Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Red Fox Helicopters Inc. v. Skyline Helicopters Ltd.*, 2021 BCCRT 105

B E T W E E N :

RED FOX HELICOPTERS INC.

APPLICANT

A N D :

SKYLINE HELICOPTERS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about payment for helicopter pilot services. The applicant, Red Fox Helicopters Inc. (Red Fox), says the respondent, Skyline Helicopters Ltd. (Skyline), failed to pay for all of the services Red Fox provided to Skyline. Red Fox says Skyline

withheld $5,466.43, but Red Fox has abandoned its claim to any amount over the $5,000 Civil Resolution Tribunal (CRT) maximum small claim amount.

2. Skyline agrees that it withheld payments it owed Red Fox for pilot services, although it does not confirm the exact amount withheld. Skyline says that a Red Fox pilot's improper procedures during a flight for Skyline caused damage to a Carson Air Ltd. (Carson Air) airplane. Skyline says it withheld money to pay the amount Carson Air invoiced Skyline for the repairs. Skyline says that under the parties' contract, Red Fox is responsible for that damage. Red Fox denies being liable to Skyline for this damage.

3. In this dispute, Red Fox is represented by its employee or principal, CM. Skyline is represented by its owner. Carson Air is not a party to this dispute.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the CRT, which 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.

5. 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. 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.

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.

8. Section 11 of the parties' contract for helicopter pilot services says, "In the event of dispute arising under this Agreement the parties agree to remit the matter to final and binding arbitration in accordance with the British Columbia *Arbitration Act, 1996*" (reproduced as written). I find this CRT dispute is related to payments under the parties' agreement. However, I find there is no evidence that either party submitted the dispute to arbitration. Neither party argued that this dispute should be resolved through arbitration, and neither objected to the CRT deciding this dispute. I find the parties have both waived their contract's section 11 arbitration term, and so I find I have jurisdiction to hear this CRT dispute.

ISSUE

9. This issue in this dispute is whether Red Fox is liable to Skyline for the Carson Air airplane damage, and if not, must Skyline pay $5,000 or another amount to Red Fox?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Red Fox must prove its claims on a balance of probabilities. However, as discussed below, Skyline alleges a set-off to the amount it owed Red Fox (based on the damage to the Carson Air airplane). So, Skyline has the burden of proving the set-off on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

11. The undisputed evidence is that Red Fox performed helicopter pilot services for Skyline under a January 11, 2017 contract that was renewed on December 19, 2018. I note neither party alleges an employment relationship between Skyline and Red Fox's pilot, CM. This is supported by the parties' contract that says Red Fox is an independent contractor and that Red Fox would be paid on its invoices, including GST. On the evidence before me, and for the purposes of this dispute, I find that CM was not Skyline's employee. So, I find there was no employment relationship that made Skyline directly responsible for CM's actions. I find Skyline argues that Red Fox is vicariously liable to Skyline for damage caused by Red Fox's employee, CM.

12. Red Fox says its Skyline contract ended on December 13, 2019, and that Skyline owed a total of $18,290.99 for Red Fox's 3 final invoices, which are in evidence. Skyline does not directly deny that Red Fox performed the invoiced work, that the invoiced amounts are correct, or that it owed Red Fox for that work. Skyline confirms that it only paid Red Fox $12,824.56 for those invoices, which I find is a shortfall of $5,466.43. As noted, Red Fox claims $5,000.

13. I find that Red Fox has met its burden of proving that Skyline owed $5,000 for the 3 final invoices. However, as noted above Skyline says that under their contract, Red Fox owed Skyline for the costs of damaging a Carson Air airplane.

14. Skyline's reduction in its payment to Red Fox is known in law as a "set-off". As noted, Skyline bears the burden of proving that it was entitled to reduce Red Fox's payment by a set-off amount. Skyline does not say how much set-off it is entitled to, and I note that the Carson Air repair invoice to Skyline in evidence totals only $4,321.93. However, because Skyline does not directly dispute Red Fox's invoices, I find it alleges a set-off of the $5,000 claimed by Red Fox, and says that it owes Red Fox nothing more.

15. The airplane damage at issue here occurred on December 4, 2019. Red Fox says CM was piloting a test flight of a Skyline helicopter, which involved hovering about 20 feet above a Skyline helicopter pad or apron at an airport. Red Fox and TL, a Skyline employee flying with CM, confirm that the test involved making power changes while

hovering. A Skyline employee on the ground, MM, said that the helicopter was "aggressively hovering", while another Skyline employee on the ground, BC, said that the motions were "erratic hover manoeuvres."

16. MM said that the helicopter's rotor downwash was "tossing around" aircraft parked on a neighbouring ramp area, so he went outside and motioned the helicopter away. CM completed the hover tests in a different area of the airport before returning and landing at the original location. CM says he did not then think any damage had resulted from the hover tests.

17. I find that in correspondence between Carson Air and Skyline, Carson Air said the door of one of its airplanes had been damaged during the December 4, 2019 hover test. Skyline does not say how the damage occurred, but Carson Air photos in evidence show damaged airplane door hinges. I find Carson Air email correspondence indicates that an airplane door had swung open during the hover test. Red Fox says a Skyline employee later told it that a student pilot at Carson Air had forgotten to close an airplane door, and the helicopter downwash caused it to fly open, damaging the door. As Skyline does not directly deny this account, and the evidence supports it, I accept it as fact.

