



Civil Resolution Tribunal

Date Issued: May 25, 2021

File: SC-2021-000969

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Philip v. Bekins Moving and Storage (Canada) Ltd.*, 2021 BCCRT 563

B E T W E E N :

THOMAS PHILIP

APPLICANT

A N D :

BEKINS MOVING AND STORAGE (CANADA) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about residential moving services. The applicant, Thomas Philip, hired the respondent, Bekins Moving and Storage (Canada) Ltd. (Bekins), for a long-distance move. Mr. Philip says that when the movers arrived at the destination with his belongings, they charged him an additional \$525 over the agreed amount for “shuttle service.” Mr. Philip says the shuttle service was unnecessary, and also

alleges that the shuttle did not occur for the reasons given. Mr. Philip claims a refund of the paid \$525 for shuttle service.

2. Bekins says that the streets were too narrow for its truck to access Mr. Philip's building, and that there was a vehicle parked in the building's loading zone. So, Bekins says the movers had to transfer Mr. Philip's belongings into a smaller vehicle to complete the move. Bekins says the shuttle service charge was justified.
3. Mr. Philip is self-represented. Bekins is represented by a branch manager, KR.

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). 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to 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.

ISSUE

8. The issue in this dispute is whether Bekins was entitled to charge Mr. Philip \$525 for the shuttle service.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Philip must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to what I find is relevant to provide context for my decision.
10. It is undisputed that Mr. Philip hired Bekins to move his household possessions from Ontario to Vancouver Island. On December 16, 2020, Bekins provided Mr. Philip with 2 estimates, showing the rate difference depending on whether the shipment weight was over or under 1,500 pounds. Both estimates stated that they were for the services indicated, and that any additional services required would result in additional charges.
11. Bekins confirmed to Mr. Philip in a December 17, 2020 email that the final amount charged would be based on "the actual weight and services provided". Mr. Philip confirmed he would like to proceed and provided Bekins with the destination address.
12. The evidence shows that Bekins loaded Mr. Philip's possessions in Ontario into a tractor-trailer truck (truck) on January 14, 2021. The delivery was scheduled to arrive between January 25 and February 10, 2021.

13. While the truck was on route, Bekins sent Mr. Philip a January 28, 2021 email advising that the truck would likely arrive on February 5, 2021. The email also stated the amount owing was \$5,618.89, and Mr. Philip could pay to the driver directly at the time of delivery or by credit card the day before.
14. Mr. Philip says that Bekins' driver, JM, called him on February 2, 2021 and arranged to arrive at 9 a.m. on February 4, 2021, which Bekins does not dispute. Mr. Philip says KR called him at 9:40 a.m. on February 4 to advise that JM had been unable to reach Mr. Philip's building with his truck. Mr. Philip says KR told him that his belongings had to be transferred to a smaller vehicle, and this shuttle service would cost an additional \$500 plus \$25 GST. Mr. Philip says KR told him that if he did not pay the shuttle service charge, Bekins would not deliver Mr. Philip's belongings.
15. Although Mr. Philip objected to the charge, he says he felt he had no choice but to pay it. It is undisputed that JM arrived with Mr. Philip's belongings in his "drom box", which I infer is a dromedary, or storage container mounted behind a tractor's cab. It is also undisputed that Mr. Philip paid JM with a \$5,618.89 bank draft, and an additional \$525 in cash for the shuttle service.
16. Mr. Philip says that Bekins should have investigated the delivery area ahead of time to determine whether his building was accessible. He says Bekins had his address well in advance and could have done a Google Maps search to plan the delivery using a smaller vehicle. Mr. Philip submitted a copy of a February 5, 2021 letter he wrote to Bekins that stated he would have paid the additional fee without complaint, had he been notified in advance that his belongings would have to be transferred into a smaller vehicle.
17. Notably, Mr. Philip does not dispute that Bekins was entitled to charge a shuttle service fee under the terms of their agreement, so long as the service occurred and was necessary. However, Mr. Philip submits that several aspects of Bekins' evidence do not add up, and he alleges that Bekins' employees colluded in a scheme to charge him for a shuttle service that they did not perform on February 4, 2021 as claimed, or for the reasons Bekins gave him.

