



# Civil Resolution Tribunal

Date Issued: June 3, 2024

File: SC-2023-006032

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malomo v. Mario's Towing Ltd.*, 2024 BCCRT 504

BETWEEN:

TOLUYEMI MALOMO and TM-RIDES LTD.

**APPLICANTS**

AND:

MARIO'S TOWING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about towing and storage services.

2. The applicant, Toluyemi Malomo, is the president of TM-Rides Ltd., a car sales company located in Vancouver. On January 17, 2023, the applicants purchased a 2006 Toyota vehicle from a third-party auctioneer in Kelowna.
3. TM-Rides hired the respondent, Mario's Towing Ltd., and paid \$525 to tow the Toyota from Kelowna to Vancouver. Mario's provided an estimate of 5-9 days to complete service but never delivered the vehicle. Mario's cancelled the delivery service on February 1 and refunded TM-Rides. TM-Rides made other delivery arrangements.
4. Mario's then issued a \$369.67 invoice for storage fees for holding the car and demanded payment before releasing the Toyota from its lot. TM-Rides paid the storage fee to release the car but immediately sought a refund.
5. Dr. Malomo and TM-Rides claim \$4,969.67 for storage fees, the cost of transporting the vehicle, legal advice, inconvenience, and punitive damages. Mario's says the applicants owe the storage fees and asks me to dismiss the applicants' claims.
6. Dr. Malomo represents the applicants. An employee represents Mario's.
7. For the reasons that follow, I allow TM-Rides' claim for a refund of storage fees and dismiss the remaining claims.

## **JURISDICTION AND PROCEDURE**

8. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
9. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. There are no issues that turn on the parties' credibility.

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.

10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
11. Where permitted by CRTA section 118, 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.
12. Here, the applicants include both an incorporated company and one of its principals in his personal capacity. The evidence suggests Dr. Malomo made all transactions on behalf of TM-Rides, the corporation, and not himself, personally. Dr. Malomo does not suggest he entered into any agreements separate from the business. So, I find Dr. Malomo does not have any claims in his personal capacity and dismiss them. I consider TM-Rides' claims below.

## **ISSUES**

13. The issues in this dispute are:
  - a. Is TM-Rides entitled to a refund of storage fees charged by Mario's?
  - b. If so, is TM-Rides entitled to any further damages?

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, TM-Rides, as applicant, must prove its claims on a balance of probabilities. 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. Despite having the opportunity to do so, Mario's did not provide any documentary evidence.

15. The basic facts are not in dispute. On January 17, 2023, TM-Rides purchased a Toyota from a third-party auctioneer in Kelowna. The same day, it hired Mario's to tow the Toyota from Kelowna to Vancouver for \$525. On January 18, a Mario's employee, CB, confirmed the Toyota had been "booked into dispatch," which I infer means taken into its care and control.
16. The parties agree that CB estimated delivery would take between 5 and 9 business days. Mario's says this put the delivery window between January 23 and 27.
17. In submissions, TM-Rides say it had to send an employee, R, to Kelowna to either collect the vehicle or determine when Mario's would deliver it. In doing so, it says it incurred \$400 in costs. However, it did not provide any evidence of what R's costs were or explain why it was necessary to have them attend Kelowna in person. While TM-Rides provided a record of an e-transfer to R of \$540, it did not explain the difference in amounts. Further, there is no evidence TM-Rides attempted to communicate with Mario's in the period between January 18 and whenever R attended, which calls into question the necessity of having an employee travel to Kelowna in person. I dismiss TM-Rides' claim for \$400 in R's travel costs.
18. TM-Rides says Mario's promised R it would deliver the Toyota on the weekend of February 25 and 26. These dates are inconsistent with the other evidence, so I expect TM-Rides intended to say a weekend in late January.
19. When TM-Rides did not receive the Toyota by the end of January, Dr. Malomo called Mario's. On February 1, Dr. Malomo spoke to CB, who confirmed Mario's had not yet towed the Toyota. CB undisputedly said Mario's would not be able to meet the estimated delivery time window, cancelled services, and provided a refund.
20. In the email confirming the pending refund, CB told TM-Rides to make alternate arrangements to pick up the car and that the new delivery company would have to pay \$20.77 per day in storage fees for the Toyota.
21. TM-Rides' new delivery company collected the car from Mario's on February 3. The delivery company paid \$369.67 for 17 days of storage fees at \$20.71 per day, plus

5% tax, slightly less than its original quoted cost. The delivery company invoiced TM-Rides for \$1,083.15, which included \$369.67 for fees paid by its driver as well as the delivery cost and tax.

