



Civil Resolution Tribunal

Date Issued: December 6, 2021

File: SC-2020-007140

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henghui Trade Development Ltd. v. Vancouver Total Construction Inc.*,
2021 BCCRT 1280

B E T W E E N :

HENGHUI TRADE DEVELOPMENT LTD.

APPLICANT

A N D :

VANCOUVER TOTAL CONSTRUCTION INC., ALEXANDER
BARBACHKOV, VLADYSLAV ZHYLIAIEV, and XINGXING ZHANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for moving services. The applicant, Henghui Trade Development Ltd. (Henghui), says it provided moving services to the respondent Vancouver Total Construction Inc. (VTC). Henghui says the respondent Vladyslav Zhyliaiev was VTC's liaison for the contract and made the booking. Henghui says VTC's director, the respondent Alexander Barbachkov, insulted Henghui's manager FW. Henghui also says VTC's employee XingXing Zhang ignored WorksafeBC rules at the jobsite and failed to provide a safe work environment. Henghui claims \$2,720.50 as payment for its moving services.
2. The respondents say Henghui failed to send the agreed number of moving trucks, were slow and inefficient, and unreasonably delaying the moving process. VTC agreed to pay \$2,041.36 but Henghui has refused.
3. Henghui is represented by its manager FW. VTC is represented by Mr. Barbachkov who also represents himself. Mr. Zhyliaiev and Ms. Zhang are each self-represented.

JURISDICTION AND PROCEDURE

4. 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). 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy

resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues are:
 - a. Did Henghui fulfill its moving services contract?
 - b. To what extent, if any, are the respondents responsible for the claimed \$2,720.50 for moving services?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Henghui has the burden of proving its claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision. Apart from its submissions, I note the only evidence Henghui submitted was a single text exchange with Mr. Zhyliaiev on April 1, 2021.

Claim against Ms. Zhang, Mr. Barbachkov, and Mr. Zhyliaiev

10. A corporation like VTC is distinct from its directors and officers. At law, officers, directors, and employees of corporations are not personally liable unless they

committed a wrongful act independent from that of the corporation (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121).

11. Henghui's only allegation against Ms. Zhang personally is that she allegedly did not follow WorksafeBC safety requirements on site. Henghui submitted no evidence of this, and Ms. Zhang was undisputedly only VTC's employee. There is no evidence she is personally responsible for VTC's worksite safety nor is there any evidence Ms. Zhang was a party to the moving services contract. I dismiss the claim against Ms. Zhang.
12. Mr. Barbachkov is VTC's director and president. There is no evidence Mr. Barbachkov committed any wrong act independent from VTC. Even if Mr. Barbachkov had insulted FW as Henghui alleges, which I find is vague and unproven, that would not be sufficient to hold Mr. Barbachkov personally liable under the contract. The evidence is that VTC hired Henghui. I dismiss the claim against Mr. Barbachkov.
13. While not entirely clear, the evidence indicates Mr. Zhyliaiev is VTC's employee. He undisputedly booked the move with Henghui for VTC. For the same reasons set out above, I dismiss the claim against Mr. Zhyliaiev. Henghui cannot sue both the agent (Mr. Zhyliaiev) and the principal (VTC). I find there is no evidence on which I could find Mr. Zhyliaiev personally liable for VTC's moving services contract with Henghui.

Claim against VTC

14. The agreed move date was April 1, 2021 with an 11am start time. The agreement was for Henghui to provide 2 movers to unload a "40HC container", load the goods onto 2 20-foot trucks provided by Henghui, deliver to the job site, and unload the trucks. The text messages show there were 162 crates in the container that required moving. None of this is disputed.
15. Henghui says VTC's initial quote was with a "middleman" named "Joe", and that Joe's offered \$75 per hour rate was not Henghui's rate. The difficulty for Henghui is that there is no evidence before me that VTC or its employees knew that "Joe" was

not affiliated with Henghui. In any event, nothing turns on this given my conclusion below. The material point is that Henghui ultimately agreed to do the move for VTC and as set out in its text message VTC undisputedly did agree to \$90 per hour.

16. The evidence shows Henghui confirmed it could do the April 1 move with 2 trucks and 2 movers. VTC's evidence is that Henghui was delayed and inefficient. On balance, I accept this evidence because Henghui admits that "when one truck arrived, only one mover can't unload truck by himself". While Henghui argues most of the goods were furniture requiring 2 movers, it provided no evidence of this. Further, the contract was for 2 movers and VTC undisputedly asked for an email address to send pictures of the load, but no email was given.
17. Henghui also argues that under WorksafeBC regulations movers are entitled to take a 15-minute break every 2 hours. Again, it submitted no evidence of this. Notably, there is no formal written contract in evidence that says break time is paid for and the parties' text messages that comprise their agreement do not say this either.
18. Next, Henghui says its driver was only 15 minutes late and had a text message to prove it. Yet, again, Henghui did not submit that text message. On balance, I prefer VTC's more detailed chronology and find that Henghui's first truck did not arrive until 12:40 p.m. and the 2nd truck around 1:10 p.m.
19. Next, Henghui says that even though VTC had its staff assist with the move in order to complete it, Henghui is not responsible for VTC's labour costs. While there is no claim from VTC here, the material point is that the evidence shows Henghui did not provide the movers or the trucks in a timely way and that is the reason that VTC needed to have its own staff assist.
20. Further, VTC's undisputed evidence is that around 2 p.m. on April 1 it advised Henghui that a 3rd truck would be needed. Henghui undisputedly promised it by 3:30 p.m., but the 3rd truck never came.

21. Overall, I find it likely that Henghui breached the parties' moving contract by failing to show up on time, provide the required number of movers and trucks, and by failing to work efficiently.
22. As noted, in its submissions VTC agrees to pay \$2,041.36. So, I order it to pay that amount. I do not order anything more because of my conclusion above that Henghui breached the parties' agreement and unreasonably delayed the move. Further, Henghui submitted no invoice, no time records, and no correspondence that would support its claim for anything more. Parties are told to submit all relevant evidence, and I find the invoices supporting its claim are clearly relevant. I note VTC's \$2,041.36 is \$679.14 less than the claimed \$2,720.50. This \$679.14 difference is at least in part based on \$219.60 for VTC's "inspector waiting time", which I find a reasonable deduction given Henghui's delays. In any event, Henghui failed to provide any invoice or breakdown of the claimed \$2,720.50. So, I find it is entitled to no more than the \$2,041.36.
23. In its submissions, Henghui said it will not claim any interest. So, as Henghui has waived interest I make no order for pre-judgment interest under the *Court Order Interest Act*.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The undisputed evidence is that VTC had asked for a revised invoice "since early May 2021" and was willing to pay \$2,041.36, but Henghui refused. Henghui later filed this CRT dispute on May 20, 2021. Given Henghui has not done better than the offered \$2,041.36, I dismiss its claim for reimbursement of CRT fees. The respondents did not pay fees or claim dispute-related expenses.

ORDERS

25. Within 30 days of this decision, I order VTC to pay Henghui a total of \$2,041.36. Henghui is entitled to post-judgment interest, as applicable.

26. I dismiss Henghui's remaining claims and all claims against Mr. Barbachkov, Mr. Zhyliaiev, and Ms. Zhang.
27. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
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. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Vice Chair