



Civil Resolution Tribunal

Date Issued: July 4, 2019

File: SC-2018-008515

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Commonwealth Bailiffs Ltd. v. 20/20 Information Inc. et al*,
2019 BCCRT 804

B E T W E E N :

Commonwealth Bailiffs Ltd.

APPLICANT

A N D :

20/20 Information Inc., Brian Augustyniak, and BMW Canada Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for vehicle repossession services the applicant bailiff, Commonwealth Bailiffs Ltd. (Commonwealth) provided for the respondents.

2. Commonwealth says the respondent BMW Canada Inc. (BMW) was the secured creditor for the vehicles at issue. Commonwealth says BMW specifically assigned Commonwealth as the appointed bailiff for certain vehicles and directed Commonwealth to seize each one. However, Commonwealth says between August and October 2017 its contract was with the respondent 20/20 Information Inc. (20/20) and/or the respondent Brian Augustyniak, under which Commonwealth would provide the repossession services for BMW.
3. Commonwealth says its invoices were issued to 20/20 and some were paid, but 4 invoices were not paid at all and 1 invoice only paid in part. Commonwealth claims \$4,090.25.
4. Mr. Augustyniak says he is not personally liable. 20/20 says of the claimed outstanding invoices, it never received one and otherwise alleges Commonwealth has engaged in fraud, theft, extortion and conspiracy. BMW says Commonwealth's contract was with 20/20, and that BMW has paid 20/20 for amounts invoiced by 20/20 for the vehicle accounts in question.
5. Commonwealth is represented by Don Streifel, who I infer is a principal. Brian Augustyniak represents himself and 20/20. BMW is represented by Sandrina Lucente, who is an employee. For the reasons that follow, I allow the applicant's claims.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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.
10. I note in submissions Mr. Augustyniak and 20/20 assert that the tribunal does not have jurisdiction over this dispute, and that it should be heard in Ontario. Yet, 20/20 does not explain why, although I infer it is because the respondents are all located in Ontario. However, 20/20 did not assert this at the outset of the proceeding. The applicant is located in British Columbia and the contract was signed here and the bailiff services were provided here. 20/20 filed a Dispute Response without objection to jurisdiction. Given the above I find it agreed to the jurisdiction here. I find the tribunal has jurisdiction.

ISSUE

11. The issue in this dispute is to what extent, if any, each of the respondents are liable for Commonwealth's claimed invoices for bailiff services.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the burden of proof is on the applicant to prove its claims on a balance of probabilities. The parties provided a large volume of evidence and submissions, which I have read. However, I have only referenced what I find necessary to give context to my decision.
13. At the outset, I dismiss Commonwealth's claims against Mr. Augustyniak, an employee of 20/20. There is no evidence before me to support claims against him personally, as all of Commonwealth's invoices and agreements were with 20/20. Given these conclusions, I do not need to address Mr. Augustyniak's arguments in his personal capacity about the *Charter of Rights and Freedoms* or about the tribunal's process and jurisdiction.
14. Next, I dismiss Commonwealth's claims against BMW, for the same reason. While I acknowledge BMW issued the seizure warrants and designated Commonwealth as the assigned bailiff, Commonwealth had no contractual relationship directly with BMW such that BMW ever agreed to pay Commonwealth for its services. Commonwealth admits its agreement was with 20/20 and that its invoices were issued to 20/20. In any event, Commonwealth says it does not have any knowledge that BMW has funds owing to Commonwealth, which BMW denies. Further, as set out below, the evidence shows BMW expressly paid 20/20 for Commonwealth's invoices, with the exception of the JA and LK accounts as noted below.
15. Finally, while Commonwealth says BMW warrants indemnified Commonwealth, I find that the indemnity related to any claims against Commonwealth in respect of the repossession activities, rather than for payment of Commonwealth's invoices.
16. I turn then to Commonwealth's claims against the remaining respondent 20/20, which claims total \$4,090.25, plus interest. I note I have no written contract in evidence before me, but it is undisputed that Commonwealth was hired by 20/20 to perform the repossession services. The dispute is about the amount of the invoices and whether the services were provided as described in Commonwealth's invoices,

and, whether 20/20 is entitled to any set-off for its time and expenses in dealing with the matter.

