



Civil Resolution Tribunal

Date Issued: August 22, 2022

File: SC-2022-000637

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McLean v. 2 Burley Men Moving Ltd.*, 2022 BCCRT 938

BETWEEN:

ANNA MCLEAN

APPLICANT

AND:

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about moving services. The applicant, Anna McLean, hired the respondent moving company, 2 Burley Men Moving Ltd. (Burley), for a long-haul residential move from Vancouver to Nelson.

2. Ms. McLean says Burley overcharged her and negligently provided its moving services. She says Burley initially only arrived in Nelson with half her belongings. She says she refused to pay Burley's invoice at that time, which she says was inflated, and so Burley left with her belongings. She says Burley eventually delivered most of her belongings, but some were damaged and others were missing. Ms. McLean says she is entitled to over \$14,000 as reimbursement for the alleged overcharges and damages. She has waived her claim to anything in excess of the Civil Resolution Tribunal's (CRT's) \$5,000 small claims monetary limit.
3. Burley denies that it overcharged Ms. McLean, and says it only provided an estimate at the time of booking. Burley says it was entitled to put Ms. McLean's belongings in storage after she refused to pay the invoice. Burley says the move was completed and there was no guaranteed delivery date. Burley does not deny that its movers caused some damage and that some of Ms. McLean's items were missing. However, it says that Ms. McLean agreed to a contractual term limiting its liability to \$.0.60 per pound for the damaged items, which it has already paid.
4. Ms. McLean self-represented. Burley is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.
6. 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 in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where

there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Did Burley overcharge Ms. McLean and, if so, by how much?
 - b. Is Burley responsible to pay Ms. McLean damages in excess of \$0.60 per pound for her damaged and missing belongings, and if yes, what amount?

- c. Is Burley responsible to pay Ms. McLean's claimed damages for its delay in delivering her belongings, and if yes, what amount?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. McLean must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
12. It is undisputed that Burley picked up Ms. McLean's belongings in Vancouver on October 29, 2021 and initially arrived in Nelson to deliver her belongings on November 6, 2021. It is also undisputed that Burley did not successfully deliver most of Ms. McLean's belongings to her in Nelson until almost one month later, on November 23, 2021.
13. Ms. McLean says that on November 6, about half of her belongings were missing. She also says the belongings that arrived were mixed in with another person's belongings, and some of her belongings were damaged. Burley undisputedly left with her belongings when she refused to pay Burley's invoice, which she says was inflated. Burley did not return with all of her belongings until November 23, 2021, and some of her belongings were still missing.

Did Burley overcharge Ms. McLean, and if so, by how much?

14. Ms. McLean says she spoke with Burley's employee, E, on the phone before booking the move. She says E told her that her belongings would weigh around 2,500 pounds, which would cost \$2,375 in poundage plus a \$75 scale fee. She says she went through her apartment room by room and went through every piece of furniture with E over the phone to get to the \$2,500 quote. Burley says it only provided an estimate at the time of booking, but did not specifically dispute Ms. McLean's description of her phone call with E or provide a statement from E. So, I accept that it generally occurred as Ms. McLean described above.

15. However, although Ms. McLean uses the term “quote”, Ms. McLean’s own submissions confirm that she agreed to pay Burley based on poundage, and she does not dispute that she agreed to pay for the move at a rate of \$950 per 1,000 pounds plus a \$75 scale fee, as Burley claims. So, I find that the “quote” E provided was an estimate based on the estimated weight of Ms. McLean’s belongings, and not a fixed price quote. I also find Ms. McLean agreed to pay for the move at a rate of \$950 per 1,000 pounds plus a \$75 scale fee.
16. It is undisputed that on November 6, 2021 Burley requested full payment of \$5,215.50 when it arrived in Nelson, despite it only having some of Ms. McLean’s belongings. As noted, Burley left when she refused to pay. Ms. McLean says Burley then demanded payment of \$5,555.02 before the second delivery date about three weeks later, which she says she only paid because she was concerned Burley would leave with her belongings a second time and she would never get them back. Burley did not explain this discrepancy in alleged charges between the November 6 and November 23 delivery dates. In any event, Ms. McLean says Burley overcharged her by \$2,840.50, and she claims reimbursement of this amount.
17. Ms. McLean was undisputedly charged for 5,490 pounds. She asks to be reimbursed for the “imaginary extra pounds”. Burley denies that it inflated the poundage and says it charged correctly based on the agreed pricing.
18. Burley provided two weigh scale tickets from October 29, 2021. I infer the first ticket is for two unloaded trucks, and the second ticket is for two loaded trucks. The loaded trucks weighed 272 pounds and 4,762 pounds more than the empty trucks, respectively. In total the loaded trucks weighed 5,489 pounds more than the empty trucks. This is consistent with the 5,490 pounds charged by Burley in its invoice.
19. McLean questions why there are two separate weights recorded in the weigh scale tickets. She says her belongings were loaded into only one moving truck in Vancouver on October 29, 2021, and there was still space in the truck when all her belongings were loaded. As noted, Ms. McLean also says that when the truck arrived in Nelson on November 6, her belongings were mixed in with someone else’s. Burley says the

