



# Civil Resolution Tribunal

Date of Original Decision: August 7, 2020

Date of Amended Decision: August 19, 2020

File: SC-2020-003115

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *International Machine Transport Inc. v. Asphalt Cowboy Trucking Ltd.*, 2020  
BCCRT 881

B E T W E E N :

INTERNATIONAL MACHINE TRANSPORT INC.

**APPLICANT**

A N D :

ASPHALT COWBOY TRUCKING LTD. and DAVID JENSEN

**RESPONDENTS**

A N D :

INTERNATIONAL MACHINE TRANSPORT INC.

**RESPONDENT BY COUNTERCLAIM**

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**AMENDED<sup>i</sup> REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicant, International Machine Transport Inc. (IMT), claims \$2,624.64 in fuel charges that the respondents, Asphalt Cowboy Trucking Ltd. (Asphalt) and David Jensen allegedly owe it under a Lease Operator Agreement (contract).
2. Mr. Jensen says he is Asphalt's sole officer and director and is not personally responsible for the fuel charges. However, he agrees that Asphalt owes IMT the claimed \$2,624.64 in fuel charges under the contract. Mr. Jensen says that Asphalt is "willing to pay" but says IMT owes Asphalt \$10,000 in trailer rental charges and contractual "costs" or expenses. In the counterclaim, Asphalt claims a total of \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT). IMT denies that it owes Asphalt anything under the contract or for a trailer rental.
3. IMT is represented by an employee or officer. Mr. Jensen represents himself and Asphalt.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
6. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. As mentioned above, Mr. Jensen admits that Asphalt owes IMT the claimed \$2,624.64 in fuel charges and that Asphalt will pay the debt. Therefore, I find the remaining issues in this dispute are:
  - a. Is Mr. Jensen personally liable to IMT for the fuel charges?
  - b. Does IMT owe Asphalt some or all of the claimed \$5,000 in trailer rental charges and costs?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, IMT bears the burden of proving its claims on a balance of probabilities. Asphalt bears the same burden on the counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. IMT and Asphalt entered into the lease operator contract on August 9, 2020. The signed contract in evidence states that Asphalt will provide and operate a tractor power unit and trailer for the purpose of transporting equipment and other cargo for IMT's customers. Section 4 states that IMT will be responsible for "pre-approved costs", including cranes, pilot cars, permits, tolls, ferries, route surveys, police escorts, rental equipment, and "other extraordinary costs as mutually agreed". Section 5 states that Asphalt will be responsible for items including but not limited to fuel, taxes, reporting fees, base plates and licenses.

***Is Mr. Jensen personally liable to IMT for the fuel charges?***

11. I find the obligation to pay fuel charges only arose from the contract between IMT and Asphalt. I find that Mr. Jensen was not a party to the contract and so, had no contractual obligation to pay the fuel charges. Even though Mr. Jensen is the sole director and officer of Asphalt, I am not satisfied that he is personally liable to pay Asphalt's fuel charge debt. Asphalt is a legal entity that is separate and distinct from its officer and director, Mr. Jensen. An officer or director is not generally liable for the corporation's debts even when they are the sole company shareholder (see *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 SCR 2 (CanLII) at paragraph 13).
12. At any rate, despite naming Mr. Jensen as a party to this dispute, IMT did not then submit any arguments or evidence to prove that Mr. Jensen should be held personally responsible for Asphalt's fuel charge debt. Rather, it generally argues that the obligations were contractual and only between itself and Asphalt, and not with Mr. Jensen personally.
13. I find that Asphalt is solely responsible for the debt and Asphalt must reimburse IMT the \$2,624.64 in fuel charges. I dismiss IMT's claim against Mr. Jensen.

***Does IMT owe Asphalt some or all of the claimed \$5,000 in trailer rental charges and costs?***

14. Mr. Jensen says he sold his truck and was planning to replace it with a new truck. At Mr. Jensen's request, IMT undisputedly agreed to allow him to leave his truck's trailer in IMT's yard while he "took some time off to consider" his options. Mr. Jensen does not say whether he personally owned the trailer or if it was Asphalt's asset.
15. Mr. Jensen argues that IMT blocked the trailer in its yard and Asphalt was unable to earn revenue from the trailer because he was not able to move it out of the yard for the month of March, for which Asphalt claims \$2,182 for 1 month's trailer rental.