18. Skyline submitted a $4,321.93 Carson Air invoice addressed to Skyline for helicopter rotor "blast" damage, namely inspection, repair, and other costs for one airplane, and inspection costs for a second airplane. Skyline says it owes Carson Air for this damage, but does not say whether it paid the Carson Air invoice. I find the evidence does not show any payment from Skyline to Carson Air. Red Fox does not directly say whether Skyline is responsible for those costs.

19. As noted, Skyline bears the burden of proving the $5,000 set-off. This means that Skyline must prove that Red Fox damaged Carson Air's airplane, that Skyline owes Carson Air for the airplane damage, and that under the parties' contract Red Fox is responsible for such damage.

20. First, I considered whether the evidence shows Red Fox damaged Carson Air's airplane, and whether Skyline is liable to Carson Air for the costs of that damage. I find that Skyline does not directly deny that Carson Air failed to secure the door of its airplane, which was parked near to a known helicopter takeoff and landing area. Based on this undisputed evidence, and the other evidence before me, I find Skyline has failed to prove that CM's rotor wash was a cause of the airplane damage, rather than an unexpected, unseen, and unsecured airplane door. So, on balance, I find that Skyline has not met its burden of showing that CM's piloting caused the airplane damage, or that Skyline was responsible to Carson Air for that damage.

21. That said, even if Skyline was liable to Carson Air for the airplane damage, I find that Skyline has not proven it is entitled to set off that damage from its debt to Red Fox, for the following reasons.

22. Skyline says Red Fox is liable for the damage under the parties' contract. Section 6 of the contract says, "It is understood and agreed that the Contractor shall be liable for any damages where such damages result from the gross negligence or willful misconduct of the contractor" (reproduced as written). I find that Red Fox is the "Contractor" in the contract. I find the contract does not say that Red Fox is liable to Skyline for any other type of damages.

23. Skyline says that the airplane damage resulted from Red Fox's gross negligence or wilful misconduct. Specifically, Skyline says that Red Fox failed to follow both Skyline company regulations and procedures, and Transport Canada regulations, during the December 4, 2019 Red Fox test flight.

24. First, company procedures. Skyline provided no written Skyline regulations, procedures, or policies as evidence, and did not explain how Red Fox allegedly violated such written Skyline rules. Skyline says it advises Carson Air to move its airplanes during periods of increased Skyline flight activity. Skyline also says that it regularly tells its pilots to conduct flights while considering any nearby Carson Air aircraft. However, I find the evidence fails to show that Skyline actually told these things to Carson Air, Red Fox, or any other Skyline pilots. Further, I find Skyline has

not shown that Red Fox failed to consider the presence of Carson Air airplanes during the hover test, or that CM should have suspected that Carson Air's airplanes were not properly secured. Overall, I find Skyline has failed to prove that Red Fox violated any Skyline rules, procedures, or policies.

25. Second, Skyline says that Red Fox's test flight violated Canadian Aviation Regulation (CAR) 602.01.1, which says, "No person shall operate an aircraft in such a reckless or negligent manner as to endanger or be likely to endanger the life or property of any person." CM denies operating the helicopter recklessly or negligently, saying that the power fluctuations were a necessary part of the test, and he did not think at the time of the test that the rotor wash caused any damage to nearby aircraft. I find that whether CM's helicopter piloting failed to meet expected standards is a subject beyond ordinary knowledge and experience, and requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283). Under CRT rule 8.3, I find there is no expert evidence before me in this dispute. I find Skyline has not met its burden of proving that CM operated the Skyline helicopter in a reckless or negligent manner, or that Red Fox violated CAR 602.01.1 or any other applicable law or rule.

26. On the evidence before me, I find that Skyline has failed to prove that Red Fox's test flight showed gross negligence or wilful misconduct, whether through a breach of Skyline procedures or policies, a violation of CAR 602.01.1, or for any other reason. So, I find Red Fox is not liable to Skyline for the airplane damage under section 6 of the parties' contract. Overall, having weighed the evidence, I find there is no basis on which Skyline was entitled to a set-off for the cost of the Carson Air airplane damage. So, I find Skyline was not entitled to a set-off, and it owes Red Fox the claimed $5,000 for unpaid helicopter pilot services.

27. Given that Carson Air is not a party to this CRT dispute, I make no findings about whether Carson Air is in fact entitled to payment from anyone.

CRT FEES, EXPENSES, AND INTEREST

28. 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. Red Fox was successful here, so I find it is entitled to reimbursement of the $175 it paid in CRT fees. Skyline paid no CRT fees, and neither party claimed CRT dispute-related expenses.

29. Under the *Court Order Interest Act*, Red Fox is entitled to pre-judgment interest on the $5,000 owing. Red Fox's final invoice was dated December 17, 2019, so I find pre-judgment interest is calculated from the following day, December 18, 2019, until the date of this decision. This equals $65.42.

ORDERS

30. Within 30 days of the date of this order, I order Skyline to pay Red Fox a total of $5,240.42, broken down as follows:

    a. $5,000 in debt for unpaid helicopter pilot services,

    b. $65.42 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

31. Red Fox is entitled to post-judgment interest, as applicable.

32. 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.

33. 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.

Chad McCarthy, Tribunal Member