



# Civil Resolution Tribunal

Date Issued: August 26, 2024

File: SC-2023-007450

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lordco Parts Ltd. v. Alpha Fleet Services Inc.*, 2024 BCCRT 823

B E T W E E N :

LORDCO PARTS LTD

**APPLICANT**

A N D :

ALPHA FLEET SERVICES INC. and CORY MICHAEL PENNER

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. The applicant, Lordco Parts Ltd. (Lordco), says the respondents, Alpha Fleet Services Inc. (Alpha) and Cory Michael Penner, purchased products from Lordco on a credit account, but have not paid the invoices within 30 days, as agreed. Lordco says Mr. Penner personally guaranteed Alpha's debts. Lordco claims payment of \$1,413.15 on its overdue account.

2. Alpha and Mr. Penner say that the invoices have been paid and Lordco's accounting is incorrect. Alpha did not file a Dispute Response and is therefore technically in default.
3. Lordco is represented by an employee. Mr. Penner represents himself and Alpha as its owner.

## **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). 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.
5. 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. 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.
6. 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.
7. 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.

### ***Alpha's default status***

8. Lordco named both Alpha and Mr. Penner as respondents in this dispute. Mr. Penner provided a Dispute Response on his own behalf but did not provide a separate

Dispute Response on behalf of Alpha. Typically, when a respondent does not file a Dispute Response (as Alpha failed to do), that respondent is noted in default and liability against them is assumed. However, as Mr. Penner provided submissions on his own behalf as well as Alpha's, I find this shows he intended to respond on both Alpha's behalf as well as his own. So, despite Alpha's technical default status, I will proceed to decide Lordco's claim against both Alpha and Mr. Penner on its merits.

## **ISSUE**

9. The issue in this dispute is whether Alpha or Mr. Penner are responsible to pay Lordco the claimed \$1,413.15.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Lordco, as the applicant, must prove its claims on a balance of probabilities, meaning more likely than not. However, once an applicant establishes a debt, the burden shifts to the respondent to prove they have paid it. I have read all the parties' submissions and evidence but refer only to what that I find relevant to provide context for my decision.
11. Lordco provided a signed customer account agreement in evidence. It shows that Alpha applied for a Lordco credit account on December 14, 2021. The same document also shows that Mr. Penner provided a personal guarantee for any present and future debts due and owing by Alpha to Lordco.
12. Lordco says Alpha and Mr. Penner bought various products on Alpha's credit account. However, Lordco's invoices are all addressed to Alpha, so I find only Alpha bought products on the credit account, not Mr. Penner personally. Nothing turns on this in any event. As noted, I find the evidence shows Mr. Penner provided a personal guarantee on any debts Alpha incurred with Lordco. So, I find Alpha and Mr. Penner are jointly and severally liable for any amounts I find owing to Lordco in this dispute. I turn now to the amounts claimed.

## ***Invoices***

13. Lordco provided 9 invoices in evidence showing various purchases by Alpha between June 10, 2022 and November 30, 2022, as follows:
- a. June 10, 2022, invoice - \$3025.26, of which \$140.24 remains unpaid
  - b. June 15, 2022, invoice- \$38.92
  - c. July 6, 2022, invoice - \$14.92
  - d. July 6, 2022, invoice - \$14.92
  - e. July 22, 2022, invoice - \$395.44
  - f. August 4, 2022, invoice - \$356.39
  - g. September 12, 2022, invoice - \$7.98
  - h. September 13, 2022, invoice - \$19.46
  - i. November 30, 2022, invoice - \$92.69
14. An invoice from September 1, 2022, shows a credit of \$39.99. Subtracting this credit, the 9 unpaid purchases total \$1040.97. Lordco's claim of \$1,413.15 also includes \$372.18 in interest charges.
15. Alpha agrees that it purchased products from Lordco and disputes only the invoice from November 30, 2022. Alpha says it is not familiar with the November charge. Alpha says that it made 3 payments on the invoiced amount totaling \$2948.59. Alpha says its account is paid up in full and Lordco's accounting records are incorrect.
16. Lordco says that the payments made by Alpha were applied to amounts owed from earlier purchases. The parties' disagreement stems from purchases Alpha returned in early 2022. Alpha applied a credit for these returns from its payments to Lordco. However, Lordco says the returns were refunded to credit cards used to pay for the

purchases. Alpha denies ever receiving the refunded amounts on its credit cards. Neither party provided complete details of earlier purchases and payments

17. As the respondent, Alpha has the burden of proving that it has paid its debt. I find that Alpha has failed to prove that it has done so. Alpha provided screenshots of payments processed by its accounting software but did not prove that the payments were sent to Lordco. It could have done so by providing banking records, copies of cheques or confirmation of funds transfers. Alpha also does not explain the details of the credit that it claims, such as the amount.
18. So, I find that Lordco has proved it is entitled to an amount for the claimed invoices with one exception. Lordco did not provide evidence that it sent the November 30, 2022, invoice to Alpha or that Alpha received it. I find that Lordco has proved it is entitled to \$948.28.
19. Lordco included several additional invoices between June 30, 2022, and June 30, 2023, that each contain a single “finance charge.” The finance charge invoices collectively total \$372.18. Lordco explains in its submissions that these invoices contain the contractual interest charges on the purchases. Contractual interest is dealt with separately and I address it below.

### ***Contractual interest***

20. Lordco claims contractual interest at a rate of 34.48% per year. Alpha agreed to pay a “service charge on all overdue accounts at a rate of 34.48% per annum” in the signed customer account agreement. I find this “service charge” is contractual interest on any overdue accounts. So, I find Lordco is entitled to contractual interest on the \$948.28 from 30 days following the date of each of the 8 purchase invoices to the date of this decision. Collectively, I find Lordco is entitled to \$688 in contractual interest, broken down as follows:

- a. June 10, 2022, invoice - \$103.07
- b. June 15, 2022, invoice- \$28.42

- c. July 6, 2022, invoice - \$10.58
- d. July 6, 2022, invoice - \$10.58
- e. July 22, 2022, invoice - \$274.56
- f. August 4, 2022, invoice - \$243.07
- g. September 12, 2022, invoice - \$5.16
- h. September 13, 2022, invoice - \$12.56

21. 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. As Lordco was successful on most of its claimed amount, I find it is entitled to reimbursement of \$125 in paid CRT fees.
22. Lordco also claimed \$304.08 in expenses for serving the respondents, but it did not provide receipts, so I find this expense is unproven. Lordco also claimed legal fees but provided no proof of those fees or specifically what they were for. Under CRT rule 9.5(3)(b), generally the CRT will not order reimbursement of legal fees unless there are extraordinary circumstance that make it appropriate to do so. I find the circumstances of this case involve a simple contractual dispute and are not extraordinary.

## **ORDERS**

23. Within 30 days of the date of this decision, I order Alpha and Mr. Penner, jointly and severally, to pay Lordco a total of \$1,761.28, broken down as follows:
- a. \$948.28 in debt,
  - b. \$688 in contractual interest, and
  - c. \$125 in CRT fees.

24. Lordco is entitled to post-judgment interest, as applicable.

25. 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.

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Maria Montgomery, Tribunal Member