16. IMT says that Mr. Jensen never asked to move his trailer, he was able to move it, and in fact, he retrieved it from IMT's yard on March 30, 2020 without IMT's knowledge. It says that either Mr. Jensen sent it an invoice for trailer rental charges that it did not pay. The rental invoice is not in evidence and so I do not know if it was sent on behalf of Asphalt. IMT says owes nothing because it did not have a contract to rent the trailer, did not use the trailer, and it should have charged Mr. Jensen rent for leaving the trailer in its yard. As there is no trailer rental contract in evidence, I accept IMT's assertion that it did not rent the trailer from either Asphalt or Mr. Jensen.
17. Mr. Jensen did not submit any documents that show he asked IMT to remove the trailer. He also does not say he asked to remove the trailer and was denied. Further, Mr. Jensen does not dispute that he removed the trailer on March 30, 2020 without IMT's knowledge. Thus, I find he has not proven that IMT prevented him from removing the trailer. Even if the trailer was blocked, Mr. Jensen stated that he was not working during the storage period having decided to take time off for contemplation and not because he lacked access to the trailer. I find IMT owes Asphalt nothing for a trailer that Mr. Jensen voluntarily left in IMT's yard for several months.
18. Mr. Jensen also says IMT failed to pay Asphalt for the costs it incurred under section 4 of the lease operator contract. Mr. Jensen provided copies of "Bill Credits" with the amounts IMT allegedly owes Asphalt for licensing, permits, pilot car/crane, ferry, and tolls.
19. I find the claimed items in the Bill Credits are costs as defined under section 4 of the contract. However, the contract only required IMT to pay costs that were "pre-approved". IMT says that it did not pre-approve any of the claimed cost items. Mr. Jensen himself does not say that IMT pre-approved Asphalt for the claimed cost items. There is also no documentation before me that the claimed costs were pre-approved. I find IMT is not responsible under the contract to reimburse Asphalt for the claimed cost items.

20. In short, I find that Asphalt has not established on a balance of probabilities that it is entitled to payment from IMT for trailer rental charges or any of the claimed costs.
21. I acknowledge that Mr. Jensen asserts that there are likely discrepancies in IMT's accounting. He questions whether IMT properly compensated Asphalt during the contract term. However, I find Mr. Jensen's assertions are unsupported and speculative and he bears the burden of proof on this point. There are no documents before me that support a conclusion that IMT had accounting discrepancies or that Asphalt was undercompensated.
22. I dismiss Asphalt's \$5,000 counterclaim.

### ***Conclusion***

23. I find that Asphalt must pay IMT a total of \$2,624.64 in fuel charges, which Asphalt admits are owing under the contract.
24. The *Court Order Interest Act* applies to the CRT. I find IMT is entitled to pre-judgement interest on the \$2,624.64 debt. The fuel charges were incurred in February 2020 but in its dispute application IMT claimed interest from March 15, 2020. I have calculated interest from March 15, 2020 to the date of this decision. This equals \$16.37.
25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find IMT was successful in its claim against Asphalt but not Mr. Jensen. I will allow IMT reimbursement of ½ its CRT fees for a total of \$62.50. As Asphalt was unsuccessful on the counterclaim, I dismiss its claim for CRT fees. Mr. Jensen paid no CRT fees and none of the parties claimed dispute-related expenses.

## ORDERS

26. Within 30 days of the date of this order, I order Asphalt to pay IMT a total of \$2,703.51, broken down as follows:
  - a. \$2,624.64 in debt for fuel charges,
  - b. \$16.37 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
27. IMT is entitled to post-judgment interest, as applicable.
28. IMT's claims against Mr. Jensen and Asphalt's counterclaims are dismissed.
29. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Trisha Apland, Tribunal Member

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<sup>i</sup> Amendment Notes: The style of cause in the original decision contained an inadvertent typographical error in the name of the Respondent to Counterclaim. I corrected the decision (as underlined) under the authority of CRTA section 64.