



# Civil Resolution Tribunal

Date Issued: June 3, 2021

File: SC-2020-009511

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gordon v. Galaxy Motors (1990) Ltd. dba Galaxy RV*, 2021 BCCRT 603

**B E T W E E N :**

GREG GORDON

**APPLICANT**

**A N D :**

GALAXY MOTORS (1990) LTD. dba GALAXY RV and PHILLIP  
MALCOLM DAGGER

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, Greg Gordon, is a former employee of the respondent, Galaxy Motors (1990) Ltd. dba Galaxy RV (Galaxy RV). Mr. Gordon says that he was wrongfully dismissed. He claims \$642.40 for 1 week of severance pay.

2. Mr. Gordon also claims that he has stored furniture in his home for Galaxy RV since July 7, 2020. He claims \$1,560 for moving the furniture to his home and storing it. It is unclear whether Mr. Gordon still has the furniture. In any event, Galaxy RV did not counterclaim for its return.
3. Galaxy RV says that Mr. Gordon quit and so he is not entitled to severance pay. It also denies that it agreed to pay Mr. Gordon to move and store its furniture. Galaxy RV asks that I dismiss Mr. Gordon's claims.
4. Phillip Malcolm Dagger did not file a Dispute Response or participate in this dispute. I address his default status below.
5. Mr. Gordon is self-represented. Galaxy RV is represented by an employee.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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 of 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 *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 that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
10. I note that Mr. Gordon refers to the *Employment Standards Act* (ESA). In *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182, the court confirmed that the Employment Standards Branch has exclusive jurisdiction to enforce rights under the ESA. This means that the CRT has no jurisdiction over benefits or entitlements from the ESA. However, despite referring to the ESA, I find that in substance Mr. Gordon's claim for severance pay is based on his employment contract and not the ESA. So, I find that his claim is that Galaxy RV breached the employment contract, which is a civil claim that the CRT can resolve under its small claims jurisdiction. I find that the CRT has jurisdiction to hear this dispute.

## **ISSUES**

11. In the initial Dispute Notice, Mr. Gordon claimed reimbursement for expenses he incurred during his employment. The parties have since resolved that issue.
12. The remaining issues in this dispute are:
  - a. Is Mr. Gordon entitled to severance pay? If so, how much?
  - b. Is Mr. Gordon entitled to be paid for moving and storing Galaxy RV's furniture?

## EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Mr. Gordon as the applicant must prove his claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The parties agree that Mr. Gordon was a Galaxy RV employee from April 15 to July 22, 2020. Mr. Gordon says that Galaxy RV dismissed him, but Galaxy RV says that he quit. When an employee is dismissed without cause, under the common law they are entitled to reasonable notice or pay in lieu of reasonable notice, which is sometimes called severance pay. However, if the employee quits, they are not entitled to any severance pay.
15. There is very little evidence before me about the end of Mr. Gordon's employment. I infer that his employment ended during a conversation with Galaxy RV's general manager at the time, AH. There is no statement from AH in evidence, which I address below. The only written evidence before me is the Record of Employment (ROE) that Galaxy RV prepared for Mr. Gordon, which said that Mr. Gordon quit. However, the ROE does not include any details about why Galaxy RV believed that Mr. Gordon quit. So, I find that it is not helpful evidence.
16. Mr. Gordon relies on the fact that he received Employment Insurance benefits, which are not available to employees who quit. He says that he convinced Service Canada that Galaxy RV had dismissed him despite what Galaxy RV put on the ROE. However, I am not bound by Service Canada's conclusion that Galaxy RV dismissed Mr. Gordon. Also, Mr. Gordon does not say anything about what he said to Service Canada to persuade them that he was dismissed. I therefore place no weight on the fact that Mr. Gordon received Employment Insurance benefits.
17. Mr. Gordon argues that Galaxy RV failed to provide any relevant evidence about the end of his employment, such as a written statement from AH. I infer that Mr. Gordon wants me to draw an adverse inference against Galaxy RV, which means that I would assume that Galaxy RV did not provide a statement from AH because it

would not have helped its case. An adverse inference may be appropriate when a party fails to provide relevant evidence from a witness without a good explanation. I find that AH clearly had relevant evidence and Galaxy RV provided no explanation about why it did not get a statement from them.

