



Civil Resolution Tribunal

Date Issued: November 20, 2023

File: SC-2023-000592

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Elite Multi Services Ltd. v. Arif*, 2023 BCCRT 993

B E T W E E N :

ELITE MULTI SERVICES LTD.

APPLICANT

A N D :

REBOUAR ARIF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about equipment rental fees and equipment damage.
2. The respondent, Rebouar Arif, rented an all-terrain vehicle (ATV) and trailer from the applicant, Elite Multi Services Ltd. (Elite). Elite says Mr. Arif damaged the ATV's window during the rental. Elite says Mr. Arif initially paid for the ATV rental costs and

the window damage with his credit card, but later reversed the charge. Elite claims \$2,107.47 for the ATV rental costs and window damage.

3. Mr. Arif does not dispute that the ATV's window was damaged, but says he did not cause the damage and he is not responsible for the repair costs. Mr. Arif says he only agreed to pay \$750 for the ATV rental costs. He also says he only reversed \$1,357.47 of his credit card payment to Elite.
4. Elite is represented by its director, Kevin Potvin. Mr. Arif is self-represented.

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.
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.
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 to what extent, if any, Mr. Arif is responsible to pay Elite \$2,107.47 for ATV rental costs and window damage.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Elite, as the applicant, must prove its claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. Mr. Arif agreed to rent a "CF Moto 800" ATV and trailer from Elite for 2 days, which is confirmed in the parties' text messages. On October 16, 2021, Mr. Arif signed a "rental agreement and waiver of liability". Among other things, in the agreement, Mr. Arif agreed "to be responsible for the replacement at full value of any equipment not returned or returned in a damaged condition". Elite provided the ATV and trailer to Mr. Arif on October 16, 2021.
12. On October 18, 2021, Elite inquired as to when Mr. Arif would return the ATV, and the parties agreed Mr. Arif could return it the following morning. Mr. Arif also advised Elite that he might need Elite to pick up the ATV and trailer in a nearby city because Mr. Arif's truck had a flat tire. It is undisputed that Elite sent an employee to pick up the ATV and trailer from Mr. Arif on October 19, 2021.
13. As noted, Elite says when it retrieved the ATV, it had a smashed windshield and Mr. Arif told Elite the window was damaged by a rock. There are no photographs of the window damage, but the parties do not dispute that the window was damaged and required replacement.
14. Mr. Arif says that he is not responsible for the window damage. In submissions, Mr. Arif alleges the window damage was the result of a pre-existing rock chip that led to a crack during the rental. I find this allegation unsupported by the documentary evidence, including Mr. Arif's own text messages. In the parties' text messages on

October 19, 2021, Elite advised it looked at the window and said “that’s not a small crack, the window is garbage”. Elite said the window damage was not from a rock, and there were “many indications” the damage was from a branch or something of that nature. Elite said it would need a few days to determine the window’s replacement cost. Elite also said the ATV’s fuel tank was only half full so Elite would see how much needed to be added for fuel as well.

15. In response, Mr. Arif said “copy that” and asked Elite to keep him posted. Mr. Arif also confirmed he forgot to fuel up before returning the ATV, because he was dealing with the tire. Mr. Arif did not argue that there was a pre-existing rock chip, nor dispute that the window was damaged and required replacement. Instead, Mr. Arif thanked Elite for its help, and asked Elite to let him know once it had sourced a window replacement. I find Mr. Arif’s allegation that the window damage was due to a rock chip that pre-dated the ATV rental is not consistent with his own text messages after the machine was returned to Elite. I find it notable that when Elite told Mr. Arif the window required replacement, Mr. Arif did not dispute causing the damage nor suggest the damage was caused by either a pre-existing rock chip or other pre-existing windshield damage, which I would have expected him to do in the circumstances. Mr. Arif does not dispute that the window was damaged, and the evidence does not support a finding that there was a pre-existing rock chip. Given all the above, on balance, I find Mr. Arif is responsible for the window damage.
16. I now turn to Elite’s claimed charges for the ATV rental costs and window replacement.
17. In an October 28, 2021 text message, Elite provided Mr. Arif with Elite’s charges for the rental costs totaling \$2,107.47. I find this text message served as Elite’s invoice. Elite also texted a screenshot of an Ignition Motorsports quote for \$1,240 plus freight and tax for the window replacement. The charges were broken down as follows:
 - a. 2 day ATV and trailer rental: \$584 plus tax = \$623.12,
 - b. 12 litres of fuel at \$3 per litre: \$36 plus tax = \$37.80,

