



# Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-002002

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jepray Magnusentosa (dba Fenny Gamelia) v. Scott Freight Services Ltd.*,  
2020 BCCRT 1052

B E T W E E N :

JEFRAY MAGNUSENTOSA (Doing Business as FENNY GAMELIA)

**APPLICANT**

A N D :

SCOTT FREIGHT SERVICES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shannon Salter, Chair

## INTRODUCTION

1. This dispute is about the payment of \$746.62 for freight and delivery services the applicant, Jepray Magnusentosa (doing business as Fenny Gamelia) (Gamelia), says it provided to the respondent, Scott Freight Services Ltd. (Scott).

2. Scott says Gamelia did not provide the services as agreed, as Jeffrey Magnusentosa, Gamelia's principal or employee, had a suspended license at the time of the freight services and was involved in a hit and run accident using one of Scott's vehicles. Scott says it will have to pay the accident damages and therefore owes nothing to Gamelia.
3. Gamelia is represented by Mr. Magnusentosa. Scott is represented by Scott Long, a principal or employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to hear this dispute through written submissions.
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.

## **ISSUE**

8. The issue in this dispute is whether Scott owes Gamelia for providing freight and delivery services.

## **EVIDENCE AND ANALYSIS**

9. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. As the applicant in a civil proceeding, Gamelia must prove, on a balance of probabilities, that Scott owes it the claimed \$746.62 for freight and delivery services provided between February 13 and 20, 2020. For the following reasons, I find that Gamelia has not proved this claim, and I dismiss it.
11. During the CRT decision process, parties exchange arguments and evidence. Gamelia provided a document titled, "Evidence of payment owing," which Gamelia stated was an "Invoice of the outstanding amount owed & Email conversations record of the owner refusing to pay." (reproduced as written). CRT staff and I were unable to open this document. CRT staff emailed Gamelia repeatedly to ask it to resend the document. CRT staff advise they received no response to these emails. CRT staff also advise they tried to contact Gamelia by phone, but the phone number was out of service. On August 26, 2020, CRT staff emailed a final warning to Gamelia, stating that if it would like to have the document considered as evidence in this decision, it must be re-sent no later than August 31, 2020. CRT staff advise that as of September 17, 2020 they had received no response to this email. I find that given the number of attempts to obtain the evidence, it is reasonable to

proceed without considering it, bearing in mind that the CRT's mandate includes speedy and efficient dispute resolution.

12. The only other evidence Gamelia provided in support of its claim is a screenshot of text messages Gamelia says are from Scott. Gamelia says these text messages are threatening and harassing, and I agree. However, the messages do not contain any information about the existence, terms, or amount of a contract for freight services. I note that Gamelia's claim is for amounts owed under a contract, not damages related to alleged abuse or harassment. Given the absence of evidence supporting Gamelia's claim, I find on balance that Gamelia has not proved Scott owes it \$746.62. I therefore dismiss this claim.
13. Scott submits that it does not owe Gamelia anything, because Mr. Magnusentosa was driving with a suspended license at the time of the freight services. I infer from this that Scott's position is that ensuring that drivers have a valid license was an implied or express contractual condition, which Gamelia breached. However, given that I have dismissed Gamelia's claim against Scott, I do not need to decide this issue.
14. Relatedly, Scott submits that Mr. Magnusentosa was involved in a hit and run accident while providing freight services to Scott, and while driving Scott's vehicle with a suspended license. Scott argues the Insurance Corporation of British Columbia is requiring Scott to pay the full amount of the accident damages, yet unquantified, unless it can provide proof that the driver had a valid license. In submissions, Gamelia refused to provide this proof, although it admits that Mr. Magnusentosa discovered that his license had been suspended after the accident.
15. Scott did not file a counterclaim. I therefore infer from Scott's arguments that its position is that the circumstances around the hit and run accident, including the suspended license, either constitute a breach of a contractual condition, or give rise to an equitable set-off against any amounts owed to Gamelia (see *Dhothar v. Atwal*, 2009 BCSC 1203). Again, as I have dismissed Gamelia's claim against Scott, it is unnecessary for me to decide either of these issues.

16. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Gamelia has not been successful so I dismiss its claim for reimbursement of tribunal fees and dispute-related expenses. Scott did not claim any dispute-related expenses.

## **ORDER**

17. I order Gamelia's claims and this dispute be dismissed.

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Shannon Salter, Chair