



# Civil Resolution Tribunal

Date Issued: April 22, 2021

File: SC-2020-008862

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anharro v. Kassam*, 2021 BCCRT 414

BETWEEN:

SAID ANHARRO

**APPLICANT**

AND:

KHALIL KASSAM

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about payment for residential moving services. The applicant, Said Anharro, says the respondent, Khalil Kassam, hired him to move the contents of his home. Mr. Anharro says the move involved a 3-person crew and a truck, and the services totalled \$1,417.50. Mr. Anharro says he refused to accept a reduced \$600

price Mr. Kassam offered after the move, and Mr. Kassam then said he was not paying anything. Mr. Anharro claims \$1,417.50 from Mr. Kassam.

2. Mr. Kassam says the parties' agreement was for \$600, and that Mr. Anharro's crew failed to move certain items, stole others, and caused other costs. Mr. Kassam says he owes nothing.
3. The parties are each self-represented in this dispute.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (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. Mr. Kassam submitted no evidence in this dispute, and provided no response submissions, despite an extension of time and multiple reminders from the CRT by email and telephone. However, Mr. Kassam responded to a final CRT warning about the submission deadline on the same date it was sent, saying he had a health issue and would respond as soon as he was better. The CRT granted Mr. Kassam a further 2-week extension, but Mr. Kassam submitted no response and requested no further extensions. Given Mr. Kassam's quick response to the CRT's final warning, and the absence of any evidence showing that an alleged health issue impacted his ability to provide evidence or submissions or to participate in the dispute process, on balance I find that Mr. Kassam voluntarily chose not to provide evidence or further submissions. I find Mr. Kassam had an adequate opportunity to provide evidence and arguments in support of his position, and that I can fairly decide this dispute on the materials before me.

## **ISSUE**

9. The issue in this dispute is whether Mr. Anharro completed the move for an agreed price of \$1,417.50, or another amount, which Mr. Kassam owes.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Anharro must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the relevant evidence as needed to provide context for my decision.
11. It is undisputed that Mr. Anharro's crew moved Mr. Kassam's household possessions on July 30, 2020. The parties disagree about the move's price and how long it would take. There is no moving agreement document in evidence, and on balance I find that the parties' agreement was verbal. Contracts do not need to be written or signed to

be enforceable, but it can be more difficult to prove the contents of a verbal agreement.

12. I find the evidence before me fails to show how many items were moved, the size of Mr. Kassam's home, how far the possessions were moved, how long the move took, or any similar basis for the move's value. Mr. Anharro says the move took 11.25 hours, at a rate of \$120 per hour plus GST, which totalled \$1,417.50. In contrast, Mr. Kassam says that based on photos of his possessions which are not in evidence, Mr. Anharro estimated the move would require a 3-person crew for 5 hours at a rate of \$75 per hour, which I find totals \$375 before tax. However, in an August 4, 2020 text message, Mr. Kassam said that the parties' verbal agreement was for 2 movers at a total price of \$600, which Mr. Anharro denies. Mr. Anharro says, and Mr. Kassam does not directly deny, that after the move Mr. Anharro refused Mr. Kassam's offer of \$600, which Mr. Kassam then withdrew.
13. In a different August 4, 2020 text message, Mr. Anharro told Mr. Kassam that he had photos of the moving cargo and witnesses from the building, among other evidence. However, Mr. Anharro submitted no evidence other than copies of the parties' text messages, plus photos of a police officer's business card that I find unhelpful. Apart from the parties' own statements, I find there is no other evidence before me showing the move's price. Although Mr. Anharro suggested that Mr. Kassam had a practice of underpaying for work, he submitted no evidence supporting that allegation, and I find that the parties' statements are equally credible. So, I find the evidence is equally weighted on whether or not the parties agreed Mr. Kassam would pay \$120 per hour, or pay for 11.25 hours of labour, or pay a total of \$1,417.50. This means that Mr. Anharro has not met his burden of proving it is more likely than not that Mr. Kassam agreed to pay the entire amount claimed.
14. However, that is not the end of the inquiry. I find that the move was completed, although Mr. Kassam suggests that aspects of it were deficient. I also find there is no dispute that, except for the price, the parties agreed to other essential contract terms, such as the move's date, location, and size. I find the evidence before me fails to

show that the parties agreed to any specific price or rate for the services at the time they agreed to the verbal contract.

