



# Civil Resolution Tribunal

Date Issued: July 11, 2022

File: SC-2021-009167

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mario's Towing Ltd. v. 583529 BC Ltd.*, 2022 BCCRT 791

BETWEEN:

MARIO'S TOWING LTD.

**APPLICANT**

AND:

583529 BC LTD., JOSE CALAO and DAVID DILIGENTI

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

### INTRODUCTION

1. This dispute is about unpaid towing services.
2. The applicant, Mario's Towing Ltd. (MTL), says it towed a vehicle owned by the respondent, David Diligenti, to an auto repair shop operated by the respondent, 583529 BC Ltd.'s (583). MTL says the respondent, Jose Calao, told MTL that 583

would pay for MTL's towing services. MTL says it has not been paid, and claims \$749.50 for its unpaid invoice.

3. 583 says it agreed to have David Diligenti's vehicle towed to its auto repair shop by MTL, but denies that it agreed to pay for the towing services.
4. As discussed below, David Diligenti and Jose Calao did not file Dispute Responses as required, and are technically in default.
5. MTL is represented by an authorized employee. 583 is represented by an employee or principal, LC. As noted, David Diligenti and Jose Calao did not participate in this dispute.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the others. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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**

10. The issue in this dispute is whether any of the respondents are responsible to pay MTL's towing service charges totaling \$749.50.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant MTL must prove its claims on a balance of probabilities (meaning more likely than not). I note that 583 did not provide any evidence despite being provided with the opportunity to do so. I have read all the parties' submissions and MTL's evidence but refer only to what I find relevant to provide context for my decision.
12. At the outset, I note that MTL's claim is for an unpaid invoice, which the evidence shows was issued to "Precision Auto". MTL also refers to "Precision Auto Ltd" throughout its submissions. "Precision Auto Ltd" is not a named party to this dispute. However, 583 does not argue that it is not a proper party to this dispute, and refers to itself as Precision Auto in its Dispute Response. So, although MTL's invoice lists

Precision Auto, I find it undisputed that MTL issued its invoice for towing services to 583 and 583 is a proper party to this dispute.

13. MTL named 583, Jose Calao, and David Diligenti as respondents in this dispute. I will now address whether any of the respondents are responsible for MTL's invoice.

***Is Jose Calao responsible for MTL's invoice?***

14. I will first address Jose Calao's liability. The CRT served them by regular mail at the address provided by MTL, which is the same address as 583. Under the CRT's rules, the Dispute Notice was deemed served on Jose Calao on December 21, 2021. The CRT also sent the Dispute Notice to an email address that matches the email address provided by 583 in its Dispute Response. Jose Calao did not file a Dispute Response within 14 days, as required under the CRT's rules.

15. Given Jose Calao's failure to file a Dispute Response, they are in default. However, despite this default status, I find they are not responsible for MTL's claims, as discussed below.

16. Based on the evidence and submissions, I find that Jose Calao is 583's employee or principal. Although MTL alleges that Jose Caleo told MTL that 583 would pay for the towing services, I find the evidence does not show that Jose Calao personally agreed to pay for MTL's towing services.

17. At law, officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See: *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. MTL did not allege that Jose Caleo committed a wrongful act independent of 583. So, I dismiss MTL's claims against Jose Caleo personally.

