



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Micro Logistics Group Inc. v. Gorski*, 2023 BCCRT 1127

B E T W E E N :

MICRO LOGISTICS GROUP INC.

APPLICANT

A N D :

TAMARA GORSKI

RESPONDENT

A N D :

MICRO LOGISTICS GROUP INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about moving expenses.
2. Micro Logistics Group Inc. (Micro) provided moving services for Tamara Gorski from Vancouver Island to Vancouver. Micro says Ms. Gorski has not paid its invoice. Micro claims \$1,730.51 for its invoice for moving services.
3. Ms. Gorski says Micro was responsible for missing a ferry, leading to a higher charge. She says Micro did not move all her items, so she had to finish moving the rest herself. She says she suffered mental distress as a result of Micro's incomplete move. That said, she acknowledges she owes Micro some amount for the work it did. Finally, Ms. Gorski alleges Micro performed an unconscionable act under the *Business Practice and Consumer Protection Act* (BPCPA). She claims \$1,100 in costs, which I find are legal costs. She also claims \$3,300 in damages.
4. Micro is represented by its owner, Jorge Martinez. Ms. Gorski is represented by a law student, Andrew Baldin.
5. For the reasons that follow, I allow Micro's claim and, except for \$100, dismiss Ms. Gorski's counterclaim.

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.
9. 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.
10. The decision relates to 2 linked disputes with the same parties that I find collectively consist of a claim and a counterclaim. So, I have issued a single decision for both disputes and have relied on the evidence and arguments in both disputes in coming to my decision.

Standing

11. On my initial review of the evidence, I noted that the name on all of Micro's evidence, including its contract, invoices, and email correspondence, was "Micro Moves Inc.". This raised the question of whether Ms. Gorski had contracted with a company other than Micro, and if so, whether Micro had standing (the legal right) to bring this claim. Similarly, it raised the question of whether Ms. Gorski had brought her claim against the correct company.
12. I sought submissions from the parties on this issue. Micro advised me that "Micro Moves Inc." is a branding name only. Despite offering Ms. Gorski's representative an opportunity to make submissions on this issue, he did not do so.
13. While not binding on me, the same issue arose in *Micro Logistics Group Inc. v. Montagano*, 2023 BCCRT 883, and I reach the same conclusion. I am satisfied Micro Moves Inc. is a branding name and the parties had a contract for moving services. Further, the parties each brought a claim against the other, which suggests they are

each satisfied with Micro's identity. Certainly, neither party raised the issue during their arguments. So, I find it is appropriate to decide this dispute on its merits.

Choice of Forum and Governing Law Clauses

14. Ms. Gorski cites the contract's "choice of forum" and "governing law" clauses and argues the CRT is not the appropriate body to address this dispute. The clause says the parties must bring all legal actions in Ontario and must apply the laws of Ontario in resolving the dispute. Ms. Gorski argues that Micro should be held to its agreement.
15. For the following reasons, I exercise my discretion not to enforce the choice of forum clause.
16. The Supreme Court of British Columbia explains how to consider a forum selection clause in *Worldwide Warranty Life Services Inc. v. LiquidNano Inc.*, 2019 BCSC 2475, citing *Douez v. Facebook Inc.*, 2017 SCC 33. Once the court (or tribunal) finds the clause valid, it should uphold the clause unless there are "strong reasons" not to.
17. There is no dispute here the forum selection clause is valid. So, are there strong reasons not to enforce it? Under *Douez*, when exercising my discretion not to enforce such a clause, I must consider all the circumstances, including the "convenience of the parties, fairness between the parties, and the interest of justice."
18. I find strong reasons exist in this case. The contract was made in British Columbia and the alleged breach took place in British Columbia. Each party filed an application with the CRT, as well as all their evidence and arguments. The jurisdictional issue was not raised until near the proceedings' end. This suggests both parties have "attorned" to its jurisdiction. (Attornment is a legal concept where the parties' ongoing participation in a tribunal's procedure shows, by their actions, they accept its jurisdiction.)
19. Both parties are in British Columbia and the events leading up to these disputes also occurred in British Columbia. Ms. Gorski also provided no evidence as to whether she genuinely wishes the dispute to be heard in Ontario or is only seeking procedural

advantage. The CRT's mandate includes providing quick and economical resolutions to disputes. Refusing to resolve this dispute would not keep with that mandate. So, I find it is in the interests of justice to proceed this dispute.

