



Civil Resolution Tribunal

Date Issued: June 26, 2024

File: SC-2023-001178

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Battista v. Trust Excavation & Demolition Ltd.*, 2024 BCCRT 602

B E T W E E N :

ANTHONY VINCENT BATTISTA

APPLICANT

A N D :

TRUST EXCAVATION & DEMOLITION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This is a dispute about the rental of an excavator. The applicant, Anthony Vincent Battista, rented an excavator to the respondent, Trust Excavation & Demolition Ltd., by verbal contract. The respondent disputes the amount owed under the verbal contract.

2. Mr. Battista is self-represented. Trust Excavation is represented by its representative, Parm Dhaliwal. Parm Dhaliwal allegedly made the verbal contract with Mr. Battista.

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 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.
4. 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.
5. 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 court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. 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

7. The issue in this dispute is whether Trust Excavation must pay Mr. Battista \$1,000 for an excavator rental.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, Mr. Battista must prove his claim 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.
9. Mr. Battista says he made a verbal contract with Parm Dhaliwal to rent the excavator. Mr. Battista describes the conversation with Parm Dhaliwal that led to the verbal contract. Parm Dhaliwal asked Mr. Battista to quote the cost to rent the excavator. Mr. Battista told Parm Dhaliwal the daily rate was \$100. Mr. Battista does not say if the verbal contract included the delivery cost. Mr. Battista also does not say if he informed Parm Dhaliwal that Trust Excavation would be charged for every day the excavator remained on its worksite.
10. Mr. Battista believed that Parm Dhaliwal agreed to the quoted rate. When Mr. Battista delivered the excavator, he confirmed the rate with Parm Dhaliwal again. Mr. Battista said in his reply submissions that his rate is \$200 per day. But the daily rate stated on the invoice issued to Trust Excavation on November 29, 2022, is \$100.
11. Mr. Battista's invoice shows the charges for the 10-day rental as follows:
 - a. The weekly rate for rental of the excavator, (\$700),
 - b. Delivery and pick up \$100, and
 - c. Day-to-day rental X 2 days @ \$100 per day = \$200.
12. Mr. Battista provided a series of text messages to show the date he delivered the excavator. Mr. Battista was scheduled to deliver the excavator at 10am on November 19, 2022, to an address in Coquitlam. On November 21, 2022, Mr. Battista asked if Parm Dhaliwal had finished using the excavator. The excavator remained in Coquitlam until November 23, 2022, when Mr. Battista moved the excavator, at Parm Dhaliwal's request, to a location in Vancouver.
13. On November 26, 2022, Mr. Battista asked Parm Dhaliwal if they were finished with the excavator. Mr. Battista says the rental ended on November 28, 2022. Mr.

Battista's invoice does not state when the excavator was picked up. But Trust Excavation does not dispute the rental end date.

14. I accept Mr. Battista's evidence that, at the time of this rental, his daily rate for excavator rental was \$100. I also accept Mr. Battista's evidence that he had a delivery and pickup fee of \$100.
15. Mr. Battista sent the invoice on or about November 29, 2022. Mr. Battista sent follow up texts inquiring about payment on December 2, 5, 20, 22, 23, and on January 2, 3, 4 and 20, 2023. Parm Dhaliwal responded to some of these text messages saying that they were going to pay the invoice. Mr. Battista never received payment.
16. Trust Excavation says the claimed amount is incorrect. Trust Excavation says Parm Dhaliwal asked for a daily rate. Trust Excavation says it used the machine for one day in Coquitlam and one day in Vancouver. The rest of the time the machine sat around on Trust Excavation's site and was not being used. Trust Excavation says the machine was not being used because Mr. Battista was waiting for a personal project to start. Trust Excavation provided no evidence of any attempts to contact Mr. Battista to inform him that it was finished using the excavator.
17. Mr. Battista says Trust Excavation's submission is not how a rental company operates.
18. The parties have no written contract. A verbal contract is enforceable like a written contract, but it can be harder to prove.
19. For a valid contract to exist, the parties must have a "meeting of the minds". This means that both parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other, plus valuable "consideration". "Consideration" means payment of money or something else of value (see discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2021 BCCA 189 and *Fairchild Developments Ltd. v. 575476 BC Ltd.*, 2020 BCCA 123).

20. I accept Mr. Battista's evidence that he informed Parm Dhaliwal of his rental rates. It is also undisputed that the excavator remained at Trust Excavation's building sites from November 19, 2022, until November 28, 2022. Since Trust Excavation made no attempt to contact Mr. Battista to return the excavator, I find that Trust Excavation rented the excavator from November 19, 2022, until November 28, 2022.
21. Based on all the evidence, I find that Trust Excavation agreed to rent Mr. Battista's excavator at the daily rate of \$100 and had use of the excavator from November 19, 2022, until November 28, 2022. I also find that Trust Excavation has not paid for the use of Mr. Battista's excavator.
22. I find that Trust Excavation owes Mr. Battista \$1000 for the invoice issued on November 29, 2022.
23. The *Court Order Interest Act* applies to the CRT. Mr. Battista is entitled to pre-judgment interest on the \$1000 from November 29, 2022, the date of the invoice to the date of this decision. This equals \$73.92.
24. 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. I find Mr. Battista had to bring this action as Trust Excavation had not paid anything for the excavator's rental. I find Mr. Battista is entitled to reimbursement of \$125 in CRT application fees. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of the date of this decision, I order Trust Excavation & Demolition Ltd. to pay Anthony Vincent Battista a total of \$1,198.92, broken down as follows:
 - a. \$1000 in debt,
 - b. \$73.92 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.

26. The applicant is entitled to post-judgment interest, as applicable.

27. This is a validated decision and order. 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.

Mark Henderson, Tribunal Member