



# Civil Resolution Tribunal

Date Issued: December 1, 2022

File: SC-2022-000153

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brulot v. All-Can Express Ltd. dba A.C.E. Courier Services*,  
2022 BCCRT 1294

B E T W E E N :

MAGALI MARIE-PIERRE BRULOT

**APPLICANT**

A N D :

ALL-CAN EXPRESS LTD. dba A.C.E. COURIER SERVICES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about courier services. The applicant, Magali Marie-Pierre Brulot, hired the respondent, All-Can Express Ltd. dba A.C.E. Courier Services (ACE), to deliver raw oysters and mussels to Dr. Brulot's residence. Dr. Brulot says she paid for

overnight delivery but did not receive the seafood until 5 days later by which time the seafood had spoiled. She claims \$262.74 for the spoiled seafood.

2. ACE admits it delivered the seafood late. However, it says that it is not responsible for any damages resulting from the late delivery based on its terms and conditions of transport.
3. Dr. Brulot is self-represented. ACE is represented by an employee or principal.

## **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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether ACE owes Dr. Brulot for the spoiled seafood.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant, Dr. Brulot must prove her claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. The evidence shows as follows. On December 23, 2021 at 9:48 am, Dr. Brulot placed a \$262.74 online order for raw oysters and mussels from Fanny Bay Oysters (FBO). According to ACE’s waybill, ACE picked up the seafood from FBO the same day at 12:56 pm for delivery to Dr. Brulot. Dr. Brulot says she arranged for overnight delivery, which I accept as ACE does not dispute it.
11. Dr. Brulot says she received a telephone call from ACE on December 24, 2021 before 8 am. During this call, Dr. Brulot says an ACE employee informed her ACE had her package and required payment before ACE could deliver it. Dr. Brulot says she paid \$72.09 by credit card over the phone following which ACE’s employee told her that her package would be delivered shortly. A receipt in evidence shows the \$72.09 payment was made at 7:54 am on December 24, 2021.
12. ACE says its business closed at noon on December 24, 2021 and Dr. Brulot’s payment was not processed in time for ACE’s delivery truck to receive the order. It is undisputed ACE eventually made the delivery to Dr. Brulot’s residence on December 29, 2021 once it reopened after the holidays.
13. The evidence includes a statement from AM, Dr. Brulot’s neighbour. In this statement, AM said they were visiting Dr. Brulot on December 29, 2021 when the seafood was delivered, inedible. Based on the evidence before me, which ACE does not dispute, I find the seafood was spoiled by the time ACE delivered it to Dr. Brulot on December 29, 2021.

14. ACE undisputedly refunded Dr. Brulot the \$72.09 courier charge for the late delivery. However, ACE says it is not responsible for reimbursing Dr. Brulot for the spoiled seafood.
15. ACE says under its terms of conditions of transport, it is not liable for any damages resulting from late delivery or due to alleged negligence by ACE. In particular, ACE refers to a bill of lading terms and conditions document in evidence which includes a term that ACE is not liable for any incidental costs, loss of use, consequential or any other damages resulting from delayed delivery or negligence.
16. When a party wants to rely on the terms of a contract, it must prove the existence and acceptance of those terms. So, the burden is on ACE to prove the parties' contract included the above limitation of liability clause.
17. ACE says the shipper, FBO, agreed to its terms and conditions on behalf of Dr. Brulot when FBO signed ACE's waybill. The waybill in evidence shows a signature under "shipper's signature" so I infer FBO signed the waybill. The waybill says to "see reverse for terms & conditions". However, the reverse side of the waybill is not in evidence. Notably, Dr. Brulot did not sign the waybill. So, I find the evidence before me does not establish that the terms and conditions ACE relies on were on the waybill or otherwise agreed to by FBO or Dr. Brulot. Specifically, there is no evidence that the above limitation of liability clause was ever brought to Dr. Brulot's attention.
18. Based on the above, I find the limitation of liability clause does not apply here. So, is ACE liable for the spoiled seafood? As mentioned, ACE does not deny Dr. Brulot paid for overnight delivery. Photographs in evidence show the package was clearly labeled as "rush" and "perishable".
19. Dr. Brulot says ACE was negligent in not informing her it would be closing for the holidays at noon on December 24, 2021 and that there was a possibility the seafood package could be delayed. She says there was no information on ACE's website or on its voicemail about its office closure. ACE does not dispute this. Dr. Brulot further

says ACE was also negligent for failing to inform its driver that the delivery fee had been paid, thus delaying the delivery by 5 days.

20. In order to prove ACE was negligent, Dr. Brulot must establish that ACE owed her a duty of care, that it breached the standard of care, and that she sustained foreseeable damage caused by ACE's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
21. I find that in providing courier services to Dr. Brulot, ACE owed her a duty of care. I find the applicable standard of care here was for ACE to reasonably attempt to deliver the perishable goods before it closed for the holidays once Dr. Brulot made payment. Though ACE says Dr. Brulot's payment was not processed in time, given that Dr. Brulot's payment was made at 7:54 am on December 24, 2021, I find ACE could have reasonably attempted to make the delivery before it closed at noon for the holidays. I find ACE breached this standard of care by undisputedly failing to make any attempts to deliver the perishable goods on December 24, 2021.
22. Since the package was clearly labelled as "rush" and "perishable", I find it was reasonably foreseeable that ACE's failure to deliver the package overnight could result in the seafood spoiling and loss to Dr. Brulot. So, I find Dr. Brulot is entitled to \$262.74 in damages from ACE for the spoiled seafood.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Dr. Brulot is entitled to pre-judgment interest on the \$262.74 from December 24, 2021, the date the cause of action arose, to the date of this decision. This equals \$2.50.
24. 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 Dr. Brulot is entitled to reimbursement of \$150 in CRT fees. The parties do not claim any dispute-related expenses.

## ORDERS

25. Within 14 days of the date of this decision, I order ACE to pay Dr. Brulot a total of \$415.24, broken down as follows:
- a. \$262.74 in damages,
  - b. \$2.50 in pre-judgment interest under the COIA, and
  - c. \$150 in CRT fees.
26. Dr. Brulot is entitled to post-judgment interest, as applicable.
27. 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.

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Nav Shukla, Tribunal Member