



Civil Resolution Tribunal

Date Issued: June 27, 2022

File: SC-2021-008755

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mario's Towing Ltd. v. Madbee Contracting Ltd.*, 2022 BCCRT 741

BETWEEN:

MARIO'S TOWING LTD.

APPLICANT

AND:

MADBEE CONTRACTING LTD. and JOSEPH MENZIES

RESPONDENTS

AND:

MARIO'S TOWING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about unpaid towing and moving services, and related property damage. The respondent and applicant by counterclaim, Madbee Contracting Ltd. (MBC), hired the applicant and respondent by counterclaim, Mario's Towing Ltd. (MTL), to move certain items with MTL's truck on 5 occasions. The respondent Joseph Menzies is MBC's employee or principal. During the first move, an MBC item carried on MTL's truck snagged an overhead electricity line and fell off. MTL says it repaired the item's damage, but MBC has not paid for that move or the 4 later moves. MTL claims \$1,452.13 for the unpaid moves.
2. The respondents admit that MBC has not paid for the moves, because they say MTL owes additional amounts for the accident. MBC counterclaims against MTL for \$4,700: \$2,200 for further item damage and \$2,500 for power line damage. MTL denies owing anything further, and says other damage was pre-existing or unproven.
3. In this dispute, MTL is represented by an authorized employee. Mr. Menzies represents both himself and MBC.

JURISDICTION AND PROCEDURE

4. These are the formal 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. 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.

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.

ISSUES

8. The issues in this dispute are:
 - a. Are the respondents responsible for MTL's moving charges totalling \$1,452.13?
 - b. Is MTL responsible for the power line accident and resulting damage?
 - c. If so, did MTL fail to fully repair the accident damage, and does it owe an additional \$4,700 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, MTL must prove its claim on a balance of probabilities, meaning “more likely than not.” MBC must prove its counterclaim to the same standard. I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. At the outset, I note that MTL’s claim is for unpaid invoices, which the evidence shows were all issued to MBC and not Mr. Menzies. I find the evidence does not show that Mr. Menzies personally contracted with MTL for the moving work. Although MTL

alleges that Mr. Menzies was negligent in not identifying an overhead power line hazard to MTL's driver, even if true, I find this does not mean that Mr. Menzies is personally responsible for paying MTL's invoices. I dismiss MTL's claim against Mr. Menzies.

11. The undisputed evidence is as follows. MTL agreed to provide a truck and employee driver to move a "sea can", which I infer is a multi-modal shipping container, within MBC's storage yard on March 3, 2020. MBC told the driver, DJ, that a "sled deck" was on top of the sea can. From submitted photos, the sled deck appears to be an accessory onto which vehicles or equipment may be loaded or transported. In an April 7, 2022 written statement, DJ said that he initially told MBC that MTL did not move containers with items on top of them, but he agreed to do so after others secured the sled deck to the container. I find there is no evidence supporting MTL's allegation that Mr. Menzies "insisted" the container be moved with the sled deck, or that the sled deck was improperly secured to the container.
12. DJ loaded the sea can and attached sled deck onto the MTL truck, and drove the route MBC indicated, with Mr. Menzies' family member, PS, in the passenger seat. Neither Mr. Menzies nor PS warned DJ about the presence of an overhead power line along the route. Despite driving at a "slow and cautious speed," DJ drove under the power line, which caught the sled deck, causing it to detach and fall to the ground. Submitted photos show that after the accident, part of the sled deck's tubular metal upper rail snapped off near a joint, and the power line sagged to within a few feet of the ground.

Is MBC Responsible for \$1,452.13 in Moving Charges?

13. It is undisputed that MBC did not pay for the March 3, 2020 move, or for 4 other moves later in 2020 that MBC requested and MTL provided. Submitted invoices show that the 5 moves' costs equal the \$1,452.13 MTL claims. MBC does not say that MTL failed to complete the moves as specified, with the exception of the sled deck accident. Further, MBC does not say it was improperly charged for those moves. MBC only says that it has not paid because MTL owes it for accident damage.

14. On the evidence before me, I find that MBC completed the 5 moves substantially as agreed. So, subject to any deductions for accident-related damage, discussed below, I allow MTL's claim for \$1,452.13.

Is MTL Responsible for the Accident and Resulting Damage?

15. MBC says MTL, through its driver DJ, is responsible for the accident. I find MBC claims, essentially, that DJ negligently failed to keep a proper lookout, which resulted in the power line snag and resulting damage.

16. To prove negligence, MBC must show that MTL owed MBC a duty of care, MTL breached the standard of care, MBC sustained damage, and the damage was caused by MTL's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).

17. I accept that MTL (through its employee DJ) owed MBC a duty of care to ensure that the operation of MTL's truck did not damage MBC's property. The standard of care is not perfection, but rather what would be expected of an ordinary, reasonable, and prudent person in the same circumstances. The particular facts of the dispute determine whether MTL acted reasonably.

