



Civil Resolution Tribunal

Date Issued: December 21, 2020

File: SC-2020-007133

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henghui Trade Development (Canada) Ltd. v. Bining*, 2020 BCCRT 1442

B E T W E E N :

HENGHUI TRADE DEVELOPMENT (CANADA) LTD.

APPLICANT

A N D :

PAUL BINING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is over payment for moving services.
2. The applicant, Henghui Trade Development (Canada) Ltd. (HTD), provided moving services for the respondent, Paul Bining. Mr. Bining undisputedly refused to pay for the move. HTD seeks payment of \$1,250 for its services.

3. Although I find he had the opportunity to do so, Mr. Bining chose not to submit any evidence or argument about this dispute, other than his Dispute Response Form. Relying on the Dispute Response, Mr. Bining's position was that he owes nothing because HTD allegedly broke his \$1,991.36 table during the move. As Mr. Bining brought no counterclaim, I infer Mr. Bining's position is that he is entitled to "set-off" the cost of a replacement table against the amount owing to HTD for the move.
4. HTD is represented by an employee or officer. Mr. Bining is self-represented.

JURISDICTION AND PROCEDURE

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says 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.

8. 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

9. The issue in this dispute is whether Mr. Bining must pay HTD the claimed \$1,250 for its moving services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant HTD must prove its claims on a balance of probabilities. Having said that, the onus of proving a set-off, is on the party alleging it and here, that party is Mr. Bining (see *Wilson v Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203).
11. HTD performed moving services for Mr. Bining on August 18, 2020 for \$1,250. Immediately after the move, Mr. Bining gave HTD a cheque for payment, but the cheque bounced. Mr. Bining then refused to pay for the move. These facts are not disputed.
12. Subject to any equitable set-off, I find Mr. Bining owes HTD the claimed \$1,250 in debt for the move.
13. An equitable set-off means that if Mr. Bining can prove that HTD owes him money that is reasonably connected to the moving services contract debt, he can deduct it from the amounts he owes to HTD.
14. In the Dispute Response, Mr. Bining said he asked HTD movers to take some chairs out of the storage unit and “while they were doing that one of the chairs fell on a foyer glass table and broke it”. HTD agrees that the table broke but says its movers did not break it. HTD says Mr. Bining broke the table himself by pulling out the chairs.

15. I find the parties' statements are mostly consistent. Mr. Bining statement quoted above is in passive tense and while it says HTD moved chairs, it does not directly state that it was HTD's mover who caused the chair to fall and break the table. I find on his own statement it could have equally been Mr. Bining who caused the chair to fall. I also find that giving HTD a cheque for payment after the move is some evidence that Mr. Bining was satisfied with the job and does not suggest that HTD broke his table.
16. As noted, Mr. Bining bears the burden of proving the set-off. I find he has not proven on a balance of probabilities that HTD caused the table to break. He also provided no records to prove the table's value. I find HTD does not owe Mr. Bining anything for the broken table and as such, I find Mr. Bining has not proven that he is entitled to a set-off.
17. I find that Mr. Bining must pay HTD the claimed \$1,250 debt for its moving services.
18. The *Court Order Interest Act* applies to the CRT. Because the parties had no contractual agreement on interest, I find HTD is entitled to pre-judgment interest on the \$1,250 from August 18, 2020 to the date of this decision. This equals \$1.98.
19. 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 HTD is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed dispute-related expenses.

ORDER

20. Within 30 days of the date of this order, I order the respondent, Mr. Bining, to pay the applicant, HTD, a total of \$1,376.94, broken down as follows:
 - a. \$1,250 as payment on the debt,
 - b. \$1.94 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

21. HTD is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
22. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
23. 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.

Trisha Apland, Tribunal Member