load was bigger than expected and was split into two trucks. However, Burley did not say when Ms. McLean's belongings were split into two trucks, and did not provide any statement from E or the movers who loaded Ms. McLean's belongings in Vancouver to confirm two trucks were used on October 29, 2021.

20. Further, Burley does not dispute that when it first attempted delivery of Ms. McLean's belongings in Nelson, another person's belongings were mixed in with hers. Burley provided no explanation for this. In the absence of a meaningful explanation from Burley or a statement from its movers about how Ms. McLean's belongings were weighed, or why her belongings were delivered mixed in with someone else's, I find it likely that Ms. McLean's belongings were weighed with someone else's belongings.
21. 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.
22. I find that it is appropriate in this dispute to draw an adverse inference against Burley for failing to provide any evidence from its movers. I find that their evidence would be directly relevant to Ms. McLean's allegations. Burley provided no explanation about why it did not provide statements from any of its movers. Parties are told to provide all relevant evidence and the statements are clearly relevant. I also note Burley is a frequent CRT litigant and is familiar with the process. Further, I note that in previous CRT decisions, other tribunal members have also drawn an adverse inference against Burley for failing to provide statements from its movers. See *Wilson v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 1133, *2 Burley Men Moving Ltd. v Delmage*, 2020 BCCRT 498 and *2 Burley Men Moving Ltd. v. Maxfield*, 2021 BCCRT 223.
23. Given the above, I find it likely that Burley overcharged Ms. McLean for her move based on inaccurate weights. I find that Ms. McLean's belongings were only loaded into one truck on October 29, 2021. I find the second weight listed on the weight scale tickets was likely for someone else's truck and goods entirely. Therefore, I find that

Burley is only entitled to charge for a portion of the 4,762 pounds of belongings weighed in one truck on October 29, 2021.

24. There is no documentary evidence to assist me in determining exactly how much Ms. McLean's belongings weighed. Ms. McLean does not say how much her belongings weighed, and likely has no realistic way to find out. I find E's estimate of 2,500 pounds is some evidence about the likely weight of Ms. McLean's belongings. However, as it was only an estimate based Ms. McLean's description of her belongings over the phone, I find Ms. McLean's belongings could also reasonably weigh more than the estimated amount. On a judgment basis, I find Burley is entitled to charge for 3,500 pounds, which is approximately 3/4 of the weight of one truck, consistent with Ms. McLean's evidence that her belongings only partially filled a truck. At the agreed rate of \$950 per 1,000 pounds, this totals \$3,684.21 in poundage, plus a \$75 scale fee and \$187.96 in GST. In total, I find Burley was entitled to charge \$3,947.17. So, I find Burley overcharged Ms. McLean by \$1,607.85. I order Burley to reimburse Ms. McLean \$1,607.85 for the overcharge.
25. As noted, Ms. McLean also claims reimbursement of storage fees. However, no storage fees are listed on the invoice. I find Ms. McLean has not proven what amount of storage fees she paid, if any. Given this, I decline to order any reimbursement for storage fees.

Is Burley responsible to pay Ms. McLean damages in excess of \$0.60 per pound for her damaged and missing belongings?

26. Ms. McLean says Burley was negligent in providing its moving services. I note that in a previous CRT decision involving Burley that was issued in April 2022, another tribunal member found that movers have the burden of disproving negligence in moving services disputes. See *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 at paragraphs 19 to 21. CRT decisions are not binding on me, but I find the above decision persuasive.

