Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Monteith Moving and Storage Ltd. v. McKay*, 2022 BCCRT 150

B E T W E E N :

MONTEITH MOVING AND STORAGE LTD.

APPLICANT

A N D :

GEORGE MCKAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about a residential move. The applicant, Monteith Moving and Storage Ltd. (MMS), provided moving services for the respondent, George McKay. MMS says Mr. McKay refused to pay the full agreed amount for the move. MMS claims the $1,409 it says remains outstanding.

2. Mr. McKay says MMS charged significantly more than its "firm" pre-move estimate. He says he only owed the "quoted cost" of $887.25, less $1,200 for repairs to a TV MMS allegedly damaged. Mr. McKay filed no counterclaim in this dispute, and so effectively says he owes nothing. MMS says Mr. McKay declined its "full value protection" option, so TV damage is limited to $0.60 per pound under the parties' agreement. Mr. McKay says that would only provide about $60 in TV compensation.

3. Mr. McKay is self-represented in this dispute. MMS is represented by its president.

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. Although the parties' submissions each call into question the credibility of the other party to some extent, 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.

Standing

8. The estimate and bill of lading for Mr. McKay's move were issued in the name of "Bekins Moving and Storage" (Bekins). Mr. McKay says he hired Bekins for the move. Neither party directly explains the relationship between Bekins and MMS. However, Mr. McKay does not deny that MMS performed the moving services, or that he was responsible for paying MMS for the move. A July 26, 2021 pre-move email to Mr. McKay identified the mover as "Bekins Moving and Storage locally licensed by Monteith Moving & Storage Ltd." On balance, I find that MMS likely provided moving services to Mr. McKay under the Bekins name, and that the move agreement was between the parties. So, I find MMS has standing to bring this dispute.

ISSUES

9. The issues in this dispute are as follows:

    a. Were MMS's fees limited to its $887.25 estimate?

    b. Was MMS's estimate unfairly misleading or incorrect?

    c. Is Mr. McKay entitled to a set-off for TV damage, and what does he owe MMS, if anything?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, MMS as the applicant must prove its claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

Were MMS's fees limited to its $887.25 estimate?

11. MMS provided Mr. McKay with a July 26, 2021 estimate for a 3-stop residential move of 4,300 pounds of goods. The estimate said the move was expected to take a 2-person crew 5 hours, at a rate of $160 per hour. Including taxes and a fuel surcharge, the "Total Estimated Charges" were $887.25.

12. MMS performed the moving services. According to the Bill of Lading signed by Mr. McKay on the August 21, 2021 move date, the actual move time was 9 hours, plus a half hour of overtime at $190 per hour. The total amount charged for the move was $1,659. Subtracting the $250 deposit Mr. McKay paid, the unpaid balance shown on the Bill of Lading was the claimed $1,409.

13. Mr. McKay does not say that MMS incorrectly calculated its fees based on the actual time of the move. However, he says MMS assured him that it was simple move and that the cost estimate was accurate. Mr. McKay says MMS verbally agreed that the estimate was a "firm" quote, so MMS cannot charge more than $887.25.

14. MMS denies saying that the estimate was binding. The estimate document in evidence said that any additional items beyond the estimate would result in extra charges, because of the additional time and volume taken to move them. It said that all charges would be based on actual time taken, including travel time to and from MMS's warehouse. The estimate said that if the total time in one day exceeded 9 hours, MMS's hourly rate would increase by $15 per mover. I find that equals the $190 per hour MMS charged for overtime. Further, the second page of the estimate is titled "ESTIMATE" in large, bold, underlined letters.

15. I find the estimate document clearly indicates that the estimate is not binding, and that actual move fees are based on actual move times. Further, other than Mr. McKay's unsupported allegation, I find none of the evidence before me shows that MMS agreed to limit its fees. I find MMS' estimate was not a binding quote, and it did not limit the amount MMS could charge for the move. As discussed below, I find that

if MMS did not misrepresent the move's likely cost, Mr. McKay owes a further $1,409 for the move, less any deductions for TV damage.

Was MMS's estimate unfairly misleading or incorrect?

16. Mr. McKay says the estimate unfairly persuaded him to hire MMS, and he would have hired a different company if he had known the actual fees would be so much higher. He also says that MMS purposefully lowered its estimate below the likely actual cost in order to win his business. I find Mr. McKay essentially alleges that MMS negligently or fraudulently misrepresented the estimated move cost.

17. Negligent misrepresentation is when:

    a. A seller makes an untrue, inaccurate, or misleading representation to a purchaser,

    b. The seller makes the representation negligently, and

    c. The purchaser suffers damage from reasonably relying on the misrepresentation.

