



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Maxfield*, 2021 BCCRT 223

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

JENNICA MAXFIELD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Jennica Maxfield, hired the applicant, 2 Burley Men Moving Ltd. (Burley), to move her belongings between cities. The move took place on October 28, 2020. Ms. Maxfield refused to pay Burley's \$1,496.25 invoice. She says that the movers were late, slow, broke a desk, and acted unprofessionally. She recognizes

that she owes Burley some amount for the move but believes the invoice should be reduced. She does not say by how much.

2. Burley is represented by an employee. Ms. Maxfield is self-represented.

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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether Burley's invoice should be reduced and, if so, by how much.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Burley as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Ms. Maxfield booked the move over the phone for October 28, 2020. She received an online confirmation that said that Burley would provide 2 movers for \$130 per hour, plus 2.5 hours of travel time, and a \$125 fuel charge.
10. The online confirmation also said that the movers would arrive at Ms. Maxfield's home at 9:00 am. Burley admits that they did not show up until 10:30 am. Burley does not explain why they were late.
11. Burley completed the move at 6:00pm. The movers gave Ms. Maxfield an invoice for \$1,496.25, broken down as 7.5 hours of moving, 2.5 hours of travel time, \$125 for fuel, and GST. Ms. Maxfield refused to pay.
12. Ms. Maxfield emailed Burley the next day to explain why she did not pay the invoice. She said that the movers were late, slow and unprofessional. She also said that the movers broke a desk. Ms. Maxfield said that the move cost \$500 more than the initial estimate.
13. Burley responded with an apology but refused to adjust the invoice. I note that parts of Burley's email could be interpreted as admissions, but they were contained in an apology. Section 2 of the *Apology Act* says that an apology cannot be taken into account when determining fault or liability. So, I have not considered Burley's email in making this decision.

14. It is undisputed that Burley's invoice reflects the terms of the parties' contract. However, Ms. Maxfield argues that the invoice should be reduced because of the movers' behaviour and performance.
15. While Ms. Maxfield does not use this language, I find that she is arguing that Burley breached the contract. She wants to be compensated for those breaches, which can be set off against the invoiced amount.
16. There is no statement from either mover. When a party fails to provide relevant evidence within their possession or control about a key issue, without a good explanation, the decision maker may draw an adverse inference against them. This is because the decision maker will assume that if the missing evidence supported the party's view, they would have provided it to support their case.
17. I find that it is appropriate in this dispute to draw an adverse inference against Burley for failing to provide any evidence from the individual movers. I find that their evidence would be directly relevant to Ms. Maxfield's allegations. Burley provided no explanation about why they did not provide statements from either mover.
18. I also note that Burley does not contradict any of Ms. Maxfield's allegations, despite having the opportunity to do so.
19. Based on this adverse inference and the lack of contradictory evidence, I accept Ms. Maxfield's evidence about what happened during the move.
20. I will now turn to each of Ms. Maxfield's arguments.

Allegation 1 – The Movers were Slow

21. Ms. Maxfield says that the move took far longer than expected. She says that the final invoice was \$500 more than the initial estimate that she received over the phone. I infer that Ms. Maxfield believes that this shows that the movers were slower than they should have been. I find that the fact that Burley's invoice was higher than the initial estimate does not itself prove that the movers were slow. I say

this because the ultimate cost was based on time and a Burley employee gave the initial estimate over the phone.