***Is 583 responsible for MTL's invoice?***

18. MTL says 583 agreed to pay for the towing services.

19. MTL says the vehicle's owner, David Diligenti, called MTL's dispatcher and requested a tow service for their vehicle from the Coquihalla Highway to 583's auto repair shop in West Kelowna at 4:08 pm on February 21, 2022. MTL says its dispatcher then spoke to Jose Calao at 583's auto repair shop at 4:14 pm the same day. MTL says Jose Calao confirmed that 583 would accept the charges for the tow services and provided a purchase order number to MTL.
20. MTL says it towed the vehicle to 583's auto repair shop, and only left the vehicle without obtaining payment for its towing services because 583 provided a purchase order number. MTL says its policy is to require credit card payment for customers who do not have a charge account with MTL. MTL says it has a history of working with 583, and says if 583 had not provided a purchase order number and agreed to pay, MTL would have insisted on credit card payment before leaving the vehicle.
21. As noted, 583 says that while it agreed to have the vehicle towed to its auto repair shop, it did not agree to pay for the towing services. However, I find 583's submissions are contradicted by MTL's dispatch call log, which specifically noted in the "Driver Memo" field that the towing services should be charged to 583. It also noted in the "Comments" field that 583 was accepting the charges and gave a "PO#", which I infer means purchase order number. 583 did not address the dispatch call log in its submissions. The dispatch call log is a document created by MTL, and it is hearsay evidence. However, the CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In the circumstances, I find MTL's dispatch call log the best evidence of MTL and 583's verbal agreement. I also find that it is consistent with MTL's submissions explaining how it collects payment for its towing services.
22. 583 also says it was not contacted about the towing service charges until 6 months later. MTL says it emailed the invoice to 583 on February 28, 2020, and then sent regularly monthly statements beginning in March 2020. MTL did not provide the February 28, 2020 email in evidence. However, I find other emails confirm 583

received the invoice by May 20, 2020, at the latest. Given this, I find nothing turns on the alleged delay in receiving MTL's invoice.

23. Based on the submissions and MTL's evidence, I find MTL has proved on balance that 583 agreed to pay for the towing service charges.
24. MTL's February 21, 2020 invoice charged a total of \$749.50 to tow a Dodge Ram 2500 from the "old toll booth #5" on the Coquihalla Highway to 583's auto repair shop in West Kelowna. The invoice charged 4.5 hours at \$135 per hour for "recovery", plus a 17.5% fuel surcharge, and GST. 583 does not dispute MTL's invoiced amount, and I find the invoiced amount is not obviously unreasonable. So, I find 583 must pay MTL \$749.50 for its unpaid invoice.

***Is David Diligenti responsible for MTL's invoice?***

25. Lastly, I turn to David Diligenti's liability. The CRT served them by regular mail at the address provided by MTL. Under the CRT's rules, the Dispute Notice was deemed served on David Diligenti on December 21, 2021. David Diligenti did not file a Dispute Response within 14 days, as required under the CRT's rules.
26. Given David Diligenti's failure to file a Dispute Response, they are in default. However, despite this default status, I find they are not responsible for MTL's claims. My further reasons follow.
27. As noted, MTL says 583 agreed to pay for its towing services, and MTL's invoice issued to 583. MTL says 583 told MTL to pursue David Diligenti for payment. However, MTL does not allege that MTL and David Diligenti ever had an agreement that David Diligenti would pay for its towing services, and I have already found that 583 agreed to pay for MTL's towing services, not David Diligenti.
28. A person must agree to a contract's terms in order to be bound by them. Here, I find the submissions and evidence do not establish that David Diligenti ever agreed to pay MTL for the towing services. Further, David Diligenti is not listed on the invoice, and there is no evidence that MTL ever provided the invoice to David Diligenti.

Therefore, I find David Diligenti is not liable for MTL's invoice. I dismiss MTL's claims against David Diligenti.

***CRT fees, expenses and interest***

29. The *Court Order Interest Act* applies to the CRT. MTL is entitled to pre-judgment interest on the \$749.50 from March 21, 2021, reasonably calculated from 30 days following the date of its invoice to the date of this decision. This equals \$4.40.

30. 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. I see no reason in this case not to follow that general rule. I find MTL is entitled to reimbursement of \$125 in CRT fees. MTL did not claim any dispute-related expenses, so I award none.

**ORDERS**

31. Within 30 days of the date of this order, I order 583 to pay MTL a total of \$878.90, broken down as follows:

- a. \$749.50 in debt,
- b. \$4.40 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

32. MTL is entitled to post-judgment interest, as applicable.

33. I dismiss MTL's claims against Jose Calao and David Diligenti.

34. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Leah Volkens, Tribunal Member