



Civil Resolution Tribunal

Date Issued: September 23, 2021

File: SC-2021-001962

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Noniewicz v. Rezilliant Towing & Transport Ltd.*, 2021 BCCRT 1024

B E T W E E N :

RICHARD NONIEWICZ

APPLICANT

A N D :

REZILLIANT TOWING & TRANSPORT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. The applicant, Richard Noniewicz, says the respondent, Rezilliant Towing & Transport Ltd. (Rezilliant), hired him to enforce a warehouser's lien on 3 vehicles. Mr. Noniewicz says he completed the job but Rezilliant has failed to pay for his services. Mr. Noniewicz claims \$1,963.08 for the unpaid services.

2. Rezilliant does not dispute Mr. Noniewicz's claims and says it was willing and able to pay Mr. Noniewicz's invoice. It says it was Mr. Noniewicz who had failed to take payment.
3. Mr. Noniewicz is self-represented. Rezilliant is represented by its co-owner, Robert McAdam.
4. For the reasons that follow, I find Rezilliant must pay the amounts set out below.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. 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.
8. 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

9. The issue in this dispute is whether Rezilliant owes Mr. Noniewicz \$1,963.08 for unpaid bailiff services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Noniewicz must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Rezilliant provided no submissions or evidence beyond its Dispute Response filed at the outset of this proceeding, despite having the opportunity to do so.
11. The background facts are largely undisputed.
12. Rezilliant had hired Mr. Noniewicz, a licensed bailiff, to enforce a warehouse's lien on 3 vehicles it had stored, all of which were in arrears on storage fees. There is no written agreement before me setting out the parties' terms.
13. Mr. Noniewicz completed the work for Rezilliant, which included various tasks such as registry searches, providing notice of seizures to the vehicle owners, seizing the vehicles, registering liens, discharging pre-existing liens, and placing newspaper ads.
14. On September 29, 2020, by email, Mr. Noniewicz invoiced Rezilliant \$1,963.08 for his services. Rezilliant says it never received the invoice. Starting on October 20, 2020 until November 4, 2020, Mr. Noniewicz re-sent his invoice to Rezilliant 3 further times, which Rezilliant admits it had all received.
15. As noted above, Rezilliant does not dispute liability. In its Dispute Response, Rezilliant only says in its defence that it told Mr. Noniewicz "to come to [the] business to get paid". Rezilliant says that Mr. Noniewicz agreed to attend its office to collect payment in full, but never did. Mr. Noniewicz did not address this allegation in his submissions. Given that Mr. Noniewicz does not challenge Rezilliant's allegation, I

accept it as accurate. However, while it is unclear why Rezilliant required Mr. Noniewicz to attend in-person for payment, I find that such a payment term was not a requirement under the parties' contract, given the sparse evidence and submissions before me. Rezilliant has provided no other explanation or evidence why Mr. Noniewicz's invoice remains unpaid or why Rezilliant cannot pay Mr. Noniewicz by some other method, such as by e-transfer or cheque. Therefore, I find Rezilliant must still pay Mr. Noniewicz \$1,963.08 for his undisputed bailiff service.

16. The *Court Order Interest Act* applies to the CRT. Rezilliant argues that Mr. Noniewicz should not receive any interest because it was willing to pay the invoice if not for Mr. Noniewicz failing to collect payment. However, the COIA is mandatory meaning I must award prejudgment interest. Therefore, I find that Mr. Noniewicz is entitled to pre-judgment interest on the \$1,963.08 from October 20, 2020, the date Rezilliant acknowledged it was invoiced, to the date of this decision. This equals \$8.18.
17. 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. Although Mr. Noniewicz was successful in this dispute, I find it appropriate in this circumstance to not award reimbursement of CRT fees. I find that this cost could have been avoided had Mr. Noniewicz picked up payment from Rezilliant as agreed. Therefore, I dismiss Mr. Noniewicz's request for reimbursement of CRT fees. Neither party claimed dispute-related expenses, so I award none.

ORDERS

18. Within 14 days of the date of this order, I order Rezilliant to pay Mr. Noniewicz a total of \$1,971.26, broken down as follows:
 - a. \$1,963.08 in debt, and
 - b. \$8.18 in pre-judgment interest under the *Court Order Interest Act*.
19. Mr. Noniewicz is entitled to post-judgment interest, as applicable.

20. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
21. 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.

Roy Ho, Tribunal Member