22. The applicants emailed Mario's throughout February to ask for a storage fee refund but did not receive any response.

### **Storage Fees**

23. So, is TM-Rides entitled to a storage fee refund? For the following reasons, I find it is.
24. First, I find TM-Rides did not agree to pay Mario's storage fees. It is clear from Dr. Malomo's emails it only paid storage fees to release the Toyota from Mario's lot and not because it agreed it owed any money. Without evidence of any agreement, Mario's can not depend upon the law of contract to establish its entitlement to storage fees.
25. There is no evidence Mario's told TM-Rides about any potential storage fees ahead of time. While Mario's argues that its rates are consistent with Insurance Corporation of British Columbia (ICBC) guidelines and "posted rates," that is irrelevant to whether Mario's could charge any amount in the first place. Similarly, Mario's explanation that it could not deliver the car because of winter weather does not impact whether it had a right to charge storage costs.
26. I find Mario's pleadings broad enough to include a claim of *quantum meruit* for its storage services. *Quantum meruit* means "value for work performed". However, I find Mario's can not depend upon it to justify storage fees. Mario's had the vehicle in line with a contract for delivery. It made the decisions not to deliver the vehicle and to cancel the agreement to provide services. This does not entitle it to then charge storage fees. To the extent it is entitled to compensation for picking up – or accepting – the Toyota from the auctioneer, it has not established any value for that work. I find this is especially so given TM-Rides' explanation that if it knew Mario's would not deliver the car, it would simply have found another company to provide services.

27. I also find the applicants acted reasonably by collecting the Toyota from Mario's as soon as reasonably possible after Mario's cancelled the contract. From the date Mario's cancelled its contract for delivery, TM-Rides had the vehicle picked up within 48 hours. So, I find Mario's is not entitled to any amount for storage and order it to refund TM-Rides \$369.67.

### ***Other Damages***

28. TM-Rides claims \$750 for legal advice in respect of this dispute. Absent anything explicit in a contract, it is well established that legal fees can only be recovered as "costs", not damages.<sup>1</sup> In the context of the CRT, "costs" are called dispute-related expenses. Under CRT rule 9.5(3), the CRT will not order reimbursement of legal fees in small claims disputes except in extraordinary circumstances. I find that there is nothing extraordinary about this dispute, so I dismiss this claim.

29. TM-Rides claims \$2,000 for inconvenience and says it incurred significant losses due to the failure to deliver the car on time. However, it provided no explanation of what those losses were or any evidence of them. Since it has not proven any such loss, I dismiss this aspect of its claim.

30. Finally, TM-Rides claims \$1,500 in punitive damages for "reputational loss" due to its inability to meet customer demands. It provided no evidence of any damage to its reputation, such as communication from customers. However, even if it had, I note compensation for loss of reputation is known as defamation. Under section 119 of the CRTA, the CRT has no jurisdiction over libel and slander, which includes defamation, so I do not address that element of the claim further.

31. To the extent its claim is for punitive damages, I note punitive damages are to punish a "morally culpable" respondent and are usually granted only for malicious and outrageous acts.<sup>2</sup> Punitive damages should be resorted to in only exceptional cases

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<sup>1</sup> See: *Voyer v. C.I.B.C.*, 1986 CanLII 1226 (BC SC).

<sup>2</sup> See: *Honda Canada Inc. v. Keays*, 2008 SCC 39, at paragraphs 62 and 68 and *Chalmers v. AMO Canada Company*, 2010 BCCA 560, at paragraph 29.

and with restraint.<sup>3</sup> Here, Mario's breached its contract, but I find it did not act maliciously or outrageously. I dismiss this aspect of TM-Rides' claim.

## **Conclusion**

32. The *Court Order Interest Act* applies to the CRT. TM-Rides is entitled to pre-judgment interest on \$369.67 in storage fees from February 10, 2023, the date by which it had to reimburse the new delivery company, to the date of this decision. This equals \$23.74.
33. Under CRTA section 49 and the 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. Here, TM-Rides had partial success, so I find it is entitled to reimbursement of half of the CRT fees it paid, which totals \$87.50. Other than legal fees, which I have addressed above, TM-Rides did not claim any dispute-related expenses.

## **ORDERS**

34. Within 14 days of the date of this order, I order Mario's to pay TM-Rides a total of \$480.91, broken down as follows:
  - a. \$369.67 as a refund for storage fees,
  - b. \$23.74 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$87.50 in CRT fees.
35. TM-Rides is entitled to post-judgment interest, as applicable.
36. I dismiss the applicants' remaining claims.
37. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia.

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<sup>3</sup> See: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, at paragraph 69.

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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Christopher C. Rivers, Tribunal Member