- c. Elite's employee picking up ATV and trailer from Mr. Arif's house and transporting to shop: 1 hour and 50 minutes at \$30 per hour: \$55 plus tax = \$57.75, and
 - d. Window replacement: \$1240 plus tax = \$1,388.80.
18. Mr. Arif does not dispute the \$623.12 rental fee charge, but alleges that he brought the ATV back fueled up. However, this submission is inconsistent with his own text messages where he acknowledged he forgot to fuel up the ATV before returning it. I find Mr. Arif's text messages when he returned the ATV likely more accurately reflect what occurred at that time. So, I find he likely forgot to fuel up the ATV before returning it to Elite, which he does not dispute he was required to do. Therefore, I find Elite reasonably charged \$37.80 for re-fueling.
19. As discussed above, text messages show Mr. Arif asked Elite to pick up the ATV and trailer in a nearby city after his truck got a flat tire, and Elite undisputedly did so. I find this service was not included in the ATV and trailer rental charge, and Elite is entitled to charge a reasonable amount for providing this service. Mr. Arif did not dispute the reasonableness of this \$57.75 charge. I find Elite reasonably charged \$57.75 to retrieve the ATV and trailer.
20. Finally, the replacement window charge. As noted, Mr. Arif expressly agreed to replace any damaged equipment at full value in the parties' agreement. Mr. Arif alleges that Elite charged \$2,107.47 to his credit card without his consent when he called in his credit card number. I do not accept this submission because I find it is inconsistent with the documentary evidence. The parties' text messages show that Mr. Arif raised concerns about the window repair costs, and asked if he could try to find a cheaper replacement window. Elite agreed to allow Mr. Arif to do so, but the evidence does not show that Mr. Arif was able to find a more affordable window replacement. Elite continued to request payment from Mr. Arif in November 2021. In a November 19, 2021 text message responding to Elite's November 14, 2021 request for payment, Mr. Arif said he was extremely unhappy with the ATV he was rented, and said "this is why I am having such a hard time paying for these damages you are

claiming that we did". However, later in the same message, Mr. Arif said "I do understand you have a business to run, and will pay you in full". He asked Elite to call him and said he would pay "by card". Therefore, contrary to his submissions, I find these text messages show Mr. Arif explicitly agreed to pay Elite in full for the rental and window damage, and Elite did not charge Mr. Arif's credit card for the window damage without his consent.

21. As noted, Elite included a quote from Ignition Motorsports quote for \$1,240 plus freight and tax for the window replacement. Although Mr. Arif said the quote was "pricey" in his text messages, he did not provide an alternate quote to show the window replacement cost was unreasonable or excessive. Elite says it only charged Mr. Arif for the window replacement and tax, and paid the freight itself. This is consistent with Elite's charge as listed in its October 28, 2021 text message. So, I find Elite is entitled to \$1,388.80 for the window replacement, including tax. In total, I find Elite has proved it is entitled to \$2,107 for the ATV rental costs and window damage, subject to any proven reduction.
22. As noted, Mr. Arif says he only reversed \$1,357.47 of his credit card payment to Elite. Mr. Arif provided screenshots of his credit card statements. The statements show a \$2,212.84 charge from Elite on November 20, 2021, and then a \$1,512.84 credit from Elite on April 20, 2022. Neither party explained the discrepancy between the amount Elite now claims and the amount initially charged to Mr. Arif. However, I find the amounts shown on Mr. Arif's credit card statements most likely reflect the actual amounts charged and refunded to him. Elite did not specifically address this submission, or deny that it has retained some payment from Mr. Arif. Based on the statement amounts, I find Mr. Arif has paid Elite \$700 (\$2,212.84 - \$1,512.84). So, I find this amount must be deducted from the \$2,107.47 I have found Elite is entitled to. This leaves \$1,407.47 outstanding.
23. In summary, I find Mr. Arif is responsible to pay Elite \$1,407.47 for the balance of Elite's charges for the ATV rental, fuel, transport, and the window replacement.

Interest, CRT fees and expenses

24. The *Court Order Interest Act* applies to the CRT. Elite is entitled to pre-judgment interest on the \$1,407.47 award from October 28, 2021, the date of the text message setting out Elite's charges, to the date of this decision. This equals \$74.68.
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. As Elite was substantially successful, I find it is entitled to reimbursement of \$125 in paid CRT fees. Mr. Arif did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Arif to pay Elite a total of \$1,607.15, broken down as follows:
 - a. \$1,407.47 in debt,
 - b. \$74.68 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
27. Elite 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.

Leah Volkens, Tribunal Member