17. At this point, I must say that while 20/20 repeatedly characterizes Commonwealth's communications and invoicing as "fraudulent", "extortion", "theft", and involving "criminal activity", I find there is simply no evidence before me to support such serious allegations.
18. In chronological order, Commonwealth's claims before me are for the following vehicle accounts (I have anonymized the names of the vehicle account holders):
 - a. **Invoice 266440, account "AB", dated September 14, 2017 for \$664.65.** BMW's evidence shows it paid 20/20 \$684.65 as a disbursement for Commonwealth's invoice 266440. I have no explanation for the \$20 discrepancy.
 - b. **Invoice 266445, account "LK", dated September 28, 2017 for \$1,962.92.** 20/20 paid \$849.42 towards this invoice on February 11, 2018, leaving a \$1,113.50 balance. BMW's evidence shows on November 7, 2017 it paid 20/20's invoice for a \$1,227.92 Commonwealth disbursement for this account.
 - c. **Invoice 266443, account "JJ", dated September 28, 2017 for \$727.65.** BMW's evidence shows on October 25, 2017 it paid 20/20 an \$727.65 "disbursement" for Commonwealth's invoice.
 - d. **Invoice 266467, account "AW", dated October 5, 2017 for \$849.45.** BMW's evidence shows on November 3, 2017 it paid 20/20 an \$849.45 "disbursement" for Commonwealth's invoice.
 - e. **Invoice 266632, account "JA", dated March 1, 2018 for \$735.** BMW's evidence shows it paid \$791 on this account on November 3, 2017, but 20/20's \$791 invoice to BMW did not bill Commonwealth's invoice as a disbursement.

19. Based on 20/20's invoices to BMW, BMW's warrants, 20/20's emails requesting Commonwealth's services, and Commonwealth's invoices that include job and labour breakdown, I find Commonwealth performed the services for the vehicle accounts as invoiced. I further find Commonwealth's billed amounts are reasonable, including for LK and JA which are the particularly disputed accounts. My reasons follow.

The LK account

20. As noted above, I find the amount of Commonwealth's invoice on the LK account was reasonable because I accept Commonwealth's evidence that it had to make several trips to 2 different addresses at 20/20's request and because BMW had been unable to supply "pings" of the vehicle's location which led to further time spent locating the vehicle. 20/20 has not shown otherwise, and I note 'pings' were relied on by Commonwealth in other accounts without 20/20's objection.

21. I reject 20/20's submission that LK's invoice was "fraudulent", which submission appears to have been made simply because the invoice was higher than average. In any event, an allegation of fraud is serious and requires clear and convincing proof, which 20/20 has not provided. The fact that 20/20 chose not to bill BMW the entirety of Commonwealth's invoice is not determinative. While 20/20 says Commonwealth failed to provide "any accounting", I find Commonwealth did reasonably explain its steps in its October 2, 2017 email, and in 20/20's October 7, 2017 email 20/20 asked a couple of questions but those appeared to be rhetorical given it then stated, "I will pay this invoice". Contrary to 20/20's submission, the evidence does not show that 20/20 repeatedly asked Commonwealth for detailed reports about LK. 20/20's emails suggesting it had done so appear to have all been made after Commonwealth started to pursue BMW for payment in November 2017, which step appears to be what caused 20/20's relationship with Commonwealth to sour.

