



# Civil Resolution Tribunal

Date Issued: March 15, 2024

Files: SC-2022-009836  
and SC-2023-008145

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burt dba Exburt Contract Services v. HBM Property Management & Real Estate Ltd.*, 2024 BCCRT 270

**B E T W E E N :**

JOSHUA LUKE ANDREW BURT (Doing Business As EXBURT  
CONTRACT SERVICES) and NAOMI MINNA VICTORIA BURT

**APPLICANTS**

**A N D :**

HBM PROPERTY MANAGEMENT & REAL ESTATE LTD.  
and The Owners, Strata Plan EPS4170

**RESPONDENTS**

**A N D :**

JOSHUA LUKE ANDREW BURT (Doing Business As EXBURT  
CONTRACT SERVICES) and NAOMI MINNA VICTORIA BURT

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. This decision is about 2 linked disputes that I find are a claim and a counterclaim. So, I have considered the evidence and submissions in both disputes as a whole and issued 1 decision.
2. In dispute SC-2022-009836, Joshua Luke Andrew Burt (Doing Business As Exburt Contract Services) and Naomi Minna Victoria Burt say they provided snow removal, lot clearing, and maintenance services to The Owners, Strata Plan EPS4170 (strata) for which they have not been paid. They claim \$3,880 against the strata, and against HBM Property Management & Real Estate Ltd. (HBM), the strata's management company, for the allegedly unpaid services and administrative fees, plus contractual interest.
3. HBM says that it is only the strata's agent and is not responsible for any unpaid amounts. The strata says that Mr. Burt has overcharged it and it has paid in full for the services it received.
4. In dispute SC-2023-008145, the strata counterclaims against Mr. and Mrs. Burt for legal fees it says it incurred to remove builders liens that Mr. Burt filed against various strata lots at the strata for the unpaid snow removal services. The strata says that it paid \$5,077.16 in legal fees but it reduces its claim to \$5,000, the monetary limit for small claims disputes at the Civil Resolution Tribunal (CRT).
5. Mr. and Mrs. Burt are self-represented. The strata is represented by a strata council member and HBM is represented by its managing broker.

## **JURISDICTION AND PROCEDURE**

6. 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)*. CRTA section 2 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. CRTA section 39 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 and that an oral hearing is not necessary.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
9. In the Dispute Notice for the strata's counterclaim, the strata named Mr. and Mrs. Burt without their middle names. It is clear from the evidence that the strata intended to name Mr. and Mrs. Burt, the applicants in dispute SC-2022-009838, as respondents to the counterclaim in dispute SC-2023-008145. So, I have exercised my discretion under CRTA section 61 to amend the style of cause accordingly.

## **ISSUES**

10. The issues in these disputes are:
  - a. Are Mr. and Mrs. Burt, or either one of them, entitled to the claimed \$3,880, or some other amount for snow removal services. If so, from whom?
  - b. Does the CRT have jurisdiction to decide the strata's counterclaim?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. and Mrs. Burt as the applicants must prove their claims on a balance of probabilities. The strata must prove its counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. In November 2021, HBM, who uses the business name "Hometime Realty & Property Management" (Hometime), contacted Mr. Burt and invited him to provide a quote for

snow removal services for a number of properties that HBM manages, including the strata. On December 3, 2021, on behalf of the strata, TJ, a strata manager with HBM, signed a written contract provided by Mr. Burt for the snow removal services. I pause here to note that in dispute SC-2022-009836, Mr. and Mrs. Burt both claim against HBM and the strata for unpaid snow removal fees. However, based on the signed contract in evidence, I find Mrs. Burt was not a party to the contract, only Mr. Burt was. So, I find Mrs. Burt has no standing (legal right) to sue for a breach of the snow removal contract, and I dismiss her claims.

13. HBM also argues that it is not responsible for any unpaid snow removal services. It says, and I find an agency agreement in evidence shows, that it was at all times acting as the strata's agent.
14. I note that while the written contract names Hometime as the client, TJ clearly signed the contract as agent on behalf of the strata. In an agency situation, a principal can sue or be sued on a contract entered into by their agent. As long as the agent discloses that they are acting as an agent for the principal, the agent generally will not be liable under a contract they make between the principal and a third party (see *Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541).
15. Here, I find HBM disclosed that it was acting as the strata's agent at the latest when TJ noted that they were signing the contract as agent, on the strata's behalf. So, I find the strata is the principal that can be sued on the snow removal contract, not HBM. As a result, I dismiss Mr. Burt's claims against HBM.

