



# Civil Resolution Tribunal

Date Issued: January 28, 2020

File: SC-2019-006982

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd v. Zeegan*, 2020 BCCRT 108

B E T W E E N :

CHOHAN FREIGHT FORWARDERS LTD

**APPLICANT**

A N D :

HOWARD ZEEGAN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Butch Bagabuyo

## INTRODUCTION

1. This small claims dispute is about a damaged fence. The applicant, Chohan Freight Forwarders Ltd, says that the fence of its customer, HR, was damaged on March 4, 2019 when it was struck by the commercial truck driven by its then employee, the respondent Howard Zeegan. The applicant seeks \$3,102.75 from the respondent for the repair and replacement of its customer's damaged fence.

2. The respondent denies being at or near HR's fence on the date in question.
3. The applicant is represented by an employee and the respondent is self-represented.

## **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* (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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a court room or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue. I further note that neither party requested an oral hearing.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent damaged the applicant's customer HR's fence, and if so, whether the respondent must pay \$3,102.75 for the fence damage.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant bears the burden of proof on a balance of probabilities. This means I must find that it is more likely than not the applicant's position is correct in law and is supported by the available evidence before me.
10. The respondent submitted further evidence after the deadline for final reply had passed. I allowed the late evidence because copies were provided to the applicant with an opportunity to reply and its admission did not cause prejudice to the applicant. The applicant did not provide any further reply and none of the late evidence became a factor in my determination.
11. While I have read and considered all of the parties' evidence and submissions, I have only addressed the evidence and submissions to the extent necessary to explain and give context to my decision.
12. The applicant claims the respondent is responsible for the damaged fence of its customer HR. So, the applicant says the respondent should pay for the fence repair. In particular, the applicant presented a Bill of Lading showing the respondent was the driver who drove and delivered cargo to HR's premises on the day in question.

13. In contrast, in his Dispute Response filed at the outset of this proceeding, the respondent denied the claimant's allegation and even denied being at the location in question. The respondent did not question or challenge the Bill of Lading which shows that he delivered cargo at HR's premises on the day in question, and then later in his evidence agreed that he acknowledged to the applicant's safety officer that he hit a fence on March 4, 2019 though the location of the fence is unclear.
14. It is undisputed that the subject damaged fence is owned by the applicant's customer HR and not by the applicant itself. It is also undisputed that HR is not a named party to this dispute.
15. Since the applicant is not the owner of the damaged fence, the issue becomes on what grounds the claimant is making its claim against the respondent on behalf of its customer HR? This is even more relevant because the undisputed evidence is that the respondent was the applicant's employee at the relevant time period. So on what grounds can the employer applicant obtain damages in negligence from an employee in the course of its employment? The applicant's claim seems analogous to a claim of subrogation or assignment. So, what is a claim in subrogation?
16. A subrogation is the substitution of one person for another on a claim or legal right. The purpose of subrogation is to prevent double recovery or unjust enrichment of someone who suffered a loss, and who may be entitled to recover from more than one person: *McRae v. Canada (Attorney General)* 1997 CanLII 4121 (BCCA). A subrogation claim is often used when a third party pays a victim some form of compensation as part of its obligation under a contract such as insurance which then give, for instance, the insurer a right to seek reimbursement against the wrongdoer for the compensation it provided.
17. An assignment of claim is when someone other than the aggrieved party brings the claim under its agreed assignment of claim: *Fredrickson v. ICBC*, 1986 CanLII 1066 (BCCA); *Margetts v. Timmer Estate*, 1999 ABCA 268 (CanLII). An assignment is often advanced in contract or in tort law, but the basis of the claim is the aggrieved

party's agreement to assign its claim to a third party who the law may recognized to advance the claim.

18. In either subrogation or assignment of claim, the claimant remains the aggrieved named party even though a third party is actively pursuing or advancing the claim on its behalf or has a right of recovery under the claim.
19. In this dispute, the fence's owner HR is not a named party to this dispute. It may be that the applicant paid for the repair and replacement of its customer's fence and is simply seeking reimbursement from the respondent but there is no evidence before me to support that assertion. Doing so would be speculative. As stated at the outset, the applicant bears the burden of proof. The applicant did not provide any evidence that an assignment of claim or a subrogation agreement exists between the applicant and its customer HR, and so I find that the applicant has no basis to make the claim it did against the respondent.
20. Even if I have found that the applicant is entitled to make a claim on behalf of its customer HR against the respondent, I would not have awarded the damages claimed.
21. The April 5, 2019 invoice for \$3,102.75, for HR's fence repair, was made in the name of the applicant's customer HR and not to the applicant. There is no evidence before me that the applicant paid this invoice.
22. The applicant also says that over \$1,000 still outstanding from their agreed payment schedule with the respondent as outlined in their November 20, 2018 letter. The exact amount owing is unclear, but I do not need to address that because the November 20, 2018 letter has nothing to do with the damaged fence of HR which is the subject of this dispute. The November 20, 2018 letter relates to another collision involving the respondent and one of the applicant's truck and that dispute is not before me. As such, I find that the November 20, 2018 letter is of no probative value on this dispute.

23. With no other evidence before me that would allow the applicant's claim, I find that the applicant has failed to meet its required burden of proof.
24. Given my findings and determination, the applicant is not entitled to any interest under the *Court Order Interest Act*.
25. 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. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful, I find the applicant is not entitled to reimbursement of its tribunal fees and other dispute related expenses.

## **ORDER**

26. I dismiss the applicant's claims and this dispute.

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Butch Bagabuyo, Tribunal Member