



Civil Resolution Tribunal

Date Issued: November 18, 2022

File: SC-2021-0008752

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mario's Towing Ltd. v. HAP Enterprises Ltd.*, 2022 BCCRT 1247

BETWEEN:

MARIO'S TOWING LTD.

APPLICANT

AND:

HAP ENTERPRISES LTD. and HAP TRUCKING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about payment for towing services.
2. The applicant, Mario's Towing Ltd. (MTL), says it provided towing and cargo recovery services for one or both respondents, HAP Enterprises Ltd. (HAP Enterprises) and

HAP Trucking Ltd. (HAP Trucking). MTL claims \$3,975.75. MTL is represented by an employee.

3. The respondents deny liability. In its Dispute Response filed at the outset of this proceeding, Hap Enterprises said the equipment towed did not belong to HAP Enterprises. In its Dispute Response, HAP Trucking said the claim reflects services requested by HAP Enterprises, and HAP Trucking “doesn’t have any idea about this claim.” Neither respondent provided evidence or submissions. Each respondent is represented by a business contact.

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. 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.

ISSUE

8. The issue in this dispute is whether either respondent is responsible for MTL's \$3,975.75 service charges.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, MTL must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Neither respondent provided submissions or evidence despite having the opportunity to do so.
10. MTL says on March 11, 2020, a truck and trailer owned by one or both respondents struck another commercial vehicle on a highway, causing significant damage. The trailer was loaded with cases of wine.
11. MTL says it was dispatched (it does not say by whom) to recover and tow the tractor, trailer, and cargo. MTL issued a separate invoice to "HAP TRUCKING" for each. ICBC paid the invoices for towing the tractor and trailer.
12. Emails show that MTL sought payment from HAP Trucking for cargo recovery. HAP Trucking advised MTL to seek payment from ICBC. MTL said ICBC advised that the cargo was not covered under HAP Trucking's insurance. Over the next several months, MTL unsuccessfully tried to get HAP Trucking to pay the invoice.
13. MTL submits that HAP Trucking is also known as HAP Enterprises and HAP Transportation Group Ltd. However, it provided no evidence confirming that HAP Trucking operates under different names. Nothing in the evidence suggests the HAP companies are not distinct legal entities. The common law concept of privity of

contract says that as a general rule, a contract cannot give rights or impose obligations on a person who is not a party to the contract. So, the question is which HAP entity, if any, contracted with MTL for the cargo recovery.

14. On the evidence before me, I find MTL contracted with HAP Trucking. First, the ICBC trailer and tractor towing invoices identify HAP Trucking as the registered owner of the truck and trailer. Second, in an April 7, 2020 email, a person whose email signature identified them as representing HAP Trucking Ltd. asked MTL to make the cargo recovery invoice out to HAP Trucking. Third, when MTL continued to demand payment, a different person with the same HAP Trucking Ltd. email signature confirmed in a June 17, 2021 email that the invoice was “under consideration” as there was a claim outstanding. In none of the emails in evidence did Hap Trucking ever deny hiring MTL or deny responsibility for the cargo recovery invoice should ICBC not pay. So, I find MTL contracted with HAP Trucking. I find there is insufficient evidence that HAP Enterprises was a party to the cargo recovery contract, so I dismiss the claim against HAP Enterprises.
15. So, is MTL entitled to the claimed \$3,975.75 as invoiced? MTL gave HAP Trucking a detailed breakdown of the charges. The charges included 6 workers for 8 hours each at \$40.31 per hour, a coordinator for 8 hours at \$65 per hour, a forklift rental, trailer relocation charge and a fuel surcharge.
16. There is no written contract in evidence, and no evidence about any terms the parties verbally agreed to. However, I accept that HAP Trucking asked MTL to recover the cargo, which HAP Trucking does not specifically deny other than its general assertion that it does not have “any idea” about the claim, which I have rejected above. I find the essential elements of a contract were present, even if the parties did not expressly agree on the recovery rates and charges.
17. A binding contract may still exist even if the parties do not agree on remuneration. In such cases, the principle of contractual *quantum meruit* applies. This means MTL Trucking is entitled to be paid a reasonable amount for the services it provided (see *Infinity Steel Inc. v. B & C Steel Erectors Inc.*, 2011 BCCA 215). As HAP Trucking

does not dispute any of the charges on the invoice, and none of the charges are obviously unreasonable, I accept that the invoice reflects what MTL should be paid under *quantum meruit*. I order HAP Trucking to pay MTL \$3,975.75.

18. Had I found there was no enforceable contract because the parties did not agree on the fundamental term of what the services would cost, I would find restitutionary quantum meruit applied. I would arrive at the same result because the same factors would be material to the quantification (see *Infinity Steel* at paragraph 24).
19. The *Court Order Interest Act* applies to the CRT. MTL is entitled to pre-judgment interest on the \$3,975.75 from March 30, 2020, when it became payable, to the date of this decision. This equals \$64.54.
20. 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 find HAP Trucking must reimburse MTL its \$175 in CRT fees. I dismiss MTL's claim for the \$25 default decision fee given it originally named HAP Enterprises and not HAP Trucking. For the same reason, I order MTL to reimburse HAP Enterprises \$50 for the default decision cancellation fee. None of the parties claimed any dispute-related expenses.

ORDERS

21. Within 14 days of the date of this order, I order HAP Trucking to pay MTL a total of \$4,215.29, broken down as follows:
 - a. \$3,975.75 in debt,
 - b. \$64.54 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in CRT fees.
22. MTL is entitled to post-judgment interest, as applicable.

23. Within 14 days of the date of this order, I order MTL to pay HAP Enterprises \$50 in CRT fees.
24. HAP Enterprises is entitled to post-judgment interest, as applicable.
25. I dismiss MTL's claims against HAP Enterprises.
26. 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.

Micah Carmody, Tribunal Member