



Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2021-001622

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Phoenix Truck & Crane Ltd. v. Van Herwaarden*, 2021 BCCRT 685

B E T W E E N :

PHOENIX TRUCK & CRANE LTD.

APPLICANT

A N D :

DAVID VAN HERWAARDEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over payment for truck and crane services. The applicant, Phoenix Truck & Crane Ltd. (Phoenix), says the respondent, David van Herwaarden, owes

\$1,176 for Phoenix's efforts to deliver a 10' x 32' floating dock at Mr. van Herwaarden's request.

2. Mr. van Herwaarden says he did not receive the service he hired Phoenix to do, because Phoenix did not provide the appropriate equipment and so Phoenix returned the dock to its holding yard rather than delivering it.
3. Phoenix is represented by an employee. Mr. van Herwaarden is self-represented.

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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is the scope of the parties' truck and crane agreement, and whether Phoenix is entitled to the claimed \$1,176.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant Phoenix has the burden of proving its claim, on a balance of probabilities. I have only referenced below what I find is necessary to give context to my decision.
10. On October 22, 2020 Mr. van Herwaarden called Phoenix and asked it to pick up his dock from one location and deliver it to a specific shipyards after 4pm. That same day, he gave Phoenix his credit card number as pre-authorization for the job. On October 26, 2020, Phoenix's crane operator picked up the dock and arrived at the shipyards that afternoon. None of this is disputed.
11. This dispute is over why Phoenix was unable to complete the delivery.
12. Phoenix says the shipyards' owner, TW, told Phoenix's crane operator that the shipyards closed around 3pm and that the operator would not be able to crane the dock into the water. Phoenix alleges Mr. van Herwaarden asked it to arrive after 4pm, knowing the shipyards was closed by then so he could try and have the dock improperly delivered over the water.
13. In contrast, Mr. van Herwaarden says it told Phoenix's employee, C, on October 22 that the crane could not be taken over the water because TW would not allow it. Mr. van Herwaarden says C said Phoenix had a large enough crane that did not have to be over the water, and that there would be no problem. Mr. van Herwaarden says he chose 4pm because of Phoenix's minimum charge and that was when he was able to arrange help transporting the dock to his home. Mr. van Herwaarden does not explain how a 4pm start time might have impacted the minimum charge.

14. On October 26, Mr. van Herwaarden says the driver arrived without proper equipment and therefore could not unload the dock. He says the driver said he was not told to bring that equipment. Mr. van Herwaarden says he called C who offered to courier the proper equipment at Mr. van Herwaarden's expense, but he declined because he says that was not the agreement.
15. Mr. van Herwaarden was not able to pick up the dock until October 28, and the same day he offloaded it into the water with helpers at the shipyards with TW's consent.
16. I find this dispute turns on what type of dock delivery Phoenix agreed to, and in particular whether it agreed to provide a crane that did not go over the water.
17. Phoenix submitted a November 4, 2020 email from Phoenix's dispatcher C. C wrote he arrived after 4pm on October 26 as requested. C does not say anything about Mr. van Herwaarden's giving instructions about the dock being unloaded over water. However, C wrote that on October 26 "it became clear that this customer didn't have authorization to have us set up and launch" on the shipyards' property. Later on November 4, Phoenix's operations manager emailed C and asked whether the ramp's slope was the only delivery issue or "combination of no permissions to use ramp period?" (reproduced as written). C responded, "The customer didn't have permission. Period. [Driver WF] couldn't even drive onto the property. With swamp pads he could have set up. And I was prepared to proceed, but we were told to leave the site".
18. Phoenix also submitted a March 24, 2021 email from WF. WF wrote he was instructed there was no access to the boat launch until after the shipyards closed at 4pm and not to arrive early. WF wrote that at 4pm he pulled in front of the shipyards' property and was met by its owner (TW). WF wrote TW asked why he was there and WF said it was to access the ramp to offload the dock. WF wrote TW said that the customer had already been told he could not use the ramp and that he was upset Mr. van Herwaarden was trying to use the ramp after hours. WF wrote TW refused access and on Mr. van Herwaarden's instruction WF took the dock

back to Phoenix's yard. WF said if he had been given access to the ramp he would have been able to safely unload the dock and place it in the water.

19. Next, Phoenix submitted a March 23, 2021 statement from TW. TW wrote Mr. van Herwaarden did not have permission to use water access at the shipyards. TW said that it was too big of a liability to have a crane unload with that grade of slope on its boat launch. TW further wrote deliveries were not permitted after closing, which was "around 3" pm. TW further said he gave Mr. van Herwaarden permission to unload on October 28 using water access as by that point the dock was on a flatbed truck and could be dropped into the river instead of lifted by crane.
20. The only evidence Mr. van Herwaarden submitted was a copy of Phoenix's mission statement that it could accommodate any job, and copies of his credit card charges and reversals, which I find do not contradict Phoenix's written witness statements.
21. As noted, the parties did not have a written agreement. Oral agreements are enforceable, although they are generally harder to prove than written agreements. Here, on balance I find it unlikely Phoenix agreed on October 22 to ensure the dock would not be unloaded over water. I find the weight of C's, WF's, and TW's evidence is not consistent with such an agreement. Mr. van Herwaarden also does not address TW's evidence about the ramp not being available for deliveries after 3pm or explain how Phoenix was to unload the dock on the shipyards' property without using the ramp.
22. On balance, I find the failed delivery was not Phoenix's fault and so I find Mr. van Herwaarden must pay for Phoenix's work. I say this because I find the parties agreed Phoenix would deliver the dock to the shipyards and there was no term about not being able to unload over water or not being able to use the shipyards' ramp.
23. Phoenix claims \$1,176 under its invoice, for: a) a minimum 3-hour charge on October 26 for its crane #5061 at \$160 per hour, for picking up the dock and attempting to deliver it, and b) a minimum 4-hour charge on October 28 for its crane

#5160 at \$160 per hour, for transloading the dock in Phoenix's yard. These 7 hours at \$160 per hour, plus GST, equal the claimed \$1,176. Phoenix says it waived storage charges for holding the dock in its yard for 2 days between October 26 and 28.

24. Mr. van Herwaarden did not dispute the minimum charges or the \$160 hourly rate. I accept Phoenix's undisputed evidence that the 3-hour minimum on October 26 was reduced from 4 hours, at C's request, due to the failed delivery. On balance, I find Phoenix is entitled to the claimed \$1,176.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find Phoenix is entitled to \$3.44 in pre-judgment COIA interest, calculated from its October 28, 2020 invoice date to the date of this decision.
26. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Phoenix was successful and so I find it is entitled to reimbursement of \$125 in paid CRT fees. Phoenix did not claim dispute-related expenses, so I make no order for them.

ORDERS

27. Within 30 days of this decision, I order Mr. van Herwaarden to pay Phoenix a total of \$1,304.44 broken down as follows:
 - a. \$1,176 in debt,
 - b. \$3.44 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
28. Phoenix is entitled to post-judgment interest, as applicable.
29. 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.

30. 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.

Shelley Lopez, Vice Chair