



Civil Resolution Tribunal

Date Issued: October 13, 2023

Files: SC-2022-007768 and
SC-CC-2023-003360

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Boley*, 2023 BCCRT 868

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

COLLINA BOLEY

RESPONDENT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. These 2 linked disputes are about a residential move. I find the disputes consist of a claim and a counterclaim involving the same parties. So, I have issued a single decision for both disputes.
2. The respondent and counterclaim applicant, Collina Boley, who asked to be referred to as Collina, hired the applicant and counterclaim respondent, 2 Burley Men Moving Ltd. (Burley), to complete their residential move. Collina paid \$3,000 of the \$7,717.50 Burley charged them for the move, but Burley says they failed to pay the balance. In SC-2022-007768, Burley claims \$4,717.50 as the amount owing for moving services provided.
3. Collina says Burley overcharged them. They say Burley quoted them \$2,400 for the move, but due to mistakes Burley made, it took longer than anticipated and cost over triple the quoted amount. Collina says since they already paid \$600 more for the move than Burley's \$2,400 quote, they are not responsible to pay Burley anything further.
4. In SC-CC-2023-003360, Collina claims \$2,520 for having to move belongings they say Burley left behind. Burley denies leaving behind any items Collina instructed it to move. Burley also denies responsibility for expenses Collina incurred to move additional items, and says it only charged Collina in connection with the items it moved.
5. Burley is represented by an employee. Collina is self-represented.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal's (CRT) 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.

7. 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, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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.
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. Must Collina pay Burley \$4,717.50, or another amount, for unpaid moving services?
 - b. Must Burley pay Collina \$2,520 for the cost of moving belongings Burley allegedly left behind?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Burley must prove its claims on a balance of probabilities (meaning more likely than not). Collina must prove their counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to the evidence and argument I find necessary to explain my decision. I have considered the submissions and evidence submitted by the parties collectively in both disputes in coming to my decision.

Background

12. In late September 2022, Collina booked Burley for their residential move on October 3, 2022. When Burley did not show up on October 3, Collina called Burley's office and was told their move had mistakenly been booked for another day. The parties rescheduled the move for October 4. When Burley arrived on October 4, it told Collina their driveway was too steep for the moving truck, and it would have to use a shuttle to transport Collina's belongings from the house up to the moving truck. None of this is disputed.
13. Collina says Burley quoted them \$2,400 for the move. Collina also says they mentioned their driveway was steep and had a switchback in 2 separate conversations, once when they booked their move and again on the morning of October 4. They say they raised the driveway issue in the hope that Burley would check it out before the move. Collina says Burley assured them the driveway would be "no problem", as its drivers were experienced. I address Burley's version of events further below.
14. Collina says when Burley arrived, Collina agreed to the shuttle because the move was already a day late and Burley told them if they waited for a different moving truck, it could be delayed by a week. They say they trusted the movers' judgment, and assumed Burley would absorb any extra costs, since it had made mistakes with the date and the truck.
15. Burley acknowledges its mistake in failing to schedule Collina's move for October 3, but says it corrected this by rescheduling it for October 4. Burley denies it provided Collina with a quote, and says it only gave them an estimate, as it does not provide quotes for moves booked by the hour.
16. Burley does not directly dispute that Collina raised the driveway issue when they booked the move. However, in a statement in evidence, one of the movers (KK) said when they arrived for the move, they noticed the driveway was extremely steep with loosely packed gravel, which made it too dangerous for the 7-tonne truck Burley had

brought to safely access to the house. I find Collina likely mentioned the driveway and switchback to Burley before the move, but that Burley did not appreciate the impact this would have on its vehicular needs until its movers arrived on October 4. Contrary to what Collina says, Burley asserts KK told Collina the shuttle would be an extra cost to Collina, and they agreed to it.

17. There is no written contract in evidence, and no evidence Burley sent Collina confirmation of an hourly rate before the move. The parties submitted slightly different copies of a waybill (more on this below), both showing 3 movers at \$200 per hour, plus travel and fuel. The waybills also show Burley actually charged Collina for 15 hours at \$300 per hour and 12.25 hours at \$200 per hour, plus 5% tax, plus \$400 for fuel. The waybills note that Collina disputed some of the charges.
18. Based on the evidence before me, I find Burley provided Collina with a \$2,400 estimate for their move rather than a fixed quote, and that the move was to be billed by the hour. I say this because in submissions, Collina acknowledges there are many factors that can determine the time needed for a move, and alleges it was Burley's mistake in sending the wrong-sized truck and the movers' slow pace that unduly increased the time and cost to complete the move. Also, Collina paid Burley \$600 more than the \$2,400 they say Burley quoted them. I find it unlikely they would have paid more than \$2,400 had it been a fixed quote and not an estimate.
19. I also find the parties agreed to an hourly rate of \$200, not \$300. This is because Burley did not explain why the waybills both record the 3 movers at \$200 per hour in bigger writing in the "charged at" box, and then in smaller writing to one side, show 15 hours charged at \$300 per hour and 12.25 hours charged at \$200 per hour. In the absence of any explanation, I infer Burley unilaterally determined the \$300 hourly rate for 15 hours after starting the move, when it realized the move would take longer than anticipated. So, I find the parties' contract was for moving services at \$200 per hour, plus tax, plus fuel. I also find it was an implied term of the contract that Burley would complete the move in a timely way, since it was a move charged by the hour.

