



Civil Resolution Tribunal

Date Issued: February 13, 2024

File: SC-2023-000582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Collyer v. Mitchell's Towing Ltd.*, 2024 BCCRT 141

BETWEEN:

KEITH COLLYER

APPLICANT

AND:

MITCHELL'S TOWING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. On July 11, 2022, Keith Collyer's scooter was stolen. The thief abandoned it on private property, and the property owner called Mitchell's Towing Ltd. to pick it up. Mitchell's Towing stored the scooter from July 12 to 18, when Mr. Collyer found out where it was and picked it up. Mitchell's Towing charged him \$589.86 in towing and storage fees. Mr. Collyer says he is not responsible for these fees. He also says

they are excessive. He claims a refund of the \$589.86 plus \$70 in gas money. He is self-represented.

2. Mitchell's Towing says the scooter was on private property without authorization, so the property owner was entitled to have it towed. Mitchell's Towing says it was entitled to charge Mr. Collyer its usual rates for towing and storing the scooter. It asks me to dismiss Mr. Collyer's claims. Mitchell's Towing is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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 says 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. I find that an oral hearing is not necessary in the interests of justice.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
6. Mr. Collyer says that Mitchell's Towing submitted its Dispute Response after the CRT's deadline and without first requesting an extension. The CRT accepted the late Dispute Response and the parties continued through the CRT's process. Mr.

Collyer questions why there are deadlines if there are no consequences if they are broken. He asks whether Mitchell's Towing should be liable in default for breaching the CRT's rules. As noted above, the CRT's mandate includes informal and flexible dispute resolution. Here, the CRT retroactively extended a deadline, which I consider appropriate and fair in the circumstances.

7. Mr. Collyer also suggests that Mitchell's Towing committed an offence by providing false and misleading information to the CRT, which is prohibited by CRTA section 92. The CRT does not enforce section 92 breaches because it is a criminal offence. So, I will not specifically address this further, although my decision below addresses the parties' evidence, including the evidence Mr. Collyer says is false or misleading.

ISSUE

8. The issue in this dispute is whether Mr. Collyer is entitled to a refund and gas money from Mitchell's Towing.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Collyer as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Mr. Mitchell says his scooter was stolen from his driveway the night of July 11, 2022. It was uninsured at the time. He did not notice right away.
11. A person phoned Mitchell's Towing on July 12 because the scooter was parked in their carport. The recording of that call is in evidence. The caller said they had phoned the police, who had checked the plates and told them to phone a towing company. Mitchell's Towing asked if the caller leased the stall, and the caller said they owned the adjacent townhouse and had used the stall since the 1980s.

12. According to a police report in evidence, Mr. Collyer reported the scooter stolen that evening.
13. According to later police records, Mitchell's Towing called the police on July 18 to inform them it had Mr. Collyer's scooter. Mitchell's Towing determined this by running the scooter's vehicle identification number through CPIC, a public database of stolen vehicles. The police informed Mr. Collyer. He picked the scooter up later that day. Mitchell's Towing charged Mr. Collyer \$49.25 per day for storage, a \$150 impound fee, a \$39 fuel surcharge, and a \$28.02 "processing fee". After tax, the total bill was \$589.86, which Mr. Collyer paid.
14. Mr. Collyer makes several arguments about why he is not responsible for these charges. First, he relies on section 192 of the *Motor Vehicle Act* (MVA). Section 192(1) says that if a motor vehicle is left on private property without the "occupier's" consent, the vehicle's owner is deemed to have authorized the occupier to have the vehicle towed and stored as the vehicle's owner's agent.
15. Mr. Collyer argues that the person who called Mitchell's Towing was not authorized to have the scooter towed because they were not on strata council. Mr. Collyer provided no evidence to support this allegation. In any event, as noted, the caller told Mitchell's towing they owned the adjacent townhouse and had used the stall for many years. It was reasonable for Mitchell's Towing to infer that the caller had a right to park there and was therefore an "occupier" of the stall. As an occupier, they were entitled to call a tow truck under section 192(1) even if they were not on strata council.
16. Mr. Collyer acknowledges that section 192(1) allows an occupier to have a vehicle towed. However, he argues that the occupier must pay for towing and storage, and then claim against the vehicle owner for reimbursement. He relies on section 192(2), which gives an occupier a lien on the vehicle for reasonable charges they incur to have the vehicle towed and stored.

