



Civil Resolution Tribunal

Date Issued: October 16, 2023

File: SC-2022-008358

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Micro Logistics Group Inc. v. Montagano*, 2023 BCCRT 883

BETWEEN:

MICRO LOGISTICS GROUP INC.

APPLICANT

AND:

MARIA MONTAGANO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about residential moving services.
2. The applicant, Micro Logistics Group Inc. (Micro) says that the respondent, Maria Montagano, failed to pay for moving services it provided to her. Micro Logistics claims \$505.75.

3. In the Dispute Response filed at the outset of this proceeding, Ms. Montagano said Micro quoted \$250 for the move, with 2 men for 2 hours. She said the movers were late arriving and then took significantly longer than 2 hours to complete the move. Ms. Montagano said Micro initially agreed to accept \$300 but later refused it and demanded she pay more. Ms. Montagano said that because the movers declined her offer, she should not have to pay anything.
4. As discussed below, after filing the Dispute Response, Ms. Montagano later chose not to provide any documentary evidence or written submissions.
5. Micro is represented by an employee or principal. Ms. Montagano is self-represented.

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.
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. 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.
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 parties and inform itself in any other way it considers appropriate.

Standing

9. On my initial review of the evidence, I noted that the name on all of Micro's evidence, including its estimate, invoices, and email correspondence, was "Micro Moves Inc.". This raised the question of whether Ms. Montagano had contracted with a company other than Micro, and if so, whether Micro had standing (the legal right) to bring this claim. Through CRT staff, I asked for Micro's submissions about Micro Moves Inc.'s role in this dispute. Micro said that "Micro Moves Inc." is not a registered corporation, but is a trade or branding name only, and that Micro's logo using "Micro Moves Inc." is a registered trademark. Ms. Montagano was given the opportunity to respond to Micro's submissions on this issue, and she said only that her internet search showed the respondent as "Micro Moves Inc.".
10. I accept Micro's explanation that the use of "Micro Moves Inc." in the evidence is a branding name only. I am satisfied that Ms. Montagano contracted with Micro for moving services, noting that she has not disputed that Micro is the correct applicant. So, I find it is appropriate to decide this dispute on its merits.

Applicable law and forum selection

11. I also note that the parties' contract contains both a forum selection clause and a choice of law clause. Specifically, the contract says that any legal action or proceeding arising out of the contract must be brought in the court of the Province of Ontario and that the laws of Ontario must be applied.
12. Neither party raised the applicability of these contractual clauses. Given the choice of law clause in the parties' contract, I find that the law of Ontario applies to this dispute. That said, I find this dispute is about an alleged breach of contract and the applicable common law is essentially the same in BC and Ontario.
13. As for the forum selection clause, I find the evidence shows the contract between Micro and Ms. Montagano was made in BC, and the alleged breach of contract occurred in BC. Neither party suggested that BC was an inconvenient forum or that the CRT should not hear this dispute. In the circumstances of this case, I find that the

parties attorned or agreed to the CRT having jurisdiction over this dispute. Further, noting the reasoning in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, I find that there are sufficient connecting factors and territorial competence for the CRT to assume jurisdiction. For these reasons, I find that the CRT's jurisdiction under the CRTA permits me to decide this contractual dispute.

ISSUE

14. The issue in this dispute is to what extent, if any, Ms. Montagano owes Micro the claimed \$505.75 for moving services.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant Micro must prove its claims on a balance of probabilities (meaning "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. As noted above, Ms. Montagano did not provide any evidence or written argument, despite several reminders that she had the opportunity to do so.
16. The evidence shows Ms. Montagano called Micro on October 28, 2022, to assist her with a local move the following day. Micro's October 28 email to Ms. Montagano stated that it had placed October 29 at 6:00 pm on hold for her move. The email stated Micro's rate was \$119 plus GST per hour, which included 2 movers, an appropriate vehicle, gas, and mileage. The email included an underlined statement that the final price would be based on the hours taken to complete the service in real time. The email also asked Ms. Montagano to confirm the pick-up and drop-off addresses provided and that her inventory list consisted of several boxes (of clothing, dishes, and kitchen appliances) and some small furniture.
17. Micro also prepared an October 28, 2022 estimate, which Ms. Montagano signed the same day. I find this estimate became the parties' contract. It included much of the same information set out above from Micro's email. It specifically described Ms.

Montagano's small furniture as "like a stool, etc.". A special note stated that "the client only wants 1.5 hours, stop the clock at 1.5 hours". The estimate was \$187.43, for the requested 1.5 hours at Micro's rate of \$119 plus GST per hour.