### ***The contract***

16. The question then is whether Mr. Burt provided the strata with snow removal and related services that the strata has not paid for in full. To answer this question, I turn first to the December 3<sup>rd</sup> contract's relevant terms, which say as follows:
  - a. Mr. Burt will provide the strata with "snow removal/push & ice melt application" services between December 1, 2021, to February 28, 2022.

- b. The snow removal services will include at least the front walkway/landing, city walk, and driveway or parking area.
  - c. The strata will pay Mr. Burt a minimum fee of \$550 per month, regardless of snowfall. If the monthly services provided exceeded \$550, the minimum fee would be waived and “pay per service” would apply as identified on the attached fee schedule. The parties may adjust or negotiate this fee as needed in case the required services change.
  - d. For any amendments to the contract to be valid and binding, the amendments must be made in writing and manually signed by each parties’ authorized representative.
17. The attached fee schedule said that the strata would pay \$550 “per service”, and this price included a \$50 allowance for ice melt. Under a section titled “Regular fees”, the schedule listed, among other things, a \$185 hourly charge for services (with a 2 hour minimum), and \$240 for “additional ice melt upon request”. The schedule further said that the \$240 charge applied if additional ice melt was requested in excess of 100kg.
18. Mr. Burt says that a few days after the parties entered into the December 3 contract, he had an in-person meeting with TH, the strata council president, where they agreed to amend the agreement to change the required services and increase the agreed upon fee amounts.
19. It is undisputed that Mr. Burt met with TH on December 10. Following that meeting, Mr. Burt emailed TJ to say that based on his discussion with TH, he had underestimated what the strata required for snow clearing and de-icing. Mr. Burt said that there would be an extra charge for clearing snow from stairs, walkways, and fire egress areas, for “extra” ice melt when required for a ramp, and for revisiting after snow events to clear snow and slush left behind from cars and push to empty stalls. Mr. Burt did not state what the extra charges would be in this email. So, TJ asked Mr. Burt to send a revised contract.

20. Mrs. Burt then sent a revised fee schedule and contract to TJ on Mr. Burt's behalf on December 29, 2021. In this revised contract, Mr. Burt increased his service fee and standby charge to \$800 and changed the \$240 charge for additional ice melt from "on request" to being applicable when there is ice build-up, black ice, or when it is needed to maintain cleared areas and reduce hazards.
21. The invoices show that starting around December 18, 2021, Mr. Burt charged the strata based on the revised fee schedule. The strata argues that he was wrong to do so. For the reasons that follow, I agree.
22. As noted above, the parties' contract specifically stated that it could not be amended unless the amendments were made in writing and manually signed by both parties. While it is clear that Mr. Burt sent a revised contract to HBM with the revised fee schedule, I find the evidence does not show that the strata (or HBM on the strata's behalf) ever signed or otherwise agreed to the amended agreement and increased service fees. Under the circumstances, and given the contract's specific requirements about amendments, I find it unproven that the strata agreed to the revised agreement's terms. So, I find the December 3<sup>rd</sup> contract's terms and attached fee schedule continued to apply.

***Is Mr. Burt entitled to the claimed \$3,880 or some other amount?***

23. The evidence shows Mr. Burt sent the strata the following invoices:
  - a. Invoice #1040 dated December 22, 2021, for \$2,488.50,
  - b. Invoice #1043 dated January 4, 2022, for \$8,633.63,
  - c. Invoice #1051 dated January 22, 2022, for \$5,654.25
  - d. Invoice #1058 dated February 6, 2022, for \$840,
  - e. Invoice #1059 dated February 6, 2022, for \$1,365,
  - f. Invoice #1063 dated March 8, 2022, for \$708.76, and
  - g. Invoice #1071 dated April 18, 2022, for \$417.53.