15. Despite there being no proven, express payment terms or price, on the evidence before me, I find it was an implied term of the contract that Mr. Kassam would pay Mr. Anharro a reasonable amount for the move. In these circumstances, I find that Mr. Anharro may be entitled to payment on a contractual *quantum meruit* basis, which is a legal term meaning “value for work done.” (See *Hodder Construction (1993) Ltd. v Topolnisky*, 2021 BCSC 666 at paragraphs 118, 148, and 177 to 179.)
16. Under the contractual *quantum meruit* approach, where a binding contract is formed but the parties only agree to an unspecified reasonable price, an applicant is entitled to the cost of the services provided (see *Hodder* at paragraph 178). What was the cost of the moving services here? As noted, I find there is inadequate evidence about the move itself to calculate the cost of the services provided based on time taken, distance traveled, amount moved, or similar measures. However, I find Mr. Kassam admitted in his August 4, 2020 text message that the parties’ verbal agreement was for \$600. So, I find that both parties say the price of the move was at least \$600, and that it was unlikely it would have cost less. On the evidence before me, I find this is the best reasonable estimate of the move’s cost, as the evidence does not support any greater amount. Given my finding above that the move was completed, I find Mr. Kassam owes Mr. Anharro \$600 on a contractual *quantum meruit* basis.
17. Mr. Kassam says that Mr. Anharro’s crew wasted time, failed to move all of his possessions, stole and damaged items, and caused him other costs. Mr. Kassam did not file a counterclaim. However, in his Dispute Response, Mr. Kassam said that he will file a counterclaim. Further, in his August 4, 2020 text message, Mr. Kassam said that he intended to litigate his alleged damages and losses in “Supreme Court”. Mr. Kassam did not submit evidence supporting these alleged damages, although he claimed to have such evidence. He also did not submit the value of each type of alleged damage, or the total amount of damages he intended to claim.

18. Overall, I find there is insufficient evidence to show that Mr. Kassam claims alleged damages should be set off, meaning subtracted, from the \$600 owed to Mr. Anharro in this CRT dispute. I give significant weight to Mr. Kassam's comments about intending to pursue a counterclaim for those alleged damages in court. So, I have not considered any set-off here, because on balance I find Mr. Kassam has not alleged a set-off in this CRT dispute, despite his complaints about Mr. Anharro's services.
19. Given my finding that no set-off is alleged here, I find there is no basis for reducing the \$600 Mr. Kassam owes. I allow Mr. Anharro's claim in part, for \$600.

### **CRT FEES, EXPENSES, AND INTEREST**

20. Under the *Court Order Interest Act*, Mr. Anharro is entitled to pre-judgment interest on the \$600 owing. I find pre-judgment interest is calculated from August 14, 2020, which is the end of the 10-day payment period Mr. Anharro gave on August 4, 2020, to the date of this decision. This equals \$1.86.
21. 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. Mr. Anharro was partially successful in his claims, and I find he refused an earlier offer of the amount awarded in this dispute. So, I find he is entitled to reimbursement of half the \$125 he paid in CRT fees, which equals \$62.50. Mr. Kassam paid no CRT fees, and neither party claimed CRT dispute-related expenses, so I order no further reimbursements.

### **ORDERS**

22. Within 30 days of the date of this order, I order Mr. Kassam to pay Mr. Anharro a total of \$664.36, broken down as follows:
  - a. \$600 in debt for unpaid moving services,
  - b. \$1.86 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$62.50 in CRT fees.

23. Mr. Anharro is entitled to post-judgment interest, as applicable.
24. 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.
25. 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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Chad McCarthy, Tribunal Member