



# Civil Resolution Tribunal

Date Issued: October 24, 2023

File: SC-2022-008984

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abb Logistics Ltd. v. Avis Transport Ltd.*, 2023 BCCRT 909

B E T W E E N :

ABB LOGISTICS LTD.

**APPLICANT**

A N D :

AVISA TRANSPORT LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about an unpaid invoice. The applicant, Abb Logistics Ltd. (Abb), invoiced the respondent, Avis Transport Ltd. (Avis), \$5,500 for trucking services it provided in May 2022. Avis has not paid the invoice. Abb claims payment of the invoice, but expressly limits its claim to \$5,000, which is the small claims monetary limit at the Civil Resolution Tribunal (CRT).

2. Avisa agrees that it owes Abb for the services provided but claims a set-off of \$2,000 as repayment of a loan. Avisa says it has been waiting for Abb to send a revised invoice deducting the \$2,000 loan amount, but since Abb has not done so, it has not yet paid Abb.
3. Each party is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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.
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.
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.
8. In its submissions Avisa alleges that its representative in this dispute worked for Abb for 4 months but was not paid. However, Avisa did not file a counterclaim, and it provided no dates, details, or evidence about this allegation. Avisa's representative

is also not a party to this dispute. For these reasons, I decline to address the merits of these allegations in this decision.

## **ISSUE**

9. The issue in this dispute is whether Abb is entitled to \$5,000 for payment of its invoice, and if so, whether Avisia is entitled to a \$2,000 set-off for an unpaid loan.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Abb must prove its claims on a balance of probabilities, which means more likely than not. Abb was given the opportunity to provide reply submissions but chose not to do so. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
11. Between May 26 and 31, 2022, Abb undisputedly made 3 separate deliveries for Avisia. On June 20, 2022, Abb invoiced Avisia \$5,500 for the 3 deliveries. The invoice is in evidence. Avisia agrees that it owes Abb \$5,500 for the services it provided but says the invoice should have been reduced by \$2,000 to reflect a loan Abb owes Avisia. So, I find Avisia owes Abb the \$5,000 it claims in this dispute, subject to Avisia's set-off claim.
12. Avisia did not file a counterclaim, so I find it claims the \$2,000 as a set-off. An equitable set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. An equitable set-off may be applied when the desired set-off is connected closely enough with an applicant's claimed rights that it would be unjust to proceed without permitting one (*Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34). Since Avisia is claiming the set-off, it must prove its entitlement to any set-off amount.
13. Abb does not specifically dispute that it owes Avisia \$2,000 for a loan. It does not address the loan in its submissions despite Avisia having raised it in the Dispute

Response. As noted above, Abb did not provide reply submissions. Avisia submitted text messages which I find support its allegation that Abb owes it \$2,000. In one message Abb said, "I did work for u for \$5500 take ur \$2000 pay me rest \$3500" (reproduced as written). In the circumstances, I am satisfied that Avisia is entitled to a set-off of \$2,000.

14. Next, I must determine whether the \$2,000 should be set off from the \$5,000 Abb claims in this dispute, or the \$5,500 invoice amount. In *Klondike Contracting Corporation v. Abadian*, 2021 BCPC 145, the court found a party could provide evidence of damages above the BC Provincial Court's \$35,000 monetary limit even though the court could not order more than that amount. Previous CRT decisions have applied the same principle, noting that the CRTA uses the same language as the *Small Claims Act* (see *Kora Kitchen & Bath Design Ltd. v. Malekpour*, 2023 BCCRT 280, and *Fresh Coast Painting Inc. v. Van Steinburg*, 2023 BCCRT 756).
15. I agree with this approach. I find that the CRTA does not prevent the parties from providing evidence of debt or damages above \$5,000. It only prevents the CRT from ordering payment of over \$5,000. I am satisfied on the evidence before me that Avisia owes Abb the full \$5,500 invoice amount. So, I find Avisia's \$2,000 debt repayment must be set off from Abb's \$5,500 invoice amount. This means Abb is entitled to \$3,500 as payment of the invoice. I also note that in its submissions Avisia agrees to pay Abb \$3,500.
16. The *Court Order Interest Act* applies to the CRT. Abb is entitled to pre-judgment interest on the \$3,500 owing calculated from June 20, 2022, which is the invoice date, to the date of this decision. This equals \$162.72.
17. 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. Since Abb was generally successful, I find it is entitled to reimbursement of \$175 in CRT fees.

18. Abb also claims \$500 in legal fees as dispute-related expenses, but provided no evidence that it incurred these fees. CRT rule 9.5(3) says the CRT will not order one party to pay to another party any fees a lawyer has charged in the tribunal process, except in extraordinary circumstances. Abb does not allege that there are any extraordinary circumstances here, and I find there are not. I dismiss this claim.
19. Avisia did not pay any CRT fees or claim any dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this order, I order Avisia to pay Abb a total of \$3,837.72, broken down as follows:
- a. \$3,500 in debt,
  - b. \$162.72 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
21. Abb is entitled to post-judgment interest, as applicable.
22. I dismiss Abb's claim for reimbursement of its legal fees.
23. 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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Sarah Orr, Tribunal Member