Burley's claim

20. Collina alleges Burley's mistake in sending the wrong moving truck resulted in the need to use a shuttle, which added to the move's time and cost. I find it was reasonable for Collina to expect Burley to send an appropriately sized truck based on their description of their belongings and their driveway.
21. While Collina may have hoped Burley would come by in advance of the move to see the driveway, there is no evidence Collina asked Burley to do this and it agreed. Even so, I find that once Collina raised the driveway concerns with Burley, it was for Burley, as a professional moving company, to ensure it had the necessary vehicles to complete the move in a timely way. There is no evidence Burley took any steps, such as requesting photos of the driveway, to determine in advance what vehicles it would need to complete the move.
22. It is undisputed that when Burley arrived on October 4 and established it would need a shuttle, it then took "several hours" for the shuttle to arrive from another city. I pause here to note I do not find Burley sent a moving truck that was too big, as Collina implies. I find the fact Burley had to do a second trip to move more of Collina's belongings supports a conclusion the 7-tonne truck was not too big. However, I find it was a breach of the implied timeliness term that Burley did not have a shuttle ready at the start of the move, given what Collina had told it about the driveway and given the moving truck's size. That is, had Burley determined it needed a shuttle before starting the move, as I find it should have, the move would not have been delayed by having to wait for it. I find Collina is not responsible to pay for the several hours of delay caused by the shuttle's late arrival.
23. Collina says on October 5, Burley was to begin unloading their belongings around 9am at their new home, but did not show up until 10am. They say Burley did not begin unloading the moving truck until around 12:30pm because the shuttle it had used the day before could not be located and Burley had to "fix that problem." Burley does not dispute any of this, and I accept this is what happened.

24. Burley's copy of the waybill shows its movers showed up at 9am and finished at 9:45pm on day 2 of the move. Collina's copy does not record any start and finish times. I find Collina is not responsible to pay for the 3.5 hours Burley charged for day 2 up to 12:30pm, since Burley does not say Collina caused the unloading delay.
25. Collina also says the movers worked very slowly and were unprofessional, took many breaks, and that they (Collina) helped. However, Collina did not provide evidence they recorded the movers' breaks or otherwise tracked the number of hours they worked, so I do not discount Burley's hours for that.
26. Finally, Collina says the mistake Burley made in not booking their move on October 3 caused them significant inconvenience, as they had hired childcare and dog care for that day. As this is not part of their counterclaim, I infer they request a setoff for these expenses against any amount I award Burley. However, Collina did not provide evidence or give any indication of the lost childcare and dog care expenses for October 3, so I find them unproven.
27. Given my findings about the shuttle delays, I conclude Burley overcharged Collina for the move. The number of hours by which the move was delayed on October 4 due to having to source the shuttle is unclear. On a judgment basis, I find Burley overcharged Collina by 3.5 hours on October 4. I also find Burley overcharged Collina by 3.5 hours on October 5.
28. Overall, I find Burley is entitled to payment for 20.25 hours at \$200 per hour, plus 5% tax, plus \$400 for fuel. This amounts to \$4,652.50. Since Collina has undisputedly paid \$3,000, this leaves \$1,652.50. I order Collina to pay Burley this amount.

Collina's counterclaim

29. In SC-CC-2023-003360, Collina claims \$2,520. They say this is for the cost of moving belongings Burley left behind and did not move. Collina calculates the amount claimed based on the 12 hours they say it would have taken Burley to move the additional items, at \$200 per hour, plus 5% GST.

30. Burley disputes it left behind any of Collina's belongings they instructed Burley to move. Burley says Collina told the movers the additional items were to stay, and that any time and expense Collina may have incurred to move those items later are not Burley's responsibility.
31. Collina submitted photos of the items they say Burley failed to move. I find the photos do not help them prove they told Burley to move the belongings and Burley ignored those instructions. I find there is no other evidence that Collina directed Burley to move the additional items and Burley did not do so.
32. Even if Collina had proven Burley disregarded their instructions to move the additional items, I find they have not proven they suffered a loss, for 2 reasons. First, they did not provide receipts to support the cost of moving the additional items. Second, by Collina's own admission, they would have had to pay Burley \$2,520 to move the additional items in any event. So, I find Collina has failed to prove they are entitled to the claimed amount for moving items they say Burley left behind.
33. For these reasons, I dismiss Collina's counterclaim.

CRT FEES, EXPENSES, AND INTEREST

34. The *Court Order Interest Act* (COIA) applies to the CRT. Burley is entitled to pre-judgment interest on the \$1,652.50 debt award from October 5, 2022 the date of the waybill, to the date of this decision. This equals \$66.77.
35. 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. As Burley was partially successful in its claim, I find it is entitled to reimbursement of half its CRT fees, which is \$87.50. I dismiss Collina's claim for CRT fees, as they were unsuccessful in their counterclaim. Neither party claimed dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order Collina to pay Burley a total of \$1,806.77, broken down as follows:
- a. \$1,652.50 in debt,
 - b. \$66.77 in pre-judgment interest under the COIA, and
 - c. \$87.50 in CRT fees.
37. Burley is entitled to post-judgment interest, as applicable.
38. I dismiss Collina's counterclaim.
39. 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.

Megan Stewart, Tribunal Member