22. Ms. Maxfield says that 1 of the movers, J, barely helped. She says that because her apartment was above the loading bay, she could see J standing around the moving truck, smoking, and talking on his phone.
23. She says that the other mover, R, seemed inexperienced. She says that he moved items out of her apartment in an order that made no sense, which slowed the move down.
24. Burley's only response to this argument is that even if there was only 1 mover, Burley completed the move as promised. This argument might be persuasive if the move was for a fixed price. However, Ms. Maxfield paid for 2 movers. As a matter of common sense, 2 diligent movers will complete a move faster than 1 diligent mover.
25. I find that the parties' contract implicitly required both movers to work diligently during the move. I find that Burley breached this term. I find that J's failure to work diligently made the move longer than it should have been.
26. Ms. Maxfield provided estimates from 3 other moving companies, apparently by filling out online estimate forms on their websites. Ms. Maxfield does not say what she entered into the websites to generate the estimates. I place no weight on the estimates because I do not know what information the other moving companies used to create the estimates.
27. On a judgment basis, I find that it is appropriate to reduce Burley's invoice by \$325, which is 5 hours of J's time. As for R, I accept that his methods appeared inefficient to Ms. Maxfield. However, I find that this is not enough to prove that he breached the parties' contract by failing to work diligently.

Allegation 2 – The Movers Broke a Desk

28. Ms. Maxfield says that the movers broke a desk. She provided a photograph of the desk. It appears to have broken where the legs meet the underside of the desk. I find that the movers broke the desk.
29. Ms. Maxfield provided no evidence about the desk's value, such as its age, brand, or original value. It appears to be a particleboard desk with a veneer, as opposed to a solid wood desk. On a judgment basis, I find that the invoice should be deducted \$50 to account for the broken desk.

Allegation 3 – The Move Was Stressful

30. Ms. Maxfield also argues that she should be compensated because J yelled and swore at her and because the movers were late.
31. In general, when a party breaches a contract, the other party cannot get compensated for mental distress. There are 2 main exceptions. First, a party may get significant compensation when the contract's main purpose was "peace of mind", such as vacations or wedding photography. Second, a party may get more modest compensation where part of the contract's purpose was for a "psychological benefit". In these cases, the party may be compensated for inconvenience and discomfort that goes beyond mere frustration or disappointment. See *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30.
32. I find that a moving contract is not a "peace of mind" contract because its main purpose is to move goods from one place to another. However, I find that part of the reason to hire movers is to make moving less stressful, which is a psychological benefit. While previous CRT decisions are not binding on me, I note that the CRT awarded damages for stress and inconvenience against a moving company in *Kushura v. 0843641 B.C. Ltd. dba PL Affordable Moving Ltd.*, 2020 BCCRT 518.
33. Ms. Maxfield said in her email to Burley that J yelled and swore at her about whether the desk would fit up her new staircase. While I accept that this was

unprofessional, I find that Ms. Maxfield has not proven that it caused anything more than frustration. I find that she is not entitled to be compensated for J's unprofessional behaviour.

34. As for the movers being 1.5 hours late, Ms. Maxfield says that she had to book the elevator in her building for the move. She says that she went over her allotted time because the movers were late. She says that her building manager was "giving her grief" because someone else had booked the elevator for the afternoon. So, Ms. Maxfield says that she, her children and her sister all helped the movers empty her apartment.
35. I find that the movers being late caused Ms. Maxfield inconvenience and discomfort beyond just being frustrated. On a judgment basis, I find that it is appropriate to deduct a further \$100 from the invoice on this basis.
36. In conclusion, I find that a total of \$475 should be deducted from Burley's invoice. I find that Ms. Maxfield must pay \$950 plus GST, for a total of \$997.50.
37. The *Court Order Interest Act* (COIA) applies to the CRT. Burley is entitled to pre-judgment interest on the invoice from October 28, 2020, the date of the move, to the date of this decision. This equals \$1.48.
38. 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 find that Burley was partially successful. I find Burley is entitled to reimbursement of half of its \$125 in CRT fees, which is \$67.50. Neither party claimed any dispute-related expenses.

ORDERS

39. Within 28 days of the date of this order, I order Ms. Maxfield to pay Burley a total of \$1,066.48, broken down as follows:
 - a. \$997.50 in debt,

- b. \$1.48 in pre-judgment interest under the COIA, and
- c. \$67.50 in CRT fees.

40. Burley is entitled to post-judgment interest, as applicable.

41. 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. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

42. 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 British Columbia.

Eric Regehr, Tribunal Member