



Civil Resolution Tribunal

Date Issued: September 1, 2021

File: SC-2021-002295

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1139096 B.C. Ltd. v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 957

BETWEEN:

1139096 B.C. LTD.

APPLICANT

AND:

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged damage during a residential move on October 22, 2020. The applicant developer, 1139096 B.C. Ltd. (113), says the respondent moving company, 2 Burley Men Moving Ltd. (Burley), damaged its 2 newly

constructed homes when Burley moved staging furniture from one to the other. 113 claims \$2,020.04, being \$1,547.54 as the amount it paid to repair the properties plus \$472.50 as a refund of the moving fees paid to Burley.

2. Burley denies negligence but admits it caused at least some of the claimed damage. Burley says it did not have an opportunity to assess the damage and did not authorize repairs. Burley also says the repair costs are exaggerated and that it does “not pay for painting” under the parties’ contract. Burley asks that I dismiss the claim.
3. 113 is represented by Trevor Rennie, its Vice President of Finance. Burley is represented by CA, an employee.

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. 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. 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 section 42 of the CRTA, 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 by section 118 of the CRTA, 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 in this dispute are a) to what extent did Burley damage 113's property, and b) to what extent, if any, is 113 entitled to the claimed refund and damages for repair costs?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant 113 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.
10. The relevant undisputed background facts are as follows. On October 21, 2020, 113 hired Burley to move its staging furniture from its show home to another new townhome. The move happened on October 22. 113 told the movers they would need to be careful as both homes were finished and ready for sale. When the move was done, 113 paid Burley's \$472.50 moving invoice.

Liability

11. 113 says during the move it noticed "some floor scratches and wall bumps" to the "pristine" new homes, and asked Burley to be careful as they finished the move. 113 says Burley's representative JG agreed to meet to discuss the damage, but then after agreeing to a rescheduled date JG never showed up. Mr. Rennie says he called JG but by October 28 Burley stopped returning calls and never replied. I accept this occurred, as Burley does not dispute it and there is no statement in evidence from JG. In November 2020, 113 emailed Burley's staff its complaint along with photos of the damage.

12. In early December 2020, Burley's staff emailed 113 that it would only cover \$157, to mud damaged walls. In his reply email, Mr. Rennie disputed this amount and suggested Burley contacts its insurer. Burley did not provide a substantive response. In March 2021, 113 emailed Burley its repair invoices for millwork, drywall and paint repairs. 113 says it was not charged for floor repairs so it does not claim for that damage.
13. In its Dispute Response filed at the outset of this proceeding, Burley said it agreed with 113's claim description summarized above. As noted above, Burley however denied negligence and argued that it did not authorize repairs, the repair costs were exaggerated, and that it does not pay for painting under the contract.
14. In a Statement of Facts filed by the parties later in the proceeding, both parties agreed Burley "agreed to be liable for damages". In that same document, Burley also agreed that its movers damaged: walls of stairwells and elevator walls for both properties, and fireplace walls in the show home (referred to as unit 106).
15. In its later submissions, Burley appears to argue it did not mean to agree that its movers caused any damage apart from "damage to the walls". Burley submits the other damage could have been done by others.
16. I find the weight of the evidence shows Burley's movers caused the claimed damage. I find Burley's earlier concessions support this conclusion and I further find their later submissions speculative. In evidence are photos of the wall and fireplace damage along with multiple witness statements in evidence noting they saw the new properties before the move and the damage after. I find these support the conclusion Burley caused the claimed damage.
17. Burley relies on a "Client Disclaimer" waybill dated October 22, 2020, which has a back page that set out terms and conditions. There is no client signature or date on this back page of the contract, but at some point that day Mr. Rennie signed the top of the front page. In particular, Burley relies on a paragraph under the heading "Protection Plan Does Not Apply To", which says:

I understand that any damage to the surrounding structures resulting from this move are the sole responsibility of the customer. If any repairs are authorized it is to paint stage only.

18. Based on the above quoted term, Burley argues that it a) never authorized any repairs, and b) even if it did, it was only to “paint stage” or in preparation for painting. So, Burley says that under the contract it owes nothing.
19. In contrast, 113 relies on the October 21, 2020 booking email exchange it had with Burley, where the listed “Terms and Conditions” are similar to those in the waybill but do not include terms about repairs reimbursement “only if authorized” and “to paint stage only”.
20. I agree with 113. I find Burley cannot rely on terms and conditions it unilaterally imposed in a waybill on October 22, 2020 after the moving agreement was made on October 21, 2020. So, I find there was no contractual obligation on 113 to obtain Burley’s approval before it did the necessary repairs and there is no applicable provision that Burley does not have to compensate for painting repairs. While Mr. Rennie signed the waybill, I find Burley had an obligation to draw his attention to that one quoted paragraph upon which Burley relies, given the waybill’s terms and conditions otherwise appear similar to those 113 received on October 21 when it booked the move. I find Burley never did so.
21. 113 says that because the homes were listed for sale, urgent repairs were required, a position supported by a witness statement in evidence from its realtor. I accept this evidence. In any event, there is no suggestion that Burley was qualified or entitled to do the repairs themselves. Further, I find the evidence shows 113 tried to communicate with Burley and did not receive a satisfactory or timely response.
22. So, I find Burley is responsible for the cost of the repairs because I find it damaged the property and 113 reasonably pursued the repairs.

Damages

23. 113 claims reimbursement for repair work it paid in November 2020 for: a) fireplace millwork repairs - \$450.29, b) drywall and paint repair to the show home - \$173.25, and c) drywall and paint repair to the townhouse - \$924 (\$462 each for the suite and for the elevator repairs). The wall damage was to multiple walls in both the show home and the townhouse.
24. While Burley argues the repair costs are unreasonable, they provided no evidence or details in support. I find the repair costs are reasonable and are supported by the photos and witness statements that set out the damage's scope and the urgency for the repairs. I find Burley must reimburse 113 the claimed \$1,547.54 in damages.
25. 113 also claims a refund of the \$472.50 it paid Burley for the move. Having ordered the damages above, I find it would result in double recovery if I ordered a refund of the \$472.50. Apart from the damages addressed above, there is no evidence before me that Burley's moving services were deficient. I dismiss the \$472.50 claim.

Interest, fees and expenses

26. The *Court Order Interest Act* applies to the CRT. I find 113 is entitled to pre-judgment interest on the \$1,547.54. Calculated from November 30, 2020 (a date I find reasonable given the repairs were paid for in November 2020) to the date of this decision, this equals \$5.25.
27. 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. 113 was largely successful and so I order Burley to reimburse it the \$125 paid in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

28. Within 21 days of this decision, I order Burley to pay 113 a total of \$1,677.79, broken down as follows:

- a. \$1,547.54 in damages,
 - b. \$5.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 for reimbursement of paid CRT fees.
29. 113 is entitled to post-judgment interest, as applicable. I dismiss 113's remaining claim.
30. 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 BC 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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