18. Bekins filed a statement from JM about the events on February 4, 2021. JM stated that he attempted to complete the delivery to Mr. Philip's address with his tractor trailer, but he was unable to get there because tight streets and multiple cars parked too close to intersections made turning impossible. JM stated he tried from several directions, but his 75-foot highway tractor-trailer could not get within 4 blocks of the delivery address. JM said his crew member also drove him back in his personal vehicle to get another look of the area, but they determined no angle would work. JM also stated he asked Mr. Philip to have the loading zone in front of the building clear, but there was a white delivery van in the middle of the loading zone, which ran the risk of JM having insufficient space to park in front of the building.
19. JM took some photographs of surrounding streets near Mr. Philip's building on the morning of February 4. I find they show the building is in a residential area. Most of the streets in the photographs do not have painted dividing lines down the centre, and vehicles are parked along both sides of the streets. In some cases, the parked cars appear to allow space for only a single vehicle to drive down the middle of the street. I also find there are vehicles parked close to the intersection corners on several streets. The photographs also show a white van parked in front of Mr. Philip's building.
20. Mr. Philip argues that Bekins has not provided a detailed explanation of each photograph and how they demonstrate JM was unable to access his street. Mr. Philip also says that JM's statement that there were "tight streets and multiple cars" was exaggerated. In contrast, Bekins says there is more to operating a tractor-trailer in a city than Mr. Philip likely appreciates, and KR trusted JM as a professional driver to assess whether he had enough "swing room" with parked vehicles to safely execute turns.
21. Mr. Philip provided a statement from his building manager, MC, that stated numerous long, tractor-trailers have parked in front of the building to unload. I find MC's statement does not prove that JM's truck should have been able to access the building on February 4, 2021.

22. I find that to prove JM should have been able to safely navigate his truck through the streets in Mr. Philip's neighbourhood, expert evidence is required because this issue is outside common or ordinary knowledge: *Bergen v. Guliker*, 2015 BCCA 283. I find Mr. Philip's assessment of the photographs is insufficient to determine the potential hazards and obstacles that JM may have observed. I also find there is nothing obvious from the photographs that would suggest JM should clearly have been able to navigate the streets. In the absence of expert evidence to the contrary, I accept JM's judgement that he was unable to safely drive his truck to Mr. Philip's building.
23. Given it is undisputed that Mr. Philip's belongings were originally loaded into the trailer and they arrived in JM's drom box, I find the shuttle service did occur. Mr. Philip does not particularly dispute that it occurred at some point, but he submits that the shuttle must have been done before the morning of February 4, for unexplained reasons that had nothing to do with JM being unable to access his building. Whether the shuttle occurred on February 4 or some earlier date is irrelevant because I have found it was necessary, given JM could not safely navigate to Mr. Philip's building on February 4. Nevertheless, I find the weight of the evidence suggests that the shuttle did take place on February 4, after JM concluded he could not access Mr. Philip's building with his truck.
24. I note that Mr. Philip focused much of his evidence and submissions on the white van parked in his building's loading zone on the morning of the delivery. I accept Mr. Philip's evidence that the van was not there until at least 9:30 a.m. on February 4, and that JM likely did not speak with Mr. Philip's building manager about the van to find out whether it could be moved.
25. However, I find that nothing ultimately turns on the van because its presence was not the determining factor in JM's decision to shuttle Mr. Philip's belongings into the drom box. JM specifically stated: "even in the event I had been able to make the corner", the van presented an additional obstacle. I find JM had already decided not to drive his truck to Mr. Philip's building due to the narrow streets, but that even if he had been

able to get there, the van presented another potential risk, further supporting his decision to perform the shuttle service.

26. Contrary to Mr. Philip's submissions, I do not accept that the evidence shows Bekins engaged in any scheme to charge Mr. Philip for unnecessary services. I acknowledge it may have been preferable for Bekins to have anticipated a shuttle service might be required, so Mr. Philip was not surprised by the extra charge at the time of delivery. However, I find the contract contemplated additional charges for additional services, such as the shuttle service that occurred here.
27. I find Mr. Philip has not met his burden to prove the shuttle service was unnecessary or that it did not occur for the reasons provided. Given Mr. Philip does not dispute the amount charged for the shuttle service, I find Bekins was entitled to charge him the claimed \$525. I dismiss Mr. Philip's claim.
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. Bekins did not pay any fees or claim dispute-related expenses. Mr. Philip was unsuccessful and so I dismiss his claim for CRT fees.

ORDER

29. I dismiss Mr. Philip's claims and this dispute.

Kristin Gardner, Tribunal Member