



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Kusuhara v. 0843641 B.C. Ltd. dba PL Affordable Moving Ltd.*,
2020 BCCRT 518

B E T W E E N :

RYAN KUSUHARA

APPLICANT

A N D :

0843641 B.C. LTD. doing business as PL AFFORDABLE MOVING
LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about moving services.
2. The applicant Ryan Kusuhara says the respondent 0843641 B.C. Ltd. doing business as PL Affordable Moving Ltd. overcharged him by \$585.45 for moving,

travel and dumping fees when moving his belongings. The applicant also says that the respondent misrepresented its own name, causing him to enter the moving service contract.

3. The respondent says it charged the applicant as agreed under the contract. The respondent asks me to dismiss the dispute.
4. The applicant is self-represented. The respondent is represented by its principal PL.

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. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
7. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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. 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.
10. The applicant submits that he was provided with only “limited” discovery of documents from the respondent. However, I find that the applicant was provided with an opportunity to provide evidence and submissions, and to reply to the respondent’s evidence and submissions. In doing so, the applicant did not request that the tribunal order further document production.

ISSUES

11. The issues in this dispute are:
 - a. whether the respondent fraudulently or negligently misrepresented itself, causing the applicant to book a move with it to his detriment,
 - b. whether the respondent overcharged the applicant for moving, travel and dumping fees or otherwise breached the contract and,
 - c. if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

13. On December 2, 2019, the applicant booked a move for December 11, 2019 with a company called "Helping Hands Movers". According to its website, Helping Hands Movers was based in Richmond, BC.
14. When the movers arrived, they were from the respondent PL Affordable Moving Ltd., a Burnaby-based company. The respondent did not address why it conducted the move despite the applicant's booking with Helping Hands Movers, nor whether Helping Hands and the respondent were the same business. Based on the applicant's phone records and a screen shot from an online review by a non-party, I find that the respondent advertised itself under the name Helping Hands Movers when the applicant booked his move.
15. On December 11, 2019, the applicant signed a written invoice agreeing to have the respondent provide moving services. Although the applicant said he only "glanced" at the invoice form, I find that he agreed that the respondent would provide moving services using 1 truck with 2 men, for \$110 per hour, plus travel time, charges for supplies, storage or disposal, and tax. The invoice specified a 3-hour minimum plus travel.
16. Although the applicant submits that travel time had perhaps been struck out on his copy of the invoice, I find there is no clear strikethrough, and based on the respondent's original top copy of the invoice, I find the parties agreed that travel time would be charged.
17. The moving services included picking up items from one location and delivering them to either a location in Richmond or the applicant's father's home in Burnaby.
18. At the end of the move, I find that the respondent completed the invoice to charge the applicant \$1,059, broken down as:
 - a. \$770 for moving services from 10am-4pm (6 hours) plus travel time (1 hour) at \$110 per hour,
 - b. \$120 dump fee for disposal of items including a mattress,

- c. taxes (12%) and fuel charges (7%) totalling \$169.
19. The applicant also agrees that, through his father, he asked the respondent to remove a queen-sized bedframe, mattress and desk from the Burnaby address and deposit them at the dump.
 20. I find that the invoice included a term that a dump fee of \$120, including the mattress, would be charged. I find that the applicant, or his father KK as his agent, agreed to this charge for dumping the three items.
 21. Based on statements from the applicant and KK, I find that the respondent movers moved the applicant's keys to Burnaby from Richmond, in error. The movers offered to have the applicant meet them at the dump with the keys, but the applicant did not have keys to drive to the dump. KK had to drive the keys back to the applicant.
 22. The applicant says that the movers provided services from 10 to 3 that day, when his father, KK, paid their invoice. The respondent charged for moving services from 10 to 4. Based on KK's statement, I find that KK raised concerns about aspects of the move not being completed properly but paid the invoice.
 23. Based on text messages filed by the applicant, I find that the respondent's truck was at the dump by 3:36 p.m. on December 11.

Fraudulent or Negligent Misrepresentation

24. The applicant says the respondent induced him to enter the moving services contract by fraudulently or negligently misrepresenting its name as Helping Hands Movers.
25. A fraudulent misrepresentation occurs when a respondent knowingly makes a false oral or written representation, or where the respondent is reckless as to whether or not the statement is false: see *Ban v. Keleher*, 2017 BCSC 1132 at paragraphs 16 and 31.

26. A negligent misrepresentation is made by someone who fails to take due care and attention to ensure that the representation is true.
27. To succeed in a claim for negligent misrepresentation, the applicant must prove that:
 - a. there is a duty of care between him and the respondent,
 - b. the respondent made an untrue, inaccurate or misleading representation,
 - c. the respondent acted negligently in making the representation and,
 - d. the applicant relied on the misrepresentation to his detriment, causing damages.
28. I find that the respondent owed the applicant a duty of care as his mover.
29. The applicant filed evidence that Helping Hands Movers had one Google review of 5/5, while the respondent had many negative and some positive reviews online.
30. The applicant says if he had known that a differently named company was going to conduct the move, he would have searched for online customer reviews in that name before booking. I agree that the applicant missed the opportunity to conduct an accurate customer review check before booking, because he did not know the respondent's other business name.
31. The applicant also submits that he relied on the name Helping Hands Movers to book a mover based in Richmond, because the move was to start at a Richmond address, moving items to another Richmond address and his dad's Burnaby home. I agree that the applicant was likely searching for a Richmond-based mover with good reviews. Based on the difference in the reviews and locations, I find that the applicant would likely have booked a different mover, had he known the respondent's other company name.
32. Having said all of that, I find that the applicant has not proven that the respondent's representation as Helping Hands Movers initially, but later under another name, was

negligent or fraudulent. The applicant did not show the name was inaccurate or untrue, as the respondent appears to operate using both names. I also make this finding because many companies operate under business names different to their corporate names without it being considered a misrepresentation.