18. A fraudulent misrepresentation is when:

    a. A seller states a fact to a purchaser,

    b. The seller knows the statement is false, or is reckless about whether it is true or false, and

    c. The misrepresentation incents the purchaser to buy something.

19. To prove damages for either negligent or fraudulent misrepresentation, a seller must make a statement that is false, inaccurate, or misleading, and the buyer must reasonably rely on the representation. As Mr. McKay is the party alleging misrepresentation, he bears the burden of proving that allegation.

20. As noted, the actual move cost depended on the actual move time, and MMS was not contractually bound to its estimate. However, I considered whether MMS misrepresented the expected price by making the estimate negligently or recklessly.

21. Mr. McKay did not object to the information in the estimate when MMS issued it, apart from some discussions about labour rates. Mr. McKay says that MMS's estimator, BM, said she did not need to see the items at 1 of the 3 move locations, and said that the cost estimate was accurate. There is no statement from BM in evidence. However, I find submitted BM emails and the other evidence before me do not show that BM said the estimate was binding or declined a request to view the third location.

22. MMS says that Mr. McKay misled it about the number of items at the third pickup location, which its estimator did not view in person, so the move took longer than expected. Mr. McKay confirms that he proceeded with the move even though, after the movers arrived, it was "obvious that it was a much longer and more difficult move."

23. I find it is not plain and obvious that the amount of time MMS spent on the move was unreasonable, or that the estimate was unreasonable based on the steps taken by BM. I am unable to determine, on ordinary knowledge and experience, the expected accuracy of the MMS estimate given the information available to MMS at the time, or the expected reliability of a non-binding move estimate. I find those topics are about professional move estimation industry standards, and require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 28).

24. There is no expert evidence before me in this dispute. So, I find Mr. McKay has not met his burden of showing that MMS failed to meet an applicable standard of care in providing its estimate, or that it was reasonable to rely on the estimate in the circumstances. I also find Mr. McKay has not shown that the estimate was incorrect given the information it was based on, or that MMS recklessly or negligently failed to obtain better information for the estimate. So, I find the evidence does not show that MMS negligently or fraudulently misrepresented the move's estimated cost.

25. For the above reasons, I find that Mr. McKay owes MMS $1,409 for the move, less any deductions for TV damage discussed below.

Is Mr. McKay entitled to a set-off for TV damage?

26. Mr. McKay says MMS damaged his TV in the move, as shown in a photo of a cracked television screen. MMS does not directly deny damaging the TV, although it says any damage is limited to $0.60 per pound as set out in the Bill of Lading. I find MMS likely damaged the TV during the move.

27. The estimate said, "ALL CLAIMS TO BE SETTLED AT 0.60 PER LD PER ARTICLE" (reproduced as written). I infer that "LD" is a misspelling of "LB", meaning pound. This is consistent with the Bill of Lading signed by Mr. McKay at the conclusion of the move, including a signature on a field titled "DECLARATION OF VALUE – IMPORTANT – PLEASE READ" that said he declined to purchase "full value protection", and released the shipment to the "carrier" at a maximum declared value of $0.60 per pound per article.

28. I find that Mr. McKay likely knew, or should have known, that by agreeing to the move he agreed to limit MMS's liability for shipping damage to $0.60 per pound as shown in the estimate. I also find that by signing the Bill of Lading where he did, Mr. McKay waived his right to claim more than $0.60 per pound for shipping damage.

29. Even if the parties had not agreed to limit MMS's liability, I find that Mr. McKay has not met his burden of proving the actual value of his damages. Mr. McKay says that "quoted TV repair costs" totalled $1,200, but he provided no quotes or estimates, or any other evidence supporting the TV's value or cost to repair. I find the only reliable evidence of the TV damage's value is the $0.60 per pound agreed to in the parties' moving agreement, which as noted Mr. McKay says equals approximately $60. So, I find it is appropriate to set off $60 for TV damage against MMS's $1,409 fee claim. Subtracting the 2, I allow MMS's claim for $1,349.

CRT FEES, EXPENSES, AND INTEREST

30. I find the parties agreed to 26.92% annual interest on overdue accounts, as shown in the signed Bill of Lading. However, MMS does not claim any contractual interest in this dispute. The *Court Order Interest Act* applies to the CRT, but section 2(b) says pre-judgment interest must not be awarded if there is an agreement about interest between the parties, which I find is the case here. I award no pre-judgment interest.

31. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. MMS was substantially successful in its claim, so I find it is entitled to reimbursement of the $125 it paid in CRT fees. Neither party claims CRT dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order Mr. McKay to pay MMS a total of $1,474, broken down as $1,349 in debt and $125 in CRT fees.

33. MMS is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

34. 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.

35. 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.

Chad McCarthy, Tribunal Member