18. Here, I find the evidence shows that the overhead power line was clearly visible. Photos taken after the accident show it was a clear, sunny day, and the power line was in a meadow-like area with no visual obstructions. I find the power line was there to be seen, although I accept DJ did not notice it. In failing to notice the power line, I find DJ failed to keep a proper lookout, despite operating a vehicle with a relatively tall load and a protruding sled deck. I find this failure by MTL's employee was a breach of the standard of care by MTL. I find this breach resulted in DJ driving under the power line and dragging the sled deck onto the ground, damaging it.

19. MTL says that Mr. Menzies or MBC owed MTL a duty to warn it about the "low lying" power line. I find there is no evidence before me showing the height of the power line or the loaded sled deck, so I find it is unproven that the power line was at an unusually low height. MTL also says that MBC was responsible for ensuring that the delivery

route was safe and clear of obstacles, and for providing warning signs about the maximum height of loads on the route, but provided no authority for that argument. I find the evidence does not show that MBC, including through Mr. Menzies, provided any assurances that the moving route was free from overhead obstacles, or that it knew or should have known that the loaded truck would not fit under the power line. I find MBC was not responsible for investigating or identifying potential overhead hazards on behalf of MTL, and that MTL was solely responsible for safely navigating its loaded truck.

20. So, I find MTL is liable in negligence for damage caused by the accident.

Does MTL Owe \$4,700 For Unrepaired Damage?

21. It is undisputed that MTL paid to repair the broken sled deck rail, as shown in an October 8, 2020 invoice for \$980 from Excel Metal Fab. As noted, MBC counterclaims \$4,700 for additional repair costs.

22. MBC says MTL did not repair damage to the sled deck's side rail. I find submitted photos show a very slight bend in a different rail than the one MTL paid to repair, and paint scratches along the length of that rail. It is undisputed that the sled deck landed upside down, so I find the deck rails likely contacted the ground and the sled deck's floor did not. However, I find the sled deck appeared to be used, and there is similarly heavy scratching on its floor as there is on the rail's paint, despite the floor not hitting the ground in the accident. I find both the rail and floor scratches appear to be consistent with repeatedly dragging heavy items over them. I find the rail scratches are numerous and in more than one direction, contrary to what one would expect from a single drop from a very slowing-moving vehicle. There are no photos or other evidence of the rail's condition prior to the accident. Finally, it is not clear what type of surface the sled deck landed on, but submitted accident area photos show tall grass rather than asphalt or gravel, which I find is unlikely to have caused the rail scratches shown in the photos.

23. On balance, I find the slight side rail bend and paint scratches were likely pre-existing damage and were not caused by the accident. Further, even if I had found that this was accident-related damage, MBC provided no evidence showing the actual or estimated cost of repairing that damage, despite being reminded by CRT staff of the importance of proving damage claims with evidence.
24. Turning to power line damage, as noted, photos show that a power line sagged close to the ground after the accident. PS said in a written statement that a “hydro wire” sagged low in 3 different locations and a pole was tilted. However, I find the submitted photos do not appear to show 3 separate areas of power line sag, and the pole does not appear to have a significant tilt. Further, there are no receipts, invoices, estimates, or other evidence before me showing the actual or likely cost of any power line repairs. PS said that he and Mr. Menzies spent the rest of March 3, 2020 “getting the hydro wire corrected for safety”, but nothing in the submissions or evidence says whether they made these corrections themselves or hired someone else to do them. Nothing before me indicates what type of power line repairs were allegedly performed, or how much they cost (if anything), other than MBC’s unsupported submission that they cost \$2,500. I find there is insufficient evidence before me showing that MBC paid or owes anything for power line repairs.
25. For the above reasons, I dismiss MBC’s counterclaim for \$2,200 in additional sled deck repairs and \$2,500 in power line repairs.

CRT Fees, Expenses, and Interest

26. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, MTL is entitled to pre-judgment interest on the \$1,452.13 owing, reasonably calculated from the date of its August 4, 2021 email requesting immediate payment of that amount, until the date of this decision. This equals \$5.87.
27. 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. Here, I see no reason to depart from that general rule. MTL

was successful in its claim against MBC, so I find MBC must reimburse the \$125 MTL paid in CRT fees for that claim. Mr. Menzies paid no CRT fees for that claim. MBC was unsuccessful in its counterclaim, so I find it is not entitled to reimbursement of any paid CRT fees. No party claimed CRT dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order MBC to pay MTL a total of \$1,583, broken down as follows:
 - a. \$1,452.13 in debt,
 - b. \$5.87 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. MTL is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. I dismiss MTL's claim against Mr. Menzies, and MBC's counterclaim.
31. 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.

32. 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