



Civil Resolution Tribunal

Date Issued: November 3, 2022

File: SC-2022-003206

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Debusscher*, 2022 BCCRT 1206

BETWEEN:

2 BURLEY MEN MOVING LTD.

APPLICANT

AND:

WAYNE DEBUSSCHER

RESPONDENT

AND:

2 BURLEY MEN MOVING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a residential move. The respondent and counterclaim applicant, Wayne Debusscher, hired the applicant and counterclaim respondent, 2 Burley Men Moving Ltd. (Burley), to move his belongings from BC to Alberta. Burley says Mr. Debusscher refused to pay the full price of the move. Burley claims \$2,323.21 for the remaining balance. Mr. Debusscher says Burley overcharged him for the move and he owes nothing further.
2. Mr. Debusscher counterclaims for \$2,522.15. He says this consists of \$401.91 in hotel expenses and \$500 in lost wages because of delivery delays, and \$1,575.15 for property damage, which I find actually totals \$2,477.06. Burley says it owes no wage loss damages, and is unaware of any hotel use or property damage. Burley argues any property damage is limited to \$0.60 per pound.
3. Burley is represented by an authorized employee. Mr. Debusscher is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. Burley submitted email evidence that Mr. Debusscher says was a negotiation discussion before he was fully aware of the damage to his property. He objects to that evidence, which he says the CRT previously rejected when he tried to submit it. Although CRT rule 1.11(1) says CRT settlement discussions are confidential, the emails were sent before the parties applied for CRT dispute resolution. So, I allow the emails, although I find nothing turns on them in any event.
9. Burley originally claimed \$2,953.21 for the remaining amount Mr. Debusscher owes for the move. Later, during CRT facilitation, Burley reduced the amount claimed to \$2,323.21, although the Dispute Notice was not amended.

ISSUES

10. The issues in this dispute are:
 - a. Does Mr. Debusscher owe Burley an additional \$2,323.21 under the parties' moving contract?
 - b. Did Burley breach the parties contract by delaying the delivery, and if so, is Burley responsible for Mr. Debusscher's extra hotel expenses and lost wages?
 - c. Did Burley damage Mr. Debusscher's belongings, and if so, does Burley owe \$1,575.15 for replacement items?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Burley must prove its claim on a balance of probabilities, meaning “more likely than not.” Mr. Debusscher must prove his counterclaim to the same standard. I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.

Amount Owed Under the Contract

12. Burley moved Mr. Debusscher’s household items to a storage facility in Alberta in early May 2022. Mr. Debusscher undisputedly paid Burley \$3,712.72.

13. Mr. Debusscher says Burley quoted him a move price over the phone. He says Burley said the move would cost approximately \$3,000, and that it would not charge more than \$3,500 total. However, I find no documentary evidence supports this assertion.

14. Burley denies that it ever gives fixed price quotes or maximums for weighed shipments. Burley emailed Mr. Debusscher on April 28, 2022 with the move’s terms “as per our conversation”, including the following:

- a. \$950 per 1,000 pounds of weight,
- b. \$75 scale fee, \$600 fuel, motel, and food fee, \$600 out of area fee, and
- c. GST was additional.

15. Those emailed prices also appeared in Burley’s later invoices. Mr. Debusscher says he never received that email, although he does not deny that Burley used his correct email address. He also says he never agreed to any unspecified “additional charges” and never signed a written contract.

16. However, Mr. Debusscher argues that Burley overcharged him because it mis-weighed his belongings. He does not dispute that the move’s price was based on weight. He also does not expressly take issue with the fees or rates Burley gave in its email and repeated in its invoices. So, even if Mr. Debusscher never received the

April 28, 2022 email, I find that it likely reflects the parties' verbal agreement about the move. For the above reasons, I find that the parties more likely than not agreed to the prices and terms in Burley's email. I also find the evidence does not support that the parties agreed to a \$3,500 maximum, or any maximum, for moving charges.