17. I disagree with Mr. Collyer on this point. As noted above, section 192(1) says that the occupier is deemed to be the vehicle owner's agent when they call a tow truck. Under the law of agency, an agent is a person who can enter into contracts on another person's behalf. The other person is called the principal. When an agent contracts with a third party, the agent is not a party to the contract. The contract is just between the principal and the third party. So, under section 192(1), the occupier can enter into a contract with a towing company on the vehicle owner's behalf. The contract is then between the vehicle owner and the towing company.
18. As for section 192(2), it gives occupiers a right to claim compensation **if** the occupier incurs towing and storage charges. It does not say that the occupier **must** pay the towing and storage charges and claim reimbursement from the vehicle's owner. I find that the law of agency means that towing companies can directly charge a vehicle's owner for towing and storage charges.
19. Applied here, when the caller hired Mitchell's Towing to tow the scooter, they created a contract between Mr. Collyer and Mitchell's Towing. In other words, Mr. Collyer is deemed to have accepted Mitchell's Towing's terms. I note that Mr. Collyer relies on section 12 of the *Business Practices and Consumer Protection Act* (BPCPA), which is about unsolicited services. My conclusion about section 192 means that the services here were not unsolicited.
20. Mr. Collyer also alleges that he paid Mitchell's Towing under duress. He refers to section 8 of the BPCPA, which is about undue pressure. I note that section 8 is not directly applicable because the BC Provincial Court has jurisdiction over compensation claims for breaching the BPCPA. I will therefore only address the common law doctrine of duress.
21. Duress is a defence to the enforceability of a contract. Mr. Collyer must prove that Mitchell's Towing exercised improper or illegitimate economic pressure to override Mr. Collyer's free will.ⁱ I do not agree that by insisting on payment before releasing the scooter, Mitchell's Towing exerted illegitimate or improper pressure on Mr.

Collyer. Mitchell's Towing had a right under section 192 to receive payment from Mr. Collyer. So, I find that there was no duress.

22. Mr. Collyer also argues that Mitchell's Towing's charges were excessive. He provided evidence about ICBC's towing and storage rates. Given my conclusion that Mr. Collyer is deemed to have accepted Mitchell's Towing's terms, it follows that he agreed to Mitchell's Towing's standard private charges. This is true even if they are higher than the industry standard or higher than it charges ICBC. I recognize that Mr. Collyer had no choice in the matter and believes the charges are unfair, but this is how section 192 operates.
23. Mr. Collyer's final argument is about how long it took Mitchell's Towing to check CPIC. He provided evidence showing CPIC is updated daily, which I accept is true. He says Mitchell's Towing should have checked whether his scooter was stolen every day. If it had, Mitchell's Towing would have discovered it was stolen sooner and Mr. Collyer would have paid less for storage.
24. Mitchell's Towing says its policy is to check CPIC if it stores a vehicle for ten days without hearing from an owner. Mitchell's Towing's says that it waits because most people whose vehicle is either lost or stolen proactively call towing companies to try to find it. It says there is no legal obligation for it to do more. Mr. Collyer disagrees. He says ICBC's "Towing Business Partners Agreement" requires towing companies to tell ICBC about any vehicles that may be related to an ICBC claim, including abandoned vehicles. Mitchell's Towing says that it had no contractual obligation to call ICBC if it discovers a stolen vehicle. Mr. Collyer provided only a small excerpt of this agreement, which I find does not establish that Mitchell's Towing had to ask ICBC about Mr. Collyer's scooter. In any event, when the caller asked Mitchell's Towing to tow the scooter, Mitchell's Towing had no reason to believe the scooter was abandoned or stolen. It was simply parked in someone's carport. Ultimately, Mitchell's Towing determined Mr. Collyer's scooter was stolen six days after receiving it, which I consider reasonably prompt.

25. For these reasons, I find that Mitchell's Towing was entitled to full payment of its invoice. It follows that Mr. Collyer is not entitled to a refund, or to any gas money. I dismiss Mr. Collyer's claims.

26. Under CRTA 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. Mr. Collyer was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Mitchell's Towing did not claim any dispute-related expenses or pay any CRT fees.

ORDER

27. I dismiss Mr. Collyer's claims, and this dispute.

Eric Regehr, Vice Chair

ⁱ See *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442.