20. Given the parties' contract, I find Ontario law governs this dispute. However, the majority of the claim deals with breach of contract, and the applicable common law is essentially the same in British Columbia and Ontario. To the extent that other Ontario laws may apply, I note the burden of proving a claim is on the party making it. Neither party directed me to any Ontario law that may support their claim.

ISSUES

21. The issues in this dispute are:

- a. Is Micro entitled to its invoice for \$1,730.51 for moving expenses?
- b. Is Ms. Gorski entitled to damages arising from the move?

EVIDENCE AND ANALYSIS

22. In a civil proceeding like this one, each party, as applicant, must prove their 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.

23. In August 2022, a third-party organization (YV) contacted Micro on Ms. Gorski's behalf to arrange for moving services from Nanaimo to Vancouver. Ms. Gorski ultimately signed the contract herself, as I address below, so I do not need to determine whether YV acted as agent for Ms. Gorski.

24. Micro emailed YV about key information, including its rates, set out below:

- The rate for local moves was \$109 per service hour, plus GST, for 2 movers. Charges are based on the actual time the move takes and billed in 15-minute increments after the first hour.
 - Services that began (or ended) outside the City of Vancouver were subject to travel time and there was an additional charge for ferries.
25. Micro's emails to YV set out that it does not pack or wrap the client's items, so they must be already packed when picked up. Micro asked for detailed information about the inventory of items to be moved, contact information for moving day, pick-up and drop-off locations, and any additional information that may complicate the move. Micro specifically said it was not required to move any items not listed in the inventory. Finally, in direct response to a question from YV, Micro told YV the size of its moving vans.
26. YV relayed Ms. Gorski's answers, including the inventory of items and addresses for pick-up and drop-off. Ms. Gorski advised Micro it would have to go to separate storage businesses in Nanaimo and Crofton before delivering to a storage business in Vancouver. Ms. Gorski did not say how many storage lockers were at either site.
27. YV and Micro emailed about the estimate for the move. Micro sent a written estimate with the parties' contract's terms on August 18, 2022. The estimate totaled \$1,501.61, which included 8 service hours, 3 travel hours, ferry tickets, and GST. All conditions Micro had previously emailed to YV were repeated in the contract in substantially similar language. While the estimate was in the name of one of YV's employees, Ms. Gorski signed it herself.
28. So, I find the parties agreed to the terms in the written estimate and it is the parties' contract.
29. On August 30, 2022, the move took place. Micro says its movers arrived at the Tsawwassen ferry terminal 30 minutes early, which I find they necessarily did to ensure they could board. Micro boarded the 7:45am ferry to Nanaimo. An email shows Micro intended to take the 3:00pm ferry back from Swartz Bay, near Victoria,

to Tsawwassen. Texts show Micro arrived at the Nanaimo storage site at 10:36am, packed Ms. Gorski's items, then drove to the Crofton storage site.

30. In the meantime, Ms. Gorski texted the Crofton site's manager to ask them to cut off the locks of her storage units. At some time shortly after 12:54pm, the manager texted Ms. Gorski. The manager confirmed the movers emptied storage locker B12 but did not take anything from B17.
31. Micro says it arrived at Swartz Bay at 2:58pm but was too late to board the 3:00pm ferry. It took the 5:00pm ferry. A text from Micro's owner, Mr. Martinez, says the movers would be in Vancouver by 7:00pm.
32. Micro was evidently unable to reach the Vancouver storage business before it closed at 8:00pm. After disputing whether it could do so, Micro kept Ms. Gorski's items overnight and delivered them on August 31. More on this below.
33. Micro does not specifically say how many hours it spent delivering Ms. Gorski's items on the morning of August 31, but says that time factored into the final invoice.

