



Civil Resolution Tribunal

Date Issued: November 27, 2019

File: SC-2019-002864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hargreaves v. Vojnovich*, 2019 BCCRT 1331

BETWEEN:

NORRIS HARGREAVES

APPLICANT

AND:

MILAN VOJNOVICH and HIGH LINE ENVIRONMENTAL
CORPORATION

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Norris Hargreaves, says he paid the respondents, High Line Environmental Corporation (High Line) and Milan Vojnovich, \$1,207.50 for 5 cords of firewood but only received 3.29 cords.

2. The applicant seeks a refund of \$412.97, which he says is the value of 1.71 cords, including tax. The applicant also seeks \$635.70 for his time spent measuring the firewood loads and seeking a refund.
3. The respondents do not dispute the applicant's measurements. They say that High Line attempted to deliver more firewood to satisfy the applicant, but he refused delivery. They remain prepared to deliver the wood and say that the claim should be dismissed.
4. The applicant is self-represented. The respondents are represented by Milan Vojnovich, whom I infer is a principal of High Line.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issues in this dispute are:
 - a. Is the applicant entitled to a refund of \$412.97 for firewood that the respondents admittedly did not deliver?
 - b. To what extent, if any, is the applicant entitled to compensation for his time spent?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
11. On May 23, 2018, the applicant ordered 5 cords of firewood from High Line. According to a Government of Canada webpage submitted by the applicant, which I accept, a cord is 128 cubic feet of stacked firewood, including wood, bark and airspace.
12. High Line delivered the firewood in 2 separate truckloads. On June 26, 2018, Mr. Vojnovich delivered the first load. He provided the applicant with a ticket documenting the load at 3.14 cords. On June 28, 2018, a different driver delivered the 2nd load in a separate pile. The ticket documented the 2nd load at 2.36 cords.
13. Although the total firewood according to the tickets was 5.5 cords, High Line charged the applicant for 5 cords. Based on a price of \$230 per cord and 5 cords, the applicant paid \$1,150 plus GST of \$57.50, for a total of \$1,207.50.

14. After stacking the firewood from both loads, the applicant measured and calculated that he had received a total of 3.29 cords, which was 1.71 cords less than the 5 cords he paid for. Thus, he claims a refund of \$412.97 ($1.71 \times \$230 + 5\% \text{ GST}$).
15. The respondents made identical submissions. They did not provide any evidence despite having the opportunity to do so. The respondents agree that the machine they used for measuring the applicant's firewood volume was not calibrated, and they have since discontinued its use. They do not take issue with the applicant's calculations.
16. Having reviewed the applicant's uncontested video, photo, and spreadsheet evidence about the firewood volume, I find that the applicant's measurements are accurate and that he was shorted 1.71 cords of firewood.
17. The respondents argue that the applicant is not entitled to a refund because he agreed to accept delivery of 1.5 cords of additional firewood to satisfy his complaint, and then refused to accept delivery. The applicant says the respondents agreed to deliver 1.71 cords of firewood but never delivered.
18. Having reviewed the parties' communications from October 2018 to April 2019, I am not satisfied that the applicant prevented High Line from delivering the additional firewood. I accept the applicant's evidence that he called High Line on March 20 to arrange delivery of the firewood, and 5 times between April 3 and April 11, 2019 to follow up. I find that High Line breached the contract by delivering less than the agreed upon 5 cords of firewood. In the circumstances, I find that the most appropriate measure of damages is the stated value of the firewood not delivered under the contract – that is, the \$412.97 refund claimed.

Time spent

19. The applicant seeks \$635.70 for his time spent measuring the firewood loads and attempting to obtain a refund through phone calls, emails, and letters. This is based

on an hourly rate derived from his gross pension income. He does not say that he lost income as a result of the breach, only time.

20. Contractual damages are intended to reflect true losses. Generally, time spent by a party on litigation is not recoverable as damages, though it may be recoverable as 'costs': see *Rossmore Enterprises Ltd. v. Ingram*, 2013 BCSC 894. The tribunal may not award costs but may award dispute-related expenses.
21. Except in extraordinary cases, the tribunal does not award compensation for a party's time spent trying to resolve a dispute. I see no reason to deviate from that rule as I find that this is not an extraordinary case. I dismiss the applicant's claim for compensation for time spent.
22. Next, which of the 2 respondents is liable for the damages? In law, officers, directors and employees of corporations are not personally liable unless they committed a wrongful act independent from that of the corporation: see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. Although the parties' contract is not in evidence, the invoice is from High Line to the applicant, and the applicant wrote cheques to High Line. On a balance of probabilities, I find that the applicant's contract was with High Line, not Mr. Vojnovich. Moreover, the applicant provided no evidence that Mr. Vojnovich personally committed a wrongful act independent from High Line. I therefore dismiss the claims against Mr. Vojnovich.
23. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$412.97 refund owed from June 29, 2018, the date he paid for the firewood, to the date of this decision. This equals \$10.27.
24. Under section 49 of the CRTA 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 applicant was generally successful, I find that he is entitled to reimbursement of \$125 in tribunal fees and \$9.45 in dispute-related expenses for registered mail, which I find reasonable.

ORDERS

25. Within 14 days of the date of this order, I order the respondent High Line Environmental Corporation to pay the applicant a total of \$557.69, broken down as follows:
- a. \$412.97 as a refund for the missing firewood,
 - b. \$10.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$134.45, for \$125.00 in tribunal fees and \$9.45 in dispute-related expenses.
26. The applicant is entitled to post-judgment interest, as applicable.
27. I dismiss the claims against Mr. Vojnovich.
28. Under section 48 of the CRTA, 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.
29. Under section 58.1 of the CRTA, 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.

Micah Carmody, Tribunal Member