22. In any event, there is no evidence before me that 20/20 and Commonwealth agreed to a particular format for reporting. I also note 20/20's December 14, 2017 email to

BMW that the LK account was the first time in 19 years 20/20 had asked for a report, which I find supports my conclusion that detailed reporting was not part of Commonwealth's contract. I find on balance that through 20/20's representative G, Commonwealth had been given authority to proceed as it did. I also note 20/20's October 7, October 23, and November 23, 2017 emails to Commonwealth in which they expressly wrote they would pay the "full amount" of this invoice, though under protest and having discounted their bill to BMW.

23. Finally, I note that when 20/20 sent the \$849.42 payment, it wrote that it was a "without prejudice" "full settlement" of Commonwealth's invoice. However, at the same time it wrote that if Commonwealth failed to cash the e-transfer payment, 20/20 would consider the payment made and Commonwealth would have "no recourse". In these circumstances, I find Commonwealth reasonably accepted the \$849.42 as only a partial payment towards its invoice. I find 20/20 must pay Commonwealth the outstanding \$1,113.50 invoice balance.

The JA account

24. 20/20 argues the JA account invoice for \$735 is fraudulent. Commonwealth's invoice is dated March 1, 2018, yet the warrant was issued 5 months earlier on September 21, 2017. As also noted above, on November 3, 2017 BMW paid 20/20 \$791 without any specific reference to Commonwealth's charges. BMW submits the JA account was "closed" but does not say when.
25. 20/20 says the reason Commonwealth did not initially issue an invoice for the JA account is because Commonwealth allegedly did not perform any work or services before the account was cancelled. However, I have no evidence before me about the cancellation at all, including when any such cancellation was communicated to Commonwealth.
26. I find the issue is whether Commonwealth has reasonably shown it is entitled for payment for work performed, bearing in mind the unexplained delay in Commonwealth providing their invoice. Given my conclusions above about 20/20's

unsupported allegations, I find Commonwealth's evidence generally more credible and reliable, unless documentation shows otherwise. This means I place no weight on 20/20's allegation that Commonwealth knew the account was closed, given there is no documentation before me supporting it.

27. Commonwealth's March 1, 2018 invoice for JA does not show when the work was done. All of Commonwealth's other invoices are within weeks of the warrant. However, texts between Commonwealth and 20/20 show that at 20/20's request Commonwealth was still working on the account for JA as of October 11, 2017. Further, in evidence is an October 8, 2017 towing invoice for \$470.40, from what appears to be an affiliate "Commonwealth Towing" that shows the JA vehicle was towed to a yard.
28. I note 20/20 only billed BMW \$150 as a "bailiff procurement and management fee", because at the time of its October 8, 2017 invoice to BMW it had never received an invoice from Commonwealth. However, that October 8, 2017 invoice pre-dated the ongoing texts between 20/20 and Commonwealth, which show Commonwealth was still working under 20/20's instruction. Significantly, there is no evidence before me that 20/20 ever asked Commonwealth for its invoice on the JA account, as it had done in at least one other case. Bearing in mind the towing invoice and the parties' texts that show Commonwealth was doing work on this account, and given my concerns about 20/20's evidence generally, I prefer Commonwealth's evidence and accept that the work was done as invoiced. I find 20/20 must pay Commonwealth the \$735 as invoiced for this account.

The FW account

29. 20/20 says it paid Commonwealth a total of \$6,807.06 (as shown by e-transfer records) against Commonwealth's \$9,269.91 total of all invoices. By their own calculations, this left a \$2,462.85 difference. In part, 20/20's objections to full payment relates to an invoice it paid Commonwealth on another vehicle account, FW.

