate.

14. The applicant’s second delivery for the respondent was on September 18, 2018, for which it charged $100 flat rate, including tax.

15. As referenced above, the 2 larger deliveries at issue in this dispute were on September 24/25 and October 2, 2018. I say September “24/25” because the evidence indicates the intended delivery date was September 24 but it was not delivered until September 25. Nothing turns on the delay in delivery.

16. On September 25, 2018, before receiving an invoice for the September 24 job, Ms. Low emailed the applicant and talked about how best to move forward with their business relationship. This appears to have been in response to the applicant’s earlier email that day that detailed at length problems that added time to loading the job, but at no point was a price increase mentioned. At the end of Ms. Low’s email in response, she wrote, “**if your pricing on these larger jobs needs to be adjusted, I am open to discuss that**” (my bold emphasis added). The applicant asserts this email shows the respondent agreed to a price change. I disagree. What the respondent clearly stated was that “if” the pricing needed to change for larger jobs, she would discuss it. That is not an agreement to whatever price the applicant decided to charge after the fact. At that point, the only pricing discussed to date was the $100 flat rate per delivery. The evidence shows the applicant did not ask to

negotiate a different price and performed another delivery for the respondent a week later on October 2, which I find the respondent reasonably expected was at the same $100 flat rate.

17. The applicant alleges the parties had a telephone conversation explaining that the price would be increased, and the respondent agreed. The respondent denies any such agreement, and says the applicant is engaging in 'bait & switch' tactics. On balance, I find the applicant has not proved such a conversation took place. I say this in large part because the parties' contemporaneous email evidence surrounding the deliveries is not consistent with the respondent having agreed to a higher price, or even that the applicant ever asked for one.

18. On October 2, 2018, the applicant emailed the respondent enclosing their invoices for the September 24 and October 2 deliveries. The applicant's agent wrote he was instructed to charge "our moving rate" for this job due to its size and the amount of labour involved, being $100 per hour. The agent wrote he had discounted it as much as possible, to $75 per hour for the September 24 job and for the October 2 job, "standard" rate for the first hour and $85 per hour thereafter. The agent wrote, "we still have not locked in an hourly rate for our arrangement yet, but I would be willing to propose $85/hr to the owner …".

19. I find the applicant's October 2 email shows the parties had not agreed to a particular "moving rate", as alleged by the applicant. I find the tenor of the October 2 email suggests that the applicant's agent knew the increased pricing on the invoices would catch the respondent by surprise. This supports my conclusion that there was no prior conversation about increased prices.

20. For there to be an enforceable contract, there must be a 'meeting of the minds' between the parties. In other words, there must be a mutual understanding about the contract's fundamental terms. It may be that the applicant believed the respondent knew or should have known the rate would be higher for the larger deliveries. However, the applicant never reasonably communicated to the

respondent any different rate before the jobs were done, despite the respondent sending the applicant specifications and alerting the applicant to the larger job size.

21. In these circumstances, I find the respondent reasonably understood the ongoing agreement was a $100 flat rate, including for the September 25 and October 2 deliveries. I find nothing turns on the applicant's submitted screenshots of its website that set out pricing. I find the respondent reasonably relied on the emails specifically addressed to it, which as noted above support their understanding that it was a $100 flat rate unless and until negotiated otherwise.

22. The applicant elsewhere also argues that every 'new' customer gets 2 jobs at a rate of $100, and that the respondent knew this was a "limited offer". The applicant says the respondent knew the price goes up if the job size increases or if the hours of labour goes up. I find the parties' email evidence before and around the time of the 2 deliveries is the best evidence of the parties' agreement and I find it does not support the applicant's position. There is no evidence about the $100 being a "limited" offer. Rather, the applicant described it as its "base rate" that could go up slightly for larger loads. The applicant had the opportunity to advise the respondent of any price increase and for reasons unknown to me chose not to do so. Further, the applicant's claimed $1,260 for the September 24 and October 2 jobs were well beyond a "slight" increase of $100 per job.

23. I pause to note that while both parties provided a number of emails exchanged between them, the applicant bears the burden of proof and did not provide the invoices for the charges in question. The applicant claims $1,260 for the 2 deliveries at issue. The respondent submits there were 2 invoices, $600 and $372.75 for a total of $972.75. The respondent says on October 2 she made an offer to settle the matter, which the applicant rejected and increased their invoices to the $1,260 claimed. I have no explanation before me as to the difference.

24. The applicant also appears to claim it is entitled to a higher price because the driveway access was limited at the September 24 job. I reject this submission. As noted above, I find the applicant offered and the respondent accepted a $100 flat

rate for delivery. While such an adjustment may be reasonable, there is nothing in the parties' agreement allowed for an increase for driveway access issues. The applicant had a clear opportunity to negotiate a different price before the jobs were done, and failed to do so.

25. Even if I had found the parties had formed an agreement about a higher rate, the applicant has not proved it is owed $1,260, given its failure to file even the invoices for the deliveries, let alone any documentation such as timesheets or a bill of lading.

26. Given my conclusions above, I find the applicant has not proved the respondent agreed to anything other than the $100 flat rate, which in the past included tax. I find the respondent must pay the applicant $200 for the 2 deliveries on September 25 and October 2, 2018. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $200, from October 2, 2018.

27. The applicant also claims $322.55 in supplies it says it bought because it expected to be doing more business with the respondent. Based on a September 25, 2018 email, it is clear the applicant chose to buy the supplies to facilitate smoother loading of the respondent's shipments. However, there is no evidence the respondent ever agreed to pay for such overhead expenses or that at the time the applicant asked them to do so. Therefore, I find no reasonable basis to require the respondent to pay them. I dismiss this claim.

28. The applicant also claims $200 for time slots the respondent booked for October 4, 11, and 15, but later declined. The respondent says it reasonably declined the applicant's calendar invitations with reasonable notice. The applicant says it was "forced" to cancel the jobs because they "could not take the chance" that the respondent would refuse to pay for those jobs. I find the applicant has not proved that the respondent agreed to the bookings or that there would be any penalty if they cancelled. I also note the applicant's claimed $200 appears to be consistent with their $100 flat rate, which I find supports the respondent's general position that the higher rate claimed by the applicant was not agreed upon. I dismiss this claim.

29. The applicant was partially successful. In accordance with the Act and the tribunal's rules, I exercise my discretion to deny the applicant reimbursement of claimed tribunal fees. I say this because before this dispute began the respondent had clearly offered to pay the amount ordered and the applicant refused that offer.

ORDERS

30. Within 14 days of this decision, I order the respondent to pay the applicant a total of $202.15, broken down as follows:

    a. $200 in debt, and

    b. $2.15 in pre-judgment interest under the COIA.

31. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.

32. 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.

33. 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.

Shelley Lopez, Vice Chair