24. So, in total, Mr. Burt invoiced the strata \$20,107.67. Based on a statement in evidence, it appears that Mr. Burt ultimately “voided” invoice #1063, I infer because this invoice was for services he provided in February which totaled less than the \$800 (plus GST) minimum service fee he charged in invoice #1058. Finally, I note invoice #1071 appears to be for interest Mr. Burt charged the strata for outstanding amounts under the prior invoices. So, I find Mr. Burt charged the strata \$18,981.38 for services rendered.
25. It is undisputed that the strata paid Mr. Burt \$15,553.14 in total for the snow removal services it received between December 2021 and February 2022. As detailed below, I find Mr. Burt overcharged the strata and is not entitled to the claimed \$3,880.
26. Above I have found that the strata never agreed to increase the \$550 full-service fee and monthly minimum fee to \$800. However, in his invoices, Mr. Burt charged the strata the \$800 service fee instead of the \$550 13 times. To the extent Mr. Burt argues he provided additional services to the strata on those 13 occasions, over and above the services that were included in the \$550 full-service fee, I find this unproven. So, I find Mr. Burt was only entitled to charge \$550 plus GST for those 13 days he provided full-service snow removal. With GST, I find Mr. Burt overcharged the strata \$3,412.50 for those 13 dates.
27. Next, I agree with the strata that based on the wording of the December 3<sup>rd</sup> contract, Mr. Burt should not have charged extra for ice melt on the days where he provided snow removal services and charged the full-service fee. Given the agreed fee schedule specifically says that the full-service fee includes a \$50 allowance for ice melt, I find ice met application was included in the full-service fee. I find Mr. Burt has not shown that for 13 dates when he provided the strata with snow removal services and charged the full-service fee, the strata requested extra ice melt, over and above the \$50 allowance included in the fee. As a result, I find Mr. Burt incorrectly charged the strata \$240 for ice melt 12 times and an additional \$250 for ice melt another time. With GST, I find Mr. Burt overcharged the strata \$3,286.50 for ice melt application.

28. Together, the full-service fee and ice melt overcharges total \$6,699. Deducting the \$6,699 from the \$18,981.38 Mr. Burt ultimately charged the strata for the snow removal services, this equals \$12,282.38. This means that without accounting for any additional overcharges, the strata overpaid Mr. Burt \$3,270.76. Given these overpayments, I find Mr. Burt is not entitled to the claimed \$3,880 and I dismiss his claims.
29. The strata did not counterclaim for any overpayments, so I find it unnecessary to decide whether Mr. Burt overcharged the strata any further amounts, and I make no award to the strata for any overpayments. I turn now to the strata's counterclaim.

### ***The strata's counterclaim - \$5,000 in legal fees***

30. The evidence shows the strata spent \$5,077.16 in legal fees to address builders liens Mr. Burt filed in August and December 2022. The BC Supreme Court has jurisdiction over builders liens. In prior decisions, the CRT has held that costs associated with filing or removing a lien under the *Builders Lien Act* are part of the BC Supreme Court's exclusive jurisdiction (see, for example, *RMC Ready-Mix Ltd. v. Lalli*, 2019 BCCRT 920, *Greater Vancouver Gutters Inc. v. Tiwana*, 2021 BCCRT 408 and *Rather Be Plumbing Ltd. v. Dhillon*, 2022 BCCRT 183). While prior CRT decisions are not binding on me, I agree with the reasoning in these decisions and apply it here. So, under CRTA section 11(1)(e), I refuse to resolve the strata's counterclaim because I find it is outside the CRT's jurisdiction.

### **CRT FEES AND DISPUTE-RELATED EXPENSES**

31. Under CRTA section 49 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. As Mr. Burt was unsuccessful with his claims, I find he is not entitled to reimbursement of his paid CRT fees. Since I have refused to resolve the strata's counterclaim, I direct the CRT to reimburse the strata \$125 for its paid CRT fees. Mrs. Burt and HBM did not pay any CRT fees and none of the parties claim any dispute-related expenses, so I award none.



## **ORDERS**

32. I dismiss Mr. and Mrs. Burt's claims in dispute SC-2022-009836.

33. I refuse to resolve the strata's counterclaim in dispute SC-2023-008145 under CRTA section 11.

34. I direct the CRT to reimburse the strata \$125 in CRT fees.

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Nav Shukla, Tribunal Member