



Civil Resolution Tribunal

Date Issued: February 15, 2022

File: SC-2021-005868

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Desroches v. Reliable Towing Merritt Ltd.*, 2022 BCCRT 171

B E T W E E N :

GARY DESROCHES

APPLICANT

A N D :

RELIABLE TOWING MERRITT LTD. and BRITISH COLUMBIA
AUTOMOBILE ASSOCIATION

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about towing services following a December 26, 2020 motor vehicle incident. The applicant, Gary Desroches, says the respondent Reliable Towing Merritt Ltd. (Reliable) was negligent in the way it towed his car out of a snowbank. As discussed further below, Mr. Desroches has varied the amount he claims a number of times and now says he claims \$374.42.
2. The respondent British Columbia Automobile Association (BCAA) hired Reliable as an independent contractor as part of BCAA's Road Assist services. The respondents deny any negligence and say any towing charges and related expenses are Mr. Desroches' responsibility.
3. Mr. Desroches is self-represented. Reliable is represented by an employee or principal. BCAA is represented by C. Andrew Guerra, its in-house legal counsel.
4. For the reasons that follow, I dismiss Mr. Desroches' claim.

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). 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.
6. CRTA section 39 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.

7. Under CRTA section 42, 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 CRTA section 118, 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.
9. In the Dispute Notice that started this dispute, Mr. Desroches claimed a total of \$2,947.95 for alleged vehicle damage from Reliable's towing and related expenses. The Insurance Corporation of British Columbia (ICBC) wrote off Mr. Desroches' vehicle and so he revised his claim to \$322.42 for expenses and "damage from towing". In his later submissions, Mr. Desroches increased his claim to \$1,583.97, still excluding the vehicle repair charge but including an alleged traffic control charge. In his final reply submission, he reduced the claim again, to \$374.42: a \$137.66 towing charge for bringing his car to Vancouver, a \$74.76 hotel charge, \$150 for a fan-belt replacement, and a \$12 taxi charge. Given my conclusion below, nothing turns on whether Mr. Desroches' claim is ultimately for \$374.42 or \$322.42.
10. I note Reliable submitted some evidence late. While it is marginally relevant (mostly photos of Mr. Desroches' car and the snowy accident scene), I allow it given the CRT's flexible mandate and because Mr. Desroches had the opportunity to comment on it and so is not prejudiced by it.

ISSUES

11. The issues are a) whether Reliable or BCAA negligently handled the towing of Mr. Desroches' car, and b) to what extent, if any, is Mr. Desroches entitled to the claimed damages.

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, as the applicant Mr. Desroches has the burden of proving his claim, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision. I note that BCAA did not submit any documentary evidence and instead adopts Reliable’s position.
13. Mr. Desroches describes the background events as follows. On December 26, 2020, Mr. Desroches was driving on the Coquihalla Highway in snowy and icy conditions. His car went off the road and into a snowbank. He called 911 and BCAA. Mr. Desroches says the RCMP informed the towing company, the respondent Reliable. After Reliable pulled his car out of the snowbank, another towing company “Morris” arrived on the scene and drove Mr. Desroches to Hope. Later, Reliable picked Mr. Desroches up and drove him, while towing his car, to Vancouver. I accept this evidence, as it is not disputed.
14. Reliable and BCAA say the steps Reliable took were necessary and reasonable for the weather and they deny Reliable was negligent. In essence, Mr. Desroches says Reliable’s alleged negligence caused him to incur additional expenses as a result of his car not being driveable after Reliable pulled it out of the snowbank. I turn to Mr. Desroches’ allegations below.
15. First, Mr. Desroches says the Morris driver told him Reliable damaged his car’s bumper. Mr. Desroches says that Morris later refused to assist him for this dispute and appears to suggest that the CRT should pursue this evidence on his behalf. Parties are told by CRT staff that they must provide all relevant evidence, and Mr. Desroches did not seek a summons or production order that Morris provide evidence. Given this claim’s relatively low value and this dispute’s late stage, I find it would be disproportionate to pursue Morris’ evidence now and I decline to do so.
16. Next, some of Mr. Desroches’ ultimate complaint appears to be because Reliable’s staff asked him for his credit card before it would begin its towing work. I find

nothing unusual or legally wrong about this, as Reliable reasonably wanted to ensure it would be paid for its work.

17. Next, Mr. Desroches essentially argues that Reliable's method of towing his vehicle out of the snowbank was negligent and damaged his car. He also says they took too long and needlessly engaged traffic control measures. Mr. Desroches also alleges Reliable's towing damaged his car's fan belt and says Reliable "doctored" his bumper to make it look like snow damage rather than "incompetent" towing damage. As noted, Mr. Desroches no longer claims for the car's damage as ICBC wrote off his vehicle.
18. Again, Mr. Desroches no longer claims \$1,259.55 for the traffic control charge and submitted no evidence he was ever billed or paid for this charge. So, I find nothing turns on a traffic control charge.
19. Further, I find there is nothing obviously negligent about Reliable's towing method or the 5 hours Mr. Desroches says it took to extract his car from the snowbank. I say the same about Reliable's later tow of Mr. Desroches' vehicle to Vancouver. I find whether Reliable was negligent requires expert evidence and here there is none (see *Bergen v. Guliker*, 2015 BCCA 283). While Mr. Desroches says he has had a "little" experience towing vehicles in his past, I find this does not qualify him as an expert under the CRT's rules. In any event, he is not sufficiently neutral to be an expert as he is an interested party.
20. Significantly, Mr. Desroches did not submit any documentary evidence apart from his own typed narrative of what happened, a Google maps overview, a typed summary of calls to and from Reliable and BCAA, and his own hand-drawn map of the accident scene. He submitted no proof his fanbelt was damaged or that his bumper had been "doctored", such as a statement from a mechanic. He also submitted no receipts or invoices to support his other claimed damages, such as for the \$12 taxi charge, the \$74.76 hotel charge, or the \$137.66 towing charge to Vancouver.

21. Given the above, I find Mr. Desroches has not proven Reliable was negligent in how it towed his car out of the snowbank or in how long it took to do so. While Mr. Desroches speculates BCAA is responsible for allegedly inflating this towing job, I find there is no evidence to support this serious assertion. I also find Mr. Desroches has failed to prove his claimed damages. So, I find Mr. Desroches' claim must be dismissed.
22. 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. As Mr. Desroches was unsuccessful, I dismiss his claim for reimbursement of CRT fees. The respondents did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

23. I dismiss Mr. Desroches' claim and this dispute.

Shelley Lopez, Vice Chair