17. The weight of Mr. Debusscher's belongings was determined by the difference in the moving truck's weight with and without the belongings. Burley admits that it initially used incorrect weight measurements to calculate what Mr. Debusscher owed, although it does not clarify why or how. I find submitted invoices show that Burley crossed out an initial 6,541 pound weight, and replaced it with 5,320 pounds for a weight charge of \$5,054. I find this revised weight corresponds to the difference between 2 weigh scale receipts, both dated May 6, 2022. The total of that revised invoice, after adding the other agreed charges and GST, was \$6,645.45. Mr. Debusscher was not present at the May 6, 2022 weighing. I find the submitted evidence does not show whether his belongings, and nothing else, were on the truck that was weighed on that date.
18. The parties together re-weighed the truck at Mr. Debusscher's request and in his presence, at a different weigh scale he chose. Burley says it increased the move's price by \$780, to \$7,425.45, after the re-weighing, by including extra weigh scale charges and labour charges for unloading and reloading the truck again. Mr. Debusscher says he only agreed to pay the scale fee and no other additional charges, and the price increase was incorrect because the new scale measurements showed his possessions actually weighed less. Neither party denies, and I find submitted weigh scale receipts and photos confirm, that this re-weighing showed Mr. Debusscher's possessions weighed 2,100 kilograms, which equals 4,620 pounds. I accept that as the weight of Mr. Debusscher's belongings, given the uncertainty about what Burley previously weighed.

19. The evidence shows Burley again crossed out the totals on its previously revised invoice and added the \$780 for labour and 2 extra weigh scale charges mentioned above. However, Burley continued to use a weight of 5,320 pounds. I find the evidence does not show that Burley paid for any extra weigh scale charges, or that the parties agreed Mr. Debusscher would pay for that additional labour. I also find it was not reasonable to expect Mr. Debusscher to pay for that labour, because the revised, accepted weight of his possessions is less than the 2 different weights Burley previously used to calculate its fees. So, I find Mr. Debusscher is not responsible for the additional unloading and reloading labour or extra weigh scale fees.
20. For the reasons above, I find that Mr. Debusscher owed Burley for 4,620 pounds of moved items at \$950 per 1,000 pounds, plus the \$75 scale fee and 2 \$600 fees, plus GST. This equals \$5,947.20. Subtracting the \$3,712.72 Mr. Debusscher paid, I find that leaves \$2,234.48 in unpaid moving fees. For the above reasons, I find there is no merit in Mr. Debusscher's submissions that he should be reimbursed \$212.72 for overpaying Burley, or should have "all my money returned." I allow Burley's claim in the amount of \$2,234.48, subject to any deductions for Mr. Debusscher's counterclaim, discussed below.

Hotel Expenses and Lost Wages

21. Mr. Debusscher says that the expected delivery date was May 3, 2022, but Burley did not "show up" until May 7, 2022. He says this caused him to incur \$401.91 in extra hotel expenses for that period. Burley says it picked up the belongings on April 30, 2022, but does not say what the expected delivery date was, if any. Contrary to Mr. Debusscher's assertion, I find nothing in the evidence before me shows that Burley agreed to deliver Mr. Debusscher's belongings by May 3, 2022. I find the evidence does not show that delivery on May 7, 2022 was unreasonable in the circumstances.
22. Even if Burley had agreed to a May 3, 2022 delivery date, it undisputedly delivered the belongings to a storage facility and not a residence. So, I find that Mr. Debusscher likely did not remain in the hotel because he lacked furniture for his residence, and he does not adequately explain how the allegedly late delivery lengthened his hotel

stay. Further, submitted hotel receipts show that a different person, and not Mr. Debusscher, paid for the hotel. Mr. Debusscher does not explain his relationship to that person. So, I dismiss Mr. Debusscher's \$401.91 counterclaim for hotel expenses.

23. Mr. Debusscher also counterclaims \$500 for his time spent supervising Burley while it re-weighed his possessions. He says \$500 is the value of his "daily wage with vehicle." However, I find there is no documentary evidence of Mr. Debusscher's daily wage, or showing that he missed work while attending the re-weighing. I dismiss Mr. Debusscher's \$500 counterclaim for lost wages.