Micro's Invoice

34. Micro originally estimated the move would take 11 hours, which included travel time. In an August 31 text message, Mr. Martinez says the move was a total of 12 hours (on August 30) plus ferry costs plus service on the morning of August 31. The final invoice included charges for 13 hours plus ferry costs, which is consistent with Micro's text message. It is also exactly 2 hours more than the original estimate, the same length as the ferry delay.
35. The movers were undisputedly at the Tsawwassen ferry terminal at 7:15am. A text message before they boarded the 5:00pm ferry says they were expected in Vancouver by 7:00pm. Given that Micro would have travel time in Vancouver, I find 12 hours is the move's likely length. This means the morning service took 1 hour, which I find is reasonable.
36. As set out above, Micro's invoice is for \$1,730.51.

37. Ms. Gorski argues Micro did not properly plan its route or itinerary so should be responsible for the additional time caused by missing the 3:00pm ferry.
38. As noted above, Micro requires its clients to pack all belongs and provide a detailed inventory prior to the move. Clause 4(b) of the contract says the customer is responsible for giving complete and accurate information. Clause 5 says the customer is responsible for any time delays arising from deficiencies in packing, wrapping, or organizing items for the move.
39. Photos from the move show Ms. Gorski had numerous large and bulky items that were not listed in her inventory. The photos also show some additional small, unpacked items.
40. Micro says the inaccurate inventory made it impossible to follow their schedule and move all of Ms. Gorski's items. It says it didn't know Ms. Gorski had three full storage units. Ms. Gorski blames Micro for not asking for photographs or dimensions of the storage lockers. She does not explain why she provided an incomplete and inaccurate inventory or did not fully pack her items.
41. Given that Micro ultimately arrived at Swartz Bay at roughly the same time as the ferry left, and given their attendance 30 minutes early for the Tsawwassen ferry, I find a 30-minute delay was enough to cause Micro to miss the 3:00pm ferry. I find Ms. Gorski's incomplete and inaccurate inventory and her failure to properly pack her items added at least 30 minutes to the move. So, I find under the parties' contract, she is responsible for the additional time added by the missed ferry.
42. Even if I had not found Ms. Gorski responsible for the delay, I would still have found Ms. Gorski responsible for Micro's invoice. The original contract says "Estimate." It lists an hourly rate and an expected number of hours. So, I find it was not a fixed price contract, but an estimate of the total time the move would take. Even with the delay, Micro's invoice was only 2 hours more than its estimate, which I find is reasonable in the circumstances. I also note Micro did not anything charge for overnight storage.

43. Ms. Gorski argues Micro should have taken the ferry from Horseshoe Bay to Departure Bay instead of from Tsawwassen to Duke Point. Similarly, she argues Micro should have taken a Nanaimo ferry after Crofton instead of the Swartz Bay ferry. She says these would have saved time. Micro says it used a GPS to determine the quickest route and timed ferries based on when it worked with their planned itinerary and Ms. Gorski's pick-up locations.
44. As noted above, Micro charged by hour, not kilometer. While I accept going from Crofton to Swartz Bay may take longer than going to Nanaimo, Micro says it was the most efficient route given ferry timing. There are no ferry schedules in evidence to show otherwise, so I find Ms. Gorski has not proved this element of her claim.
45. So, Micro is entitled to its invoice for \$1,730.51 for 13 hours of moving services, ferry fees, and GST.

Items Left Behind

46. Micro undisputedly left behind a number of Ms. Gorski's items. Micro says it did not have space in its vehicle. This meant Ms. Gorski had to arrange to collect them. Ms. Gorski claims damages to address her costs associated with getting her remaining items., She claims amounts for taxis, ferries, hotel, restaurant, and storage fees.
47. As above, Micro says its estimate was based on Ms. Gorski's inventory. It says if Ms. Gorski's inventory was accurate, her items would have fit in their van. Given how many items she had, Micro says it would have had to send two moving vans which would have doubled the cost.
48. I find Ms. Gorski would have had to pay the cost of moving the rest of her items in any event. She provided no evidence to establish what the cost would have been for, say, a larger vehicle from another company that could have accommodated all her items in one trip. So, she has not proven she is entitled to be compensated for the items Micro did not collect.