18. However, to rely on an adverse inference, Mr. Gordon must establish a *prima facie* case, which means that he must provide some evidence to support his version of events (see *Lucas v. Canniff*, 2021 BCSC 1014, at paragraph 69). Mr. Gordon does not say anything about how his employment ended. He does not describe his conversation with AH that ended his employment. I find that Mr. Gordon has not established a *prima facie* case that he was dismissed, so I decline to draw an adverse inference against Galaxy RV for its failure to get a statement from AH.
19. In the absence of any persuasive evidence about how Mr. Gordon's employment ended, I find that Mr. Gordon has not proven that he was dismissed. So, he has not proven that he is entitled to severance pay. I dismiss this claim against Galaxy RV.
20. I turn then to Mr. Gordon's claim for moving and storage fees. Mr. Gordon claims \$1,560, broken down as \$200 for moving the furniture on July 7, 2021, and \$160 a month in storage fees from July 15, 2020, to March 30, 2021. As mentioned above, it is unclear when, or whether, Galaxy RV removed the furniture from Mr. Gordon's garage.
21. It is undisputed that Galaxy RV had too much furniture and needed to move some of it off-site. Mr. Gordon says that he and a Galaxy manager, JM, agreed that Galaxy RV would pay Mr. Gordon "the going rate" to store it in his garage. According to text messages in evidence, on July 7, 2020, JM asked Mr. Gordon when Mr. Gordon could "get the furniture out of the office". Mr. Gordon responded that he could do it that day. There is no mention in the text messages that Galaxy RV would pay Mr. Gordon for moving or storing the furniture.

22. Mr. Gordon alleges that he had a verbal contract with Galaxy based on his conversation with JM. Verbal contracts are enforceable but are generally harder to prove than written contracts.
23. Mr. Gordon and Galaxy RV both say that they have spoken to JM about this issue. Mr. Gordon says that JM confirmed that Galaxy RV had agreed to pay for storage. Galaxy RV says that JM confirmed that there was no arrangement about payment. While the CRT can accept hearsay evidence that would not be admissible in court, I do not accept either party's description about what JM said. I find that both parties' evidence about what JM told them is not credible because it is self-serving and unsupported by any objective evidence.
24. Mr. Gordon says that Galaxy RV should have provided a written statement from JM. I again infer that he wants me to draw an adverse inference against Galaxy RV. However, I cannot draw an adverse inference if the witness in question, here JM, is equally available to both parties (see *Lucas*). JM is no longer a Galaxy RV employee and both parties say that they spoke to him about this dispute. There is no evidence that either of them asked JM to provide a written statement. With that, I find that JM was equally available as a witness to both parties. So, I find that an adverse inference would not be appropriate.
25. I find that Mr. Gordon's unsupported assertion that Galaxy RV agreed to pay him to store its furniture is not enough to prove the existence of a verbal contract.
26. As for the 4 hours he says he spent moving the furniture, Mr. Gordon says that July 7, 2020, was not his regular workday. So, I find that this is essentially a claim for unpaid wages. Mr. Gordon provides no objective evidence to support his assertion that he was not paid for this work, such as a paystub or work schedule. So, I find that he has not proven that Galaxy RV owes him unpaid wages.
27. For these reasons, I dismiss Mr. Gordon's claim against Galaxy RV for moving and storing the furniture.

28. I turn then to Mr. Gordon's claims against Phillip Malcolm Dagger. Based on the evidence before me, they were served in accordance with the CRT's rules but failed to file a Dispute Response. Therefore, they are in default. CRT Rule 4.3(1) says that the CRT may assume a party in default is liable. This means that Phillip Malcolm Dagger is not automatically liable even though he is in default. I find that I have discretion to assess Mr. Gordon's claims against them.
29. The only time Phillip Malcolm Dagger's name appears in the evidence and submissions is in an Employee Handbook, which named them as Galaxy RV's president. In general, an officer or employee is not liable for a corporation's debts. Mr. Gordon makes no specific allegations against Phillip Malcolm Dagger personally. I see no reason why Phillip Malcolm Dagger would be liable for either severance pay or the storage fees, even if Mr. Gordon had proven those claims. So, I dismiss Mr. Gordon's claims against Phillip Malcolm Dagger.
30. 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. Gordon was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Galaxy RV did not claim any dispute-related expenses or pay any CRT fees.

## **ORDER**

31. I dismiss Mr. Gordon's claims, and this dispute.

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Eric Regehr, Tribunal Member