27. As noted, Burley has been involved in several other CRT disputes, including the one referred to above. So, I find that since at least April 2022, Burley has been aware that it bears the burden of proving it was not negligent in providing its moving services.
28. I have also drawn an adverse inference against Burley because it did not provide statements from any of its movers to confirm the details of Ms. McLean's move. I find Burley negligently provided its moving services when it undisputedly damaged and lost some of Ms. McLean's belongings.
29. Ms. McLean claims \$5,822.80 for her lost and damaged belongings,
30. As noted, Burley does not dispute that some of Ms. McLean's belongings were damaged and missing. However, it says that it has already paid Ms. McLean \$277.20 for her damaged and missing items as set out under the parties' contract. Burley relies on a two-page "Client Disclaimer" document that also appears to be its waybill and invoice, and lists terms and conditions on the back page. The client disclaimer includes a liability coverage provision that says Burley's "quotations include basic coverage of \$0.60 per pound per article and are provided by the carrier".
31. Burley says it explains its coverage to all customers when they book. Ms. McLean says she was not told about Burley's coverage and did not agree to it. She says she did not sign the second page of the client disclaimer that sets out the \$0.60 coverage condition. However, on the top of the front page there is a signature that I infer is Ms. McLean's, dated October 29, 2021, in a box that says "I have read, understood and accept the terms and conditions detailed on the back page". Ms. McLean does not dispute that she signed the first page. Therefore, I find that Ms. McLean agreed to the terms in the client disclaimer.
32. Based on the client disclaimer, Burley argues that its responsibility for property damage is limited to \$0.60 per pound of each item's weight. For the further reasons discussed below, I disagree. I note that previous CRT decisions have interpreted this contractual provision differently. In *2 Burley Men Moving Ltd. v. Rosser*, 2021 BCCRT 25, a tribunal member applied this provision and calculated compensation based on

the damaged items' weight. In contrast, in three other CRT decisions tribunal members found that this provision did not limit Burley's liability based on the damaged items' weight. See *2 Burley Men Moving Ltd. v. Delmage*, 2020 BCCRT 498, *Wilson v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 1133, and *2 Burley Men Moving Ltd. v. Iranzad*, 2022 BCCRT 501.

33. Though I am not bound by previous CRT decisions, I find the reasoning in *Delmage*, *Wilson* and *Iranzad* to be persuasive. To limit or exclude liability in a contract, a business 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). I find that Burley did not clearly indicate its "coverage" limited its responsibility for any damaged items. So, I find the parties' contract did not limit Burley's responsibility to \$0.60 per pound. Therefore, I find Burley is responsible for Ms. McLean's proved damages.
34. Ms. McLean says when she received her belongings, several items were damaged, including couch cushions and a baby crib. Photographs in evidence show damaged boxes, including a box labelled "Computer", a broken crib, and ripped and otherwise damaged couch cushions. Based on the photographs, I find it likely the crib and the couch require replacement. Mr. McLean also says several belongings were missing, including her daughter's brand new car seat, a box of kitchen supplies, a box of exercise gear, a box a photographs, and a box of jackets and winter gear. As noted, Burley does not dispute that the belongings described above were damaged and lost.
35. Ms. McLean says the cost to replace her damaged and missing belongings is \$6,100 based on her own estimates, minus the \$277.20 Burley has already paid. She claims \$5,822.80 as the difference. Ms. McLean provided evidence that shows the car seat cost \$600, but she did not provide documentary evidence to prove the value of the other missing and damaged items. However, the missing and damaged items undisputedly also included numerous kitchen items, exercise gear and snowboarding gear, a crib, and a couch. I also note that the missing items include a box of photographs which is irreplaceable. On a judgment basis, I find the cost of replacing

all of these items would be at least \$4,000. I have already ordered Burley to pay Ms. McLean \$1,607.85 for overcharges. Given the CRT's small claims \$5,000 monetary limit, the maximum amount I can award Ms. McLean for the property damage is \$3,392.15. I find Burley must pay Ms. McLean \$3,392.15 in damages for her undisputedly damaged and missing belongings. Together with the overcharge refund, this totals \$5,000.

36. Ms. McLean also claims damages resulting from Burley's delay in delivering her belongings. I have already found Burley must pay Ms. McLean the CRT's \$5,000 small claims monetary limit. Therefore, I find it is unnecessary for me to determine whether Burley is responsible for the delay, or whether Ms. McLean is entitled to any other claimed damages.

CRT fees, expenses and interest

37. The CRT's small claims \$5,000 monetary limit is exclusive of *Court Order Interest Act* (COIA) interest, CRT fees, and dispute related expenses.
38. The COIA applies to the CRT. Ms. McLean is entitled to pre-judgment interest on the \$5,000 award from November 23, 2021 the date Ms. McLean paid Burley's invoice and her belongings were delivered to the date of this decision, which I find is reasonable in the circumstances. This equals \$25.90.
39. 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 see no reason in this case not to follow that general rule. I find Ms. McLean is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses, so I award none.

ORDERS

40. Within 30 days of the date of this order, I order Burley to pay Ms. McLean a total of \$5,200.90, broken down as follows:

- a. \$1,607.85 as reimbursement for overcharges,
- b. \$3,392.15 in damages,
- c. \$25.90 in pre-judgment interest under the COIA, and
- d. \$175 in CRT fees.

41. Ms. McLean is entitled to post-judgment interest, as applicable.

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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkers, Tribunal Member