Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 1133

B E T W E E N :

JOHN WILSON

APPLICANT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, John Wilson, hired the respondent, 2 Burley Men Moving Ltd. (2 Burley Men), to move an antique dining room set from North Vancouver to Vernon. Mr. Wilson says that 2 Burley Men's movers damaged the table, 6 of the 12 chairs, and his hardwood floor. He initially asked for a total of $2,002, broken down as $812

to repair the table, $186 to rent a trailer to transport the table, $504 to repair the chairs, and $500 to repair the floors.

2. 2 Burley Men does not deny that its movers caused the damage but says that it was not negligent. It also says that Mr. Wilson agreed to a contractual term limiting its liability to $0.60 per pound for the damaged items. It asks that I dismiss Mr. Wilson's claims.

3. Mr. Wilson is self-represented. 2 Burley Men is represented by 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). 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.

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. 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.

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 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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did 2 Burley Men negligently damage Mr. Wilson's table, chairs, and floor?

    b. Did Mr. Wilson agree to a contractual term limiting 2 Burley Men's liability to $0.60 per pound of the damage items?

    c. What are Mr. Wilson's damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Wilson as the applicant must prove his 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.

10. Mr. Wilson inherited an antique dining room set that included a large table and 12 chairs. He wanted the set moved from his sister's house in North Vancouver to his house in Vernon. Mr. Wilson spoke with a 2 Burley Men employee, E, on the phone on February 7, 2021, to discuss the move. Mr. Wilson and E exchanged some text messages on February 8, 2021. In those messages, the parties agreed that 2 Burley Men would transport the set from North Vancouver to Vernon for $1,000 plus GST, which Mr. Wilson has paid. E also said that 2 Burley Men would "pad and wrap it all in the house". None of this is disputed.

11. 2 Burley Men picked up the set in North Vancouver on February 15 and delivered it to Mr. Wilson's house on February 18, 2021. Mr. Wilson was not home when the movers arrived, so he had his neighbour give them access to his house. Mr. Wilson says that his neighbour watched the movers and saw them damage the table. He

provided his text message exchange with his neighbour from the day of the move, which confirms this. In particular, the neighbour told Mr. Wilson that the movers did not use any padding when using a hand truck to move the table. The neighbour also noted that the movers did not remove their footwear in the house.

12. The movers had the neighbour sign a waybill, which included several terms on the back. One of the terms, under the heading “Carrier Liability Coverage”, said that “all quotations include $0.60 per lb. per article and are provided by the carrier” (reproduced as written). I will refer to this as the CLC clause and discuss it in more detail below.

13. Mr. Wilson arrived in Vernon on February 22, 2021. He says that this was the first time he could personally inspect the damage. He emailed 2 Burley Men photos of the table, which showed gouges and scratches on the top and edge of the table. A 2 Burley Men employee told him that the “protection plan” did not cover repair costs and offered him $84 based on the table’s weight, at $0.60 per pound. Mr. Wilson did not accept the offer.

14. Mr. Wilson later saw that 6 of the 12 chairs were damaged, each along the top edge of the chair. Mr. Wilson says that this is consistent with the movers stacking the chairs seat-to-seat, with half of them upside down. He said that if the chairs were stacked like this, the backs of half of them would rest on the floor because the chairs’ backs are longer than their legs. 2 Burley Men offered $126 for the damaged chairs, based on their weight. Mr. Wilson did not accept this offer either.

15. Mr. Wilson says that the movers tracked mud, snow, dirt, and rocks through his house while unloading in Vernon, damaging the hardwood. Mr. Wilson says that the movers failed to do anything to reduce or eliminate the amount they tracked into the house, such as putting down runners. Mr. Wilson provided photos that show dozens of scratches and dents in the hardwood between the door and living room. Mr. Wilson says that he handwashes the floor every 2 to 3 weeks, so he knows that the damage was not there before 2 Burley Men unloaded the furniture.

16. As mentioned above, 2 Burley Men does not dispute that its movers caused any of the alleged damage. 2 Burley Men says that "accidents do happen" and denies that its movers were "deliberately careless". However, 2 Burley Men admits that its movers did not wrap the furniture when loading and unloading it because it is easier to move unwrapped furniture. 2 Burley Men says that the set was only wrapped inside the truck. This is contrary to E's assurances in their text message to Mr. Wilson. 2 Burley Men also admits that runners should have been used in the house.

