



Civil Resolution Tribunal

Date Issued: May 17, 2023

File: SC-2022-005412

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mario's Towing Ltd. v. Fournier*, 2023 BCCRT 414

B E T W E E N :

MARIO'S TOWING LTD.

APPLICANT

A N D :

MAURICE FOURNIER (Doing Business As JKM TRUCKING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for tractor-trailer towing. The applicant, Mario's Towing Ltd. (MTL), says it provided towing services to the respondent, Maurice Fournier (Doing Business As JKM Trucking). MTL says that Mr. Fournier refused to pay its invoice without justification. It seeks an order for the \$441 balance owing.

2. Mr. Fournier agrees that MTL towed his tractor-trailer. However, he says MTL did so without his authorization. He also says that MTL charged an unreasonable amount. He denies liability for those 2 reasons.
3. A manager represents MTL. Mr. Fournier represents himself.
4. For the reasons that follow, I find MTL has proven its 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). 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.
6. 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.
7. 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.
8. 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

9. The issue in this dispute is whether Mr. Fournier must pay MTL \$441 for towing services.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, MTL as the applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Fournier provided no documentary evidence though he had the opportunity to do so.
11. MTL's invoice shows the following. On January 7, 2022, MTL towed Mr. Fournier's Kenworth tractor trailer truck. It was in a snowbank or ditch next to the highway at the time. MTL towed it onto the road and charged Mr. Fournier a total of \$441.
12. MTL undisputed submission is that Mr. Fournier's employee drove Mr. Fournier's truck at the time.
13. The parties agree on the following. The truck required towing. However, neither Mr. Fournier nor his driver called MTL to do the work. Instead, MTL's tow truck and driver happened to be in the area. Mr. Fournier's driver was present and spoke to MTL's driver. Mr. Fournier was not present. Aside from the invoice, the parties did not document the agreement. No one discussed the price or contract terms before MTL did the work and issued its invoice. As stated earlier, Mr. Fournier disputes whether MTL had proper authorization to proceed. I discuss this further below.
14. In January 2022 the parties exchanged emails. They show MTL requested payment of the invoice. Mr. Fournier disagreed and said MTL 1) charged an unreasonable amount, 2) should have provided an estimate beforehand, and 3) should have sought authorization from Mr. Fournier for the work.

Must Mr. Fournier pay MTL \$441 for work done?

15. Mr. Fournier says MTL should have contacted him first before it started work. He says his driver told MTL's driver to contact Mr. Fournier before MTL started the work. He says his driver permitted MTL to tow the truck because the driver wrongfully assumed MTL had called Mr. Fournier and received authorization. MTL says its tow truck driver advised that he never received such instructions and would not have performed the task without approval.
16. Neither party provided any statements from their drivers. In the absence of such evidence, I find the most likely explanation is that MTL's driver asked Mr. Fournier's driver if they wanted Mr. Fournier's truck towed, and they responded yes. This is because I find it unlikely that MTL would tow the truck without the driver's request and permission to do so. I also find it unlikely that MTL's driver would simply ignore a request to contact Mr. Fournier first, so I find no such request was made.
17. This does not end the matter. To prove the parties' contract, MTL must show that Mr. Fournier's driver could bind Mr. Fournier in a contract with MTL. In *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, the court explained that an employee can bind an employer when the employee has actual or ostensible authority.
18. Actual authority is the authority which an employer gives its employee under an express or implied agreement between employer and employee. Ostensible authority exists where the employer represents to third parties that another person has authority to bind the employer. The representation may take a variety of forms, including conduct. Ostensible authority is often found to exist where the act in question falls within the ordinary duties of the employee. Similarly, ostensible authority may arise when the employer places the employee in a position which in the outside world is generally regarded as carrying authority to enter into transactions of the kind in question. See *R & B Plumbing & Heating Ltd.* at paragraph 85.
19. I find the evidence proves that Mr. Fournier's employee had at least ostensible authority to bind Mr. Fournier. This is because Mr. Fournier placed their employee in

a position that the outside world would generally regard as having authority to hire a tow truck. First and foremost, Mr. Fournier employed the driver to drive the truck. He also placed a prominent decal on the truck that said “JKM TRUCKING”, which is a name Mr. Fournier does business as. Photos show that it was still snowing at the time. I find the outside world would conclude that the employee driver’s ordinary duties included safeguarding or moving their employer’s truck in these circumstances, and could bind their employer in a contract with a tow truck company.

20. In less clear or compelling circumstances I might have concluded that MTL required evidence of the normal customs or standards of truck drivers. See *G.R.A.M. Contracting Ltd. v. Biosource Power Inc.*, 2014 BCSC 350 at paragraph 30. However, I find it unnecessary here as the situation is unambiguous.
21. For these reasons, I find that Mr. Fournier’s employee driver bound Mr. Fournier into the towing contract with MTL. As such, it was not necessary for MTL to contract Mr. Fournier or provide an estimate beforehand.
22. Mr. Fournier also says that MTL’s invoice was unreasonable. As the parties did not agree on a price beforehand, I find that the parties agreed that MTL would charge a reasonable fee for the services provided. See, for example, *Hodder Construction (1993) Ltd. v. Topolnisky*, 2021 BCSC 666.
23. Mr. Fournier provided no evidence, such as a competitor’s estimate, to show the price was unreasonable. As MTL towed a semi-trailer and not a smaller vehicle, I do not find it obvious that the invoice amount is unreasonable. Under these circumstances, I find the best evidence of a reasonable price is MTL’s invoice. So, I order Mr. Fournier to pay MTL \$441.
24. The *Court Order Interest Act* applies to the CRT. MTL is entitled to pre-judgment interest on the debt of \$441 from January 28, 2022, the date MTL emailed a demand for Mr. Fournier to pay the invoice, to the date of this decision. This equals \$11.98.
25. 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. The parties did not claim any specific dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Fournier to pay MTL a total of \$577.98, broken down as follows:

- a. \$441 in debt,
- b. \$11.98 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

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

28. 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.

David Jiang, Tribunal Member