18. The estimate also included 2 pages of pre-printed terms and conditions. Term 4 stated that the customer must ensure their information is complete and accurate, and that items to be moved are adequately packed to allow Micro to perform the services within the time allocated. Term 5 stated that any deficiencies in packing or organizing items to be moved that cause an increase in the time quoted may result in additional fees.
19. The evidence shows that the items Ms. Montagano wanted Micro to move were in a storage unit. Micro says that when it arrived at the storage facility on October 29, 2022, Ms. Montagano was not present, as she had promised to be, and the movers did not have the codes to get into the building. Micro says it took 30 minutes for the movers to gain access to the storage unit.
20. Ms. Montagano said in her Dispute Response only that Micro "showed up" 30 minutes late. Micro admits that it arrived 15 minutes late, at 6:15 pm. I find this is consistent with an October 31, 2022 email Micro sent Ms. Montagano after the move, setting out the move's events. There is no evidence that Ms. Montagano responded to that email. Overall, I accept that Micro started the move at 6:15 pm.
21. As Ms. Montagano chose not to provide any written submissions, I also accept Micro's uncontradicted submission that Ms. Montagano was responsible for a 30-minute delay in gaining access to the storage unit once Micro arrived.
22. Once inside the facility, Micro says it found Ms. Montagano's storage unit completely full and not properly packed or organized. I find the photo of the storage unit in evidence supports Micro's submission. That is, I find the unit was very disorganized with multiple loose items that could have been packed in boxes, various unpacked larger items, as well as several full garbage bags of belongings. In other words, I find

the inventory to be moved did not consist simply of “several boxes and some small furniture (like a stool)” that were adequately packed, according to the parties’ contract.

23. Micro undisputedly phoned Ms. Montagano while the movers were at the storage unit to advise her that they would be unable to complete the job within the estimated 1.5 hours. It is also undisputed that Ms. Montagano confirmed she wanted Micro to continue loading the remaining items and complete the move.
24. Ms. Montagano said in her Dispute Response that during this call, Micro agreed to accept a total of \$300 upon delivery, which Micro denies. More on this below.
25. Micro says that when it tried to deliver Ms. Montagano’s items, it discovered she had provided the incorrect delivery address, which caused further delay. Once it arrived at the correct delivery location, Micro says it discovered the service elevator was not booked. Micro says this further delayed the unloading process. As Ms. Montagano did not respond to these submissions, I find they are undisputed, and I accept that these events occurred as Micro described.
26. Micro says that once the movers completed the service, Ms. Montagano attempted to pay by credit card. Screenshots from Micro’s payment software show 3 unsuccessful attempts to pay \$531.04 by credit card at about 10:30 pm on October 29, 2022. Ms. Montagano admitted in her Dispute Response that she tried to pay with her friend’s card. I find that this suggests that Ms. Montagano agreed to the amount charged, and that the parties did not likely have a prior agreement for Ms. Montagano to pay only \$300, as she alleged.
27. While Ms. Montagano may have offered to pay \$300 in cash, I find Micro was not obligated to accept that offer. I find that Ms. Montagano breached the parties’ contract by failing to arrange timely access to the storage facility, failing to provide an accurate inventory list before the move, failing to properly pack and organize the items to be moved, providing the incorrect delivery address, and failing to book the elevator to ensure efficient unloading. Therefore, I find Micro was entitled to charge Ms. Montagano more than the 1.5 hours initially estimated.

28. The only invoice Micro provided in evidence was dated November 2, 2022. It totaled \$562.28, which was calculated based on 4.5 hours at its \$119 plus GST hourly rate. Micro did not explain the difference between the invoiced amount and the claimed \$505.75.
29. As noted, I find that Micro arrived at the storage facility to start the move at 6:15 pm. Given Ms. Montagano's failed payment attempts were at 10:30 pm, I find Micro was entitled to charge for at least 4.25 hours. At Micro's stated hourly rate, that equals \$531.04 including tax. However, as Micro claimed only \$505.75, I find it is limited to that lower amount. Therefore, I order Ms. Montagano to pay Micro \$505.75.
30. Micro initially claimed contractual prejudgment interest on the amount owing. However, in its submissions, Micro expressly stated that it was no longer seeking interest. Therefore, I find Micro has waived its interest claim, and so I do not award any prejudgment interest.
31. 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. As the successful party, I find Micro is entitled to reimbursement of \$125 in paid CRT fees. Ms. Montagano did not pay any fees, and neither party claimed dispute-related expenses.

ORDERS

32. Within 21 days of the date of this decision, I order Ms. Montagano to pay Micro a total of \$630.75, broken down as follows:
 - a. \$505.75 in debt, and
 - b. \$125 in CRT fees.
33. Micro is entitled to post-judgment interest, as applicable.

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.

Kristin Gardner, Tribunal Member