30. 20/20 claims Commonwealth's FW invoice was fraudulent, yet there is no apparent dispute the work was done. The issue appears to relate to Commonwealth allegedly refusing to release the FW account vehicle over a weekend.
31. Based on Interac deposit screenshots, I find the evidence shows 20/20 paid Commonwealth's October 23, 2017 invoice 266476 for \$1,074.15 by e-transfer on November 1, 2017, which was only 11 days after 20/20 assigned the file to Commonwealth.
32. BMW's lawyer said in their October 31, 2017 letter to Commonwealth that it had improperly refused to release the vehicle, which if true I infer was done to exert pressure to obtain payment for its repossession services. In any event, I have no evidence to establish that Commonwealth did improperly refuse to release it. In any event, on November 1, 2017 BMW's lawyer emailed 20/20 that Commonwealth had called to arrange delivery of the FW vehicle. In the circumstances, I find 20/20's submission that Commonwealth had "stolen" the FW vehicle to be completely unfounded.
33. Given the above, I find any brief failure to release the vehicle to BMW does not reduce 20/20's obligation to pay Commonwealth's invoice for repossession services already performed. 20/20's November 6, 2017 email to BMW supports this conclusion, in which it said Commonwealth's invoice is "legitimate", despite their alleged 'failure to release' behavior.
34. The burden of proving fraud is on the party alleging it, and I find 20/20 has not done so. In any event, 20/20 billed BMW \$897.75 as a disbursement for Commonwealth's October 23, 2017 invoice for \$1,074.15 (deducting a towing fee), which I infer BMW paid.

20/20's claim for set-off

35. First, I am unable to reconcile the discrepancies between the amounts claimed by Commonwealth in this dispute and what 20/20 says it was invoiced and what it paid.

I find Commonwealth's records provide the best evidence of the work done, the authority for it, and the amount owing. To the extent 20/20 argues it has paid Commonwealth's outstanding claimed invoices, I find the evidence, including e-transfers, does not support that position.

36. Second, 20/20 says that it incurred legal expenses due to Commonwealth's alleged "criminal activity" plus \$3,000 of time spent dealing with the matters, plus damage to their reputation with BMW. As 20/20 did not file a counterclaim, I infer that 20/20 asks for a set-off from any amount I find owing to Commonwealth.
37. I have explained above that 20/20 has not provided any evidence to support a conclusion that Commonwealth acted criminally or fraudulently in respect of its invoices to 20/20. There was no agreement between 20/20 and Commonwealth that Commonwealth would indemnify 20/20 for legal fees. 20/20 has not provided evidence that its reputation with BMW was damaged, and I note BMW made no such submission in this dispute. The tribunal does not generally award a party for 'time spent' on a dispute, consistent with its rules that state legal fees are not recoverable unless it is an extraordinary case. This is not an extraordinary case and so even if I had found in favour of 20/20, I would not have ordered any set-off for 20/20's time spent or for legal fees.

Conclusion

38. In summary, I have allowed Commonwealth's \$4,090.25 claims against 20/20. Commonwealth is entitled to pre-judgment interest on the \$4,090.25, under the *Court Order Interest Act* (COIA), calculated from 30 days after the date of each invoice. This equals \$98.10 to the date of this decision (\$16.59 on the AB account, \$27.50 on the LK account balance, \$17.97 on the JJ account, \$20.87 on the AW account, and \$15.25 for the JA account).
39. In accordance with the Act and the tribunal's rules, as the applicant was largely successful I find 20/20 must reimburse Commonwealth its \$175 in tribunal fees, plus \$11.97 in registered mail expenses for serving the Dispute Notice on it, which I

find reasonable. I dismiss Commonwealth's claims for expenses related to service on the other respondents.

ORDERS

40. Within 14 days of this decision, I order 20/20 to pay Commonwealth a total of \$4,375.32, broken down as follows:
 - a. \$4,090.25 in debt,
 - b. \$98.10 in pre-judgment interest under the COIA,
 - c. \$186.97, for \$175 in tribunal fees and \$11.97 in dispute-related expenses.
41. Commonwealth's claims against the respondents Brian Augustyniak and BMW Canada Inc. are dismissed. Commonwealth is entitled to post-judgment interest as applicable.
42. 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.
43. 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. This tribunal order can only be enforced 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