17. Based on the photos and 2 Burley Men's admissions, I find that 2 Burley Men's movers damaged Mr. Wilson's table, chairs, and floor as alleged. As for 2 Burley Men's argument that its movers were not "deliberately careless", I find that negligence does not require a deliberate action. To prove negligence, Mr. Wilson must prove the following:

    a. 2 Burley Men owed Mr. Wilson a duty of care.

    b. 2 Burley Men breached the applicable standard of care, causing damage.

    c. The damage was a reasonably foreseeable consequence of 2 Burley Men's negligent act.

18. I find that 2 Burley Men owed Mr. Wilson a duty of care to transport the set with the competence and skill of a reasonable moving company. As for the standard of care, expert evidence is usually required to prove the standard of care of professionals, which I find includes movers. However, there is an exception if the breach is so egregious that it is obviously below the standard of care (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112). I find it obvious that 2 Burley Men's movers should have wrapped the table and chairs during the entire move as promised. I find it obvious that 2 Burley Men should not have transported the chairs with half of their tops resting on the truck's floor. I also find it obvious that 2 Burley Men's movers should have put down floor runners before walking on Mr. Wilson's hardwood floors, which as mentioned 2 Burley Men admits. I find that it was reasonably foreseeable that failing to take these steps

would cause damage. I therefore find that Mr. Wilson has proven that 2 Burley Men was negligent.

19. 2 Burley Men argues that its liability is limited to $0.60 per pound based on the CLC clause. Mr. Wilson disputes this for 3 main reasons. First, he says that he did not agree to this term when he entered into the contract. Second, he says that his neighbour was not his agent and had no authority to agree to the CLC clause on his behalf. Third, he says that even if the CLC clause applies to him, it does not limit 2 Burley Men's liability for damage.

20. I agree with Mr. Wilson on all 3 points.

21. First, I find that there is no persuasive evidence that Mr. Wilson agreed to the CLC clause when he entered into the contract. 2 Burley Men says that it informs all customers about it before booking, but Mr. Wilson says that E never mentioned anything about how much compensation he could receive if 2 Burley Men damaged his items. 2 Burley Men did not provide a statement from E or explain why it did not do so.

22. When a party fails to provide relevant evidence within their possession or control about a key issue, without a good explanation, the CRT may draw an adverse inference by assuming that if the missing evidence supported the party's view, they would have provided it. In the circumstances here, I draw an adverse inference against 2 Burley Men for failing to provide a statement from E, given that E's evidence was clearly relevant. I note that the CRT has drawn adverse inferences against 2 Burley Men in past disputes for failing to provide relevant evidence, including statements. See *2 Burley Men Moving Ltd. v. Delmage*, 2020 BCCRT 498 and *2 Burley Men Moving Ltd. v. Maxfield*, 2021 BCCRT 223.

23. I therefore find that Mr. Wilson did not agree to the CLC clause when he booked the move.

24. Second, I find that Mr. Wilson's neighbour did not have authority to agree to the CLC clause on Mr. Wilson's behalf. This question engages the law of agency. For

Mr. Wilson's neighbour's signature to bind Mr. Wilson, 2 Burley Men must prove that the neighbour either had actual or apparent authority to bind Mr. Wilson to new contractual terms. There is no suggestion that Mr. Wilson gave his neighbour actual authority, so the question is whether the neighbour had apparent authority, also called ostensible authority. The legal test for apparent authority is that Mr. Wilson must have represented to 2 Burley Men, through his words or actions, that his neighbour had authority to agree to the terms on the waybill on Mr. Wilson's behalf. See *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295.

25. I find that the mere fact that Mr. Wilson's neighbour was present to let the movers into Mr. Wilson's house was not a representation that the neighbour could agree to new contractual terms on Mr. Wilson's behalf. I therefore find that Mr. Wilson is not bound by the terms on the waybill, including the CLC clause.

26. Finally, with respect to the CLC clause, I note that different tribunal members have reached different conclusions about what it means. In *Delmage*, the tribunal member concluded that the terms did not limit 2 Burley Men's liability because it only referred to the amount of "coverage" 2 Burley Men would provide. In contrast, in *2 Burley Men Moving Ltd. v. Rosser*, 2021 BCCRT 25, another tribunal member applied the CLC clause and awarded a set-off based on the damaged item's weight. Past CRT decisions are not binding on me.