Property Damage

24. Mr. Debusscher says that Burley damaged several pieces of furniture during the move, as shown in submitted photos. I find the photos show a filing cabinet with part of its base and a wheel broken off, a shelf with large dents, and 3 dressers: 1 with broken legs and a deeply scratched top, 1 with severely scraped drawers, and 1 with a deeply scratched top. Burley does not address these allegations in its submissions.
25. I find that Mr. Debusscher alleges Burley negligently damaged the furniture. To prove negligence, Mr. Debusscher must show that Burley owed him a duty of care, it breached the standard of care, and the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. However, in moving disputes the mover has the burden of disproving negligence, even though as noted Mr. Debusscher has the general burden of proving his claims as the applicant. See for example the non-binding but persuasive decision *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 at paragraphs 19 to 21.
26. Mr. Debusscher hired Burley, so I find Burley owed him a duty of care. I find the applicable standard of care was to employ the skill and care expected of a reasonably prudent and careful mover in similar circumstances. As noted, Burley does not directly deny causing the furniture damage shown in submitted photos. Further, I find Burley provided no evidence suggesting that the damage did not result from Burley's moving activities, or that Burley took reasonable steps to prevent that damage. On the

evidence before me, I find all of the furniture damage at issue resulted from Burley's negligence.

27. Burley says the parties' agreement limited Burley's liability for property damage to \$0.60 per pound. Burley might be referring to unspecified contractual language similar to that used in other Burley moves, which the CRT has considered in other decisions. Most of those other decisions found that other Burley contracts did not limit Burley's liability to \$0.60 per pound, for example *McLean v. 2 Burley Men Moving Ltd.*, 2022 BCCRT 938 at paragraphs 31 to 33. However, I find nothing turns on that, because none of the evidence before me shows that Mr. Debusscher agreed to contract terms limiting Burley's liability for property damage based on weight, or at all. So, I find Burley is fully responsible for that damage.
28. I turn to the value of the furniture damage. Neither party argued that Mr. Debusscher's furniture was repairable, or that it was worth less than new furniture because of age or pre-existing damage. I find the photos in evidence show that the moving damage was severe. So, I find Burley is responsible for the proven cost of replacing Mr. Debusscher's damaged furniture with equivalent new furniture.
29. Mr. Debusscher submitted a draft order from the damaged furniture's manufacturer that I find showed an \$880.99 price for direct replacements, plus \$206.85 in furniture assembly fees. I allow Mr. Debusscher's claim for those amounts plus GST, which totals \$1,142.23. Mr. Debusscher also claims delivery costs of \$412.30 at Burley's moving rate of \$0.95 per pound. However, the draft furniture order said delivery costs were "TBD." I accept that there would likely be a delivery charge, but nothing before me shows what it would be, or that it would be the same as the price Burley charged for an interprovincial move. I find there is no evidence before me showing what rates the manufacturer or anyone else would likely charge for delivering the replacement furniture, or what the origin and destination of the furniture would be. So, on a judgment basis, I order payment of \$100 for furniture delivery.

30. I find the total amount owed by Burley equals \$1,242.23. Subtracting that amount from the \$2,234.48 owed by Mr. Debusscher, I find that overall Mr. Debusscher owes Burley \$992.25.

CRT Fees, Expenses, and Interest

31. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Burley is entitled to pre-judgment interest on the \$992.25 owing. I find this interest is reasonably calculated from May 7, 2022, the final delivery date when Mr. Debusscher made a partial payment, until the date of this decision. This equals \$6.50.

32. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Burley was largely successful in its claim, so I find it is entitled to reimbursement of the \$125 it paid in CRT fees. Mr. Debusscher was partly successful in his counterclaim, so I find he is entitled to reimbursement of half of the \$75 he paid in CRT fees, which equals \$37.50. Subtracting the 2 fee reimbursements, I find Mr. Debusscher owes Burley \$87.50 for CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

33. I order that, within 30 days of the date of this decision, Mr. Debusscher pay Burley a total of \$1,086.25, broken down as follows:

- a. \$992.25 in debt,
- b. \$6.50 in pre-judgment interest under the COIA, and
- c. \$87.50 in CRT fees.

34. Burley is also entitled to post-judgment interest under the COIA, as applicable.

35. I dismiss Mr. Debusscher's remaining counterclaims.

36. 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.

Chad McCarthy, Tribunal Member