33. I therefore dismiss the applicant's claim for fraudulent or negligent misrepresentation.

34. I find, however, that the respondent breached its contract with the applicant in certain aspects of the move, resulting in damages. I explain these findings below.

Queen Bed Frame

35. The applicant says that he confirmed with the respondent in advance that the movers would bring the tools and disassemble a queen bed frame.

36. The respondent agrees that it was asked to disassemble a bed. However, the respondent says that it agreed only if the task was straightforward and without custom hardware. The respondent says some of the bed frame's fittings had been stripped, making the task difficult. The respondent did not file a statement from his staff to prove this fittings problem, so I prefer the applicant's evidence about what happened.

37. The applicant says that when the movers attended, they told him that they did not have the tools to disassemble the queen-sized bed frame. The applicant offered some screwdrivers, but the movers said they were not able to reassemble the bed once it was moved. At his wife's suggestion, the applicant left the bed frame for another time. I find that the applicant only did this when it became apparent that the respondent's workers would not take the bed apart.

38. The applicant later had to rent a U-Haul and have his father-in-law, YL, disassemble the bed frame to be moved. Based on YL's written statement, I find that the bed frame took him an hour to disassemble, using only a screwdriver and an Allen key.

39. I find that the respondent's movers could have disassembled the bed frame, as agreed, but failed to do so. I accept YL's statement that the task did not involve unusual hardware or other challenges, contrary to the respondent's unproven report of stripped fittings.
40. I find that the respondent's 2 movers likely would have taken half an hour to disassemble the bed frame. If the respondent had completed this task, the applicant would have been charged an extra 30 minutes of moving time. I deduct that 30 minutes from the hour that YL spent disassembling the frame. I find that the applicant also had to rent a U-Haul and drive the bed frame to its new location, which I estimate would have taken 30 minutes. Therefore, I find that the respondent must refund the applicant for 1 hour of moving time (\$110), plus tax, and the \$87.27 U-Haul rental as compensation for failing to complete the queen bed frame disassembly and move. This equals \$210.47.

Car Keys

41. Due to the respondent's mistake in taking the applicant's car keys to the Burnaby address, I find that the applicant's father had to drive to return the keys, and the applicant felt additional stress.
42. There are some situations, known as "peace of mind" contracts, where substantial damages are allowed for unnecessary mental distress where the subject matter of the contract is itself to provide pleasure, relaxation or peace of mind: *Jarvis v. Swan Tours Ltd.*, [1973] Q.B. 233, 3 W.L.R. 954, [1973] 1 All E.R. 71 (C.A). I find this is not one of those situations. The subject matter of this contract is moving services. Peace of mind is not the very matter contracted for.
43. However, in non "peace of mind" contracts, damages may still be recovered for inconvenience caused by a breach if they are reasonably foreseeable and involve more than an "incidental frustration": *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 at paragraph 44 and 45, *Wharton v. Tom Harris Chevrolet Oldsmobile Cadillac Ltd.*, 2002 BCCA 78. I accept that some temporary increased anxiety was a

reasonably foreseeable direct consequence of the respondent's failure to leave the applicant's keys with him during a residential move. I also find that the applicant had more than incidental frustration because keys to personal transportation were particularly important on moving day. On a judgement basis, I award the applicant nominal damages of \$25 for the key misplacement inconvenience.

44. Because the applicant's father is a non-party, I do not order compensation for the extra drive he had to take.

Hours

45. The applicant and KK provided evidence that the move finished at 3pm. The respondent says the move ended at 4pm, as reflected on the invoice.
46. Because the respondent movers texted the applicant to say they were at the dump at 3:36 p.m., I find that the move completed at 3pm, not 4pm and that the 36-minute drive was already included on the invoice as travel time. I do not find any breach with respect to the charged travel time, but it may not duplicate the moving time.
47. I find that the respondent overcharged the applicant by 1 hour for the move. I find that the respondent must refund the applicant \$110 plus tax, being \$123.20.

Dump Charges

48. The applicant filed rates for the Vancouver Landfill and Recycling Depot. The first ton of garbage is \$147/ton, and mattresses are \$15 each, plus a \$5 transaction fee.
49. The applicant estimates that the mattress, desk and bed frame weighed 0.25 tons, so the respondent would have paid only \$56.75 to dump them. However, the respondent charged him \$120, under the contract. I find that the price the respondent paid at the landfill does not alter the price the applicant agreed to pay the respondent.
50. Because I have found that the applicant agreed to pay \$120 to dump the items, I dismiss his claim to have the dump charges reduced.

Tribunal Fees, Dispute-Related Expenses and Interest

51. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$358.67 from December 11, 2019, the date of the invoice, to the date of this decision. This equals \$2.87.
52. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$7 for a BC Online search fee to find the respondent's corporate name, which I find is a reasonable dispute-related expense.

ORDERS

53. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$493.54, broken down as follows:
 - a. \$358.67 for deficiencies in moving service,
 - b. \$2.87 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees and \$7 for dispute-related expenses.
54. The applicant is entitled to post-judgment interest, as applicable.
55. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal

will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

56. 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.

Julie K. Gibson, Tribunal Member