27. I agree with the reasoning in *Delmage*. I find that if a company intends to limit or exclude its liability in a contract, it must do so in clear and unambiguous terms. See *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC), at paragraph 28.

28. It is arguably possible to interpret it as limiting 2 Burley Men's liability to $0.60 per pound in all circumstances, including for negligent conduct. However, I find that the word "coverage" implies that 2 Burley Men is providing a benefit to its customers, not imposing a limit. I note that another clause explicitly excludes liability if 2 Burley Men delivers a shipment to a storage facility. In contrast, the CLC clause does not say that 2 Burley Men's liability is limited to $0.60 per pound for damaged items. In

that context, I find that a reasonable person would read the CLC clause as providing a guarantee of compensation for damaged items, not a limitation of liability if 2 Burley Men is negligent. I therefore find that Mr. Wilson is not limited to recovering $0.60 per pound for the damaged table and chairs.

29. I turn then to Mr. Wilson's damages.

30. Mr. Wilson says that it cost $812 to repair the table, supported by an invoice and correspondence with the repairperson. 2 Burley Men argues that it should not be liable for this cost because it did not authorize the repair. I find that under the law of negligence, Mr. Wilson is entitled to the amount of money it will take to put him in the position he would be in if 2 Burley Men had not been negligent. I find that this means that Mr. Wilson is entitled to reasonable repair costs. I find that Mr. Wilson did not need to get 2 Burley Men's authorization before repairing the table, as there is no contractual term to that effect. I award $812 for the damage to the table, as I find the amount reasonable.

31. Mr. Wilson also claims $186, the cost of renting a trailer to transport the table, but says he lost the receipt. I find that Mr. Wilson could have provided other objective evidence about this cost, such as a statement from the person who rented him the trailer or a copy of his bank or credit card statement. However, he did provide emails with the repairperson where Mr. Wilson said that he would be using a trailer to transport the table. I find that given the size of the table, Mr. Wilson likely needed to rent a trailer to move it. On balance, despite the lack of objective evidence, I find it more likely than not that Mr. Wilson rented a trailer to take the table to the repairperson. I award him $186, as I find this amount reasonable.

32. Mr. Wilson initially claimed $504 in repair costs for the 6 chairs and $500 to repair the hardwood floors. After starting this CRT dispute, Mr. Wilson obtained estimates that it would cost $750 to repair the chairs and $6,178.75 to repair the floor. In his submissions, Mr. Wilson says that he wants $5,000 for all his claims, which is the maximum amount the CRT can award under its small claims jurisdiction. However, Mr. Wilson did not amend his claim before the submission phase of this dispute

despite having the opportunity to do so. While the CRT's mandate includes flexibility, I find that it would be procedurally unfair to allow Mr. Wilson to increase his claim by nearly $3,000 at this late stage. I decline to consider a claim for more than $504 for the chairs and $500 for the floor.

33. 2 Burley Men says that Mr. Wilson previously said that he would not claim anything for the floor damage. This statement was in a settlement offer Mr. Wilson sent 2 Burley Men before starting this dispute. Mr. Wilson offered not to pursue a claim for the floor damage if 2 Burley Men paid the other repair costs. I find that this statement was in a without prejudice letter, which means that it is not admissible evidence. In any event, it was clearly conditional on 2 Burley Men paying his other repair costs, which 2 Burley Men did not do.

34. Given the estimates in evidence, I find that Mr. Wilson has proven damages in excess of $504 for the chairs and $500 for the floor, so I award these amounts.

35. In summary, I find that Mr. Wilson has proven his claims. I order 2 Burley Men to pay him $2,002 in damages.

36. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Wilson is entitled to pre-judgment interest on the moving date, February 18, 2021, to the date of this decision. This equals $6.15.

37. 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 Mr. Wilson is entitled to reimbursement of $125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order 2 Burley Men to pay Mr. Wilson a total of $2,133.15, broken down as follows:

    a. $2,002 in damages,

b. $6.15 in pre-judgment interest under the COIA, and

c. $125 for CRT fees.

39. Mr. Wilson is entitled to post-judgment interest, as applicable.

40. 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.

41. 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