Mental Distress

49. Ms. Gorski claims for mental distress damages. She argues she is entitled to \$3,300 for mental distress and loss of enjoyment and cites *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 in support of her position.
50. As set out in *Fidler*, when a party breaches a contract, the other party cannot be compensated for mental distress. There are 2 main exceptions. First, a party may get significant compensation when the contract's main purpose was "peace of mind", such as vacations or wedding photography. Second, a party may get more modest compensation where part of the contract's purpose was for a "psychological benefit". In these cases, the party may be compensated for inconvenience and discomfort that goes beyond mere frustration or disappointment.
51. While not binding on me, the CRT has found moving contracts are not "peace of mind" contracts but do provide a psychological benefit by making moving less stressful. In *2 Burley Men Moving Ltd. v. Maxfield*, 2021 BCCRT 223, the CRT awarded a deduction of \$100 for the invoice when the movers were late which then led to the client helping to move items.
52. While Ms. Gorski was responsible for the delay in her move, text messages show Mr. Martinez was in contact with Ms. Gorski throughout moving day. At one point, when the parties were discussing whether or not Micro would be at the Vancouver storage business before it closed, Mr. Martinez wrote:

If we don't hear back from someone and the storage is not open we will have to take everything to dump station as we don't have storage units our own

(reproduced as written)

53. I find the text message threatening to dump Ms. Gorski's items deprived Ms. Gorski of the psychological benefit of hiring movers by creating the very stress the contract

was designed to lessen. On a judgment basis, I award \$100 to Ms. Gorski for mental distress.

54. Ms. Gorski also claimed damages for the cost of a number of counselling sessions. However, her counsellor said her stress arose from not having all her belongings moved, not as a result of Mr. Martinez's actions. So, I decline to award her damages for the cost of counselling.

Legal Costs

55. Ms. Gorski claims \$1,000 for costs. She says she is looking to recoup her costs, including her time and legal help. Under CRT rule 9-5(3), parties are not compensated fees paid to a lawyer except in extraordinary circumstances. Ms. Gorski argues that she has executive function vulnerabilities that required her to use legal help.
56. Despite that, I find these are not extraordinary circumstances. The evidence shows Ms. Gorski primarily used legal help in an ultimately unsuccessful attempt to settle the matter. Ms. Gorski later received assistance from a law student at the tribunal stage but did not provide evidence any that the student charged her for those services. So, I dismiss her claim for legal costs.

Mental Disability

57. Ms. Gorski argues unconscionability under section 8(3)(b) of the BPCPA. Her principal argument is that the bill was exaggerated as a result of Micro's negligence. She also argues that Micro knew she was "not well" and a could not tolerate the "mental load" of Mr. Martinez calling her about the move (her phrases).
58. To the extent Ms. Gorski argues this makes the contract non-binding under section 10 of the BPCPA, I disagree. The evidence shows she was capable of communicating with Micro on an ongoing basis throughout the transaction. While Ms. Gorski originally received assistance from YV in setting up the move, she signed the contract on her own and communicated with the movers and others throughout.

59. There is no evidence Micro knew, or ought to have known, Ms. Gorski was mentally incapable of entering a contract. It follows Micro has not breached the BPCPA's unconscionability provisions which address situations where a supplier "takes advantage" of a vulnerable person.

Conclusion

60. For convenience, I set off the damages for mental distress against the debt Ms. Gorski owes Micro, and order Ms. Gorski to pay Micro \$1,630.51.

61. While Micro claimed contractual interest in its application, it specifically waived its claim to any interest in its submissions. So, I do not order any contractual or pre-judgment interest.

62. 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. In this case, Micro was predominantly successful. However, while Micro claimed fees and expenses in its application, it specifically waived its fee and expenses claims in submissions. Ms. Gorski obtained a fee waiver and did not pay CRT fees. So, I do not make any order in respect of fees or expenses.

ORDERS

63. Within 21 days of the date of this order, I order Ms. Gorski to pay Micro a total of \$1,630.51 in debt.

64. Micro is entitled to post-judgment interest, as applicable.

65. 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.

Christopher C. Rivers, Tribunal Member