



Civil Resolution Tribunal

Date Issued: February 23, 2022

File: SC-2021-005054

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Csurka*, 2022 BCCRT 195

BETWEEN:

2 BURLEY MEN MOVING LTD.

APPLICANT

AND:

ELIZABETH CSURKA

RESPONDENT

AND:

2 BURLEY MEN MOVING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about a residential move. 2 Burley Men Moving Ltd. (2 Burley Men) says that Elizabeth Csurka, who asked to be referred to as Elizabeth in this decision, hired it to move her belongings between 2 houses in Alberta. 2 Burley Men says that it billed her \$2,373 for the move but Elizabeth only paid \$1,500. In the primary claim in this dispute, 2 Burley Men claims the \$873 balance.
2. Elizabeth counterclaims against 2 Burley Men. She says that 2 Burley Men overcharged her. She asks that I dismiss 2 Burley Men's claims. Elizabeth also says that 2 Burley Men's movers damaged several items, scratched her floors, and were unprofessional. Elizabeth asks for an order that 2 Burley Men pay her \$5,000, which includes \$1,500 for "pain and suffering". 2 Burley Men does not specifically deny the damage, stating that "accidents do happen", although it does not admit the damage either. However, 2 Burley Men also says that the parties' contract limits its liability for damaged items. 2 Burley Men asks me to dismiss Elizabeth's counterclaims.
3. Elizabeth 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.

Does the CRT have jurisdiction to decide this dispute?

8. As mentioned above, this dispute is about a move that took place entirely in Alberta. This raises the question of whether the CRT has jurisdiction, or legal authority, to decide the parties' claims. The CRT can only decide claims with a "real and substantial connection" between BC and the facts in the dispute. In *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, the Supreme Court of Canada set out several presumptive connecting factors that allow a court (or the CRT) to assume jurisdiction over a dispute. One factor that can establish a "real and substantial connection" is if the contract at issue was made in BC.
9. Contracts are often made when the parties are not in the same place, like over the phone or online. In those circumstances, the contract is considered to be formed where the offeror receives acceptance of their offer. The "offeror" is often a company offering a good or service to the public. See *Key Pile Camp (2008) Ltd. v. Donaghy*, 2016 BCSC 2226, at paragraph 35.
10. In response to my request for submissions on this issue, 2 Burley Men said that the employee who booked Elizabeth's move works out of its Victoria office, which is its head office. As described below, it is unclear whether the contract was with 2 Burley Men or a related company, but either way I accept 2 Burley Men's evidence that the employee was located in Victoria. Elizabeth does not dispute this but says that she

called an Alberta number. However, I find that this is not determinative because an Alberta number could easily have been routed to 2 Burley Men's Victoria head office. I find that 2 Burley Men or its related company was the offeror and that it received Elizabeth's acceptance of its offer in BC.

11. With that, for the purposes of this dispute, I find that the contract at issue was likely made in Victoria. I therefore find that there is a real and substantial connection to BC and the CRT has jurisdiction over this dispute.

ISSUES

12. The issues in this dispute are:
 - a. Does 2 Burley Men have standing to bring this dispute?
 - b. If so, does Elizabeth owe 2 Burley Men anything further for the move?
 - c. Did 2 Burley Men damage Elizabeth's belongings and floors?
 - d. Is Elizabeth entitled to damages for pain and suffering?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, 2 Burley Men must prove its claims on a balance of probabilities. Elizabeth must prove her counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The following facts are undisputed. Elizabeth hired a 2 Burley Men company by phone on May 5, 2021, for a move from Calgary to Carstairs, Alberta. The move was scheduled for June 17 to 18, 2021. On the first day of the move, Elizabeth signed a waybill. The company name at the top of the waybill was 2 Burley Men Moving (Alberta) Ltd. (2 Burley Men Alberta), which had an address in Calgary. 2 Burley Men's office is in Victoria, BC.

15. I turn to the issue of standing, which is about whether 2 Burley Men has a legal right to make its claim against Elizabeth. Neither party raised this issue but the corporate name on the waybill suggested that Elizabeth's contract was with 2 Burley Men Alberta, not 2 Burley Men. I pointed this out to 2 Burley Men and asked for submissions. 2 Burley Men initially failed to answer the question, so CRT staff followed up. In response, 2 Burley Men confirmed that it had nothing to say about this issue. Elizabeth says that the only company she had a contract with was the one listed on the waybill, 2 Burley Men Alberta.
16. I find 2 Burley Men's refusal to directly answer my question telling. I find that Elizabeth's moving contract was likely with 2 Burley Men Alberta, which is not a party to this dispute. Given their names, I find that 2 Burley Men Alberta is likely an Alberta subsidiary of 2 Burley Men. However, even if they are related in this way, they are still separate legal entities. I find that it is reasonable to infer that the Alberta-based corporation would handle moves within Alberta. My conclusion is also supported by the fact that Elizabeth booked the move using an Alberta number.
17. The legal concept called "privity of contract" means that a contract generally cannot impose obligations or give rights to people who are not a party to the contract. I find that 2 Burley Men has not established that it is a party to the contract with Elizabeth. 2 Burley Men has provided no other legal basis for its claim against Elizabeth, such as an assignment agreement. I therefore find that it has no standing to claim the allegedly outstanding debt.
18. For the same reason, I dismiss Elizabeth's counterclaims. Since she hired 2 Burley Men Alberta for the move, I find that her claim is against that corporation for her alleged damages.
19. Having reached that conclusion, I do not need to address the parties' substantive claims.

20. 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. Neither party was successful, so I dismiss their claims for CRT fees and dispute-related expenses.

ORDER

21. I dismiss 2 Burley Men's claims and Elizabeth's counterclaims, and this dispute.

Eric Regehr, Tribunal Member