



Civil Resolution Tribunal

Date Issued: April 16, 2024

File: SC-2023-005770

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Watson v. Move Me Canada Enterprises Inc.*, 2024 BCCRT 361

BETWEEN:

JENNIFER WATSON

APPLICANT

AND:

MOVE ME CANADA ENTERPRISES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Jennifer Watson hired Move Me Canada Enterprises Inc. (Move Me) to move their belongings between two BC cities. Ms. Watson says Move Me did not follow the agreed schedule and delivered their belongings 5 days late. They also say Move Me

damaged a number of their belongings. They claim \$1,000 for property damage, late delivery, and stress related to the move, without providing a breakdown.

2. Move Me says it completed the delivery within the timeframe provided. As for property damage, it says its liability is limited to \$0.60 per pound per item.
3. Ms. Watson is self-represented. Move Me 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 authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Move Me's terms and conditions limit its liability for property damage?
 - b. To what extent did Move Me damage Ms. Watson's property, and what is the appropriate remedy?
 - c. Is Ms. Watson entitled to mental distress damages?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Watson must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The following background facts are undisputed. Ms. Watson reached out to Move Me by email. On May 4, 2023, Move Me gave Ms. Watson a quote for \$940 based on an estimated 1,000 lbs. of belongings. Move Me was to load Ms. Watson's belongings on May 8, 2023, store them, and then deliver and unload them between May 16 and May 20, 2023. Ms. Watson paid a \$400 deposit that day to secure the reservation.
11. On May 8, the Move Me driver was over an hour late and was alone, which meant Ms. Watson's ex-partner had to cancel their plans and help with the move. Move Me deducted \$98 from Ms. Watson's bill for the inconvenience.
12. Move Me invoiced Ms. Watson the balance, which was \$1,418.60. Move Me says Ms. Watson's belongings weighed 1,980 lbs. Although Ms. Watson said Move Me emailed them the bill with no proof of their belongings' weight, they do not explicitly claim here that the weight was incorrect or that Move Me overcharged them, so I have not considered that issue further.

13. On May 25, 2023, Ms. Watson paid the balance of the invoice and Move Me delivered Ms. Watson's belongings to their storage unit. The driver arrived, again alone, around 8:30 pm. Ms. Watson was upset because Move Me said the truck would arrive "after 6," which they took to mean between 6 pm and 7 pm. Ms. Watson's partner undisputedly helped the mover unload.
14. Ms. Watson says they watched as multiple items came off the truck damaged. The next day, Ms. Watson emailed Move Me about making a property damage claim, but Move Me did not respond.

Do Move Me's terms and conditions limit its liability for property damage?

15. In the Dispute Response filed at the outset of this dispute, Move Me disagreed with Ms. Watson's claim for \$1,000, stating that it has "basic .60 cents per lbs coverage." It did not elaborate on this argument in submissions. I infer that Move Me refers to certain terms in its moving contract that state that "carrier liability is \$.60/lb per eligible article and includes a \$500.00 deductible."
16. A limitation of liability clause like the one in the moving contract is not effective or enforceable unless it is brought to the attention of the other party at the time the contract is made (see *Apps v. Grouse Mountain Resorts Ltd.*, 2020 BCCA 78). As the party seeking to rely on the limitation of liability clause, Move Me has the burden to prove that Ms. Watson was aware of and agreed to the clause on May 4, 2023, when the parties made their contract. There are no copies of the moving contract bearing Ms. Watson's signature, and no evidence about when the contract was presented to them. So, I find Move Me has not met its burden of proving that Ms. Watson agreed to the limitation of liability clause.
17. I acknowledge that the initial quote included a heading "Mover's Liability Coverage" that said "basic liability is at the standard rate of 60 cents per pound per article". However, the law is clear that if a company intends to limit or exclude its liability in a contract, it must do so in clear and unambiguous terms (see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC)). I find that

the word “coverage” implies that Move Me is providing a benefit to its customers, not imposing a limit. In that sense, I find a reasonable person would likely interpret that the liability clause as providing a guarantee of compensation for damaged items rather than a limitation of liability if Move Me was negligent. My conclusion is consistent with *Wilson v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 1133, which considered a similarly-worded clause. I therefore find that Ms. Watson is not limited to recovering \$0.60 per pound for the items they claim were damaged.

To what extent did Move Me damage Ms. Watson’s property, and what is the appropriate remedy?

18. As noted, Ms. Watson was present when Move Me delivered their belongings, and they noticed damage to some items right away. Move Me does not dispute this, and says it understands there was damage and it is not happy that the move did not go smoothly. I take from this that Move Me does not dispute that it negligently damaged the items Ms. Watson says it damaged.
19. What is left is to quantify the damages. This task is made more difficult by Ms. Watson’s failure to provide a value for any of the items, such as their purchase cost or replacement cost. They did provide photos of the damaged items.
20. The usual starting point for damages is the replacement cost of the lost or destroyed items. This is because the replacement cost is most likely to restore the party to the position they would have been in if the loss had not occurred (see *Nan v. Black Pine Manufacturing Ltd.* (1991), 1991 CanLII 1144 (BCCA)). Ms. Watson’s failure to provide replacement cost evidence is not fatal to their claim but it means I must be conservative in my estimates.
21. For the destroyed small-value items, which include a serving platter, a bike light strap, a bike carrier bag, 2 tote bins and a fan remote, I allow \$90.
22. An inversion table, which from photos I infer is a piece of home exercise or therapy equipment, has a slice in a foam bumper or handle. Photos also show that what Ms. Watson says is a 1-year-old electric bicycle is scratched. However, Ms. Watson does

not say either of these items have had their function affected, and I find they do not need to be replaced. On a judgment basis, I allow \$80 for the minor damage to these items.

23. Ms. Watson says their Chucky doll is a collector's item. It was not damaged but its original box was. However, absent any evidence of the reduction in value of the item due to a damaged box, I decline to award any damages.

24. Ms. Watson says a TV stand was damaged, but they do not elaborate and I cannot see any damage in the photo, so I decline to award damages.

25. I turn to the unique leather coffee table and side table. A leather strap on the side table is broken but Ms. Watson says it can be fixed. The coffee table has a substantial nick or rip in a strap, which I accept cannot be fixed except perhaps by replacing the strap, which may be difficult to match the colour. On a judgment basis, I allow \$150 for the coffee and side table damage.

26. The last item is a wooden box of unclear size, which has 2 substantial contact marks. Ms. Watson says it cannot be repaired, which I accept. I also accept that Ms. Watson's mother made the box which gives it sentimental value. However, the general principle is that sentimental value cannot be considered when assessing damages because doing so would make assessment of damages too imprecise and uncertain (see *Smith v. British Columbia*, 2011 BCSC 298). That said, the box features detailed joinery and has inherent value as a unique piece of wooden furniture. It still functions as a box, but its cosmetic value is reduced. On a judgment basis, I allow \$150.

27. In total, Ms. Watson is entitled to \$470 for property damage.

Is Ms. Watson entitled to mental distress damages?

28. As noted, Ms. Watson claims \$1,000 but does not identify how much they claim for property damage as opposed to other damages. Ms. Watson does not identify any specific damages resulting from the alleged late delivery. So, I find Ms. Watson's

claim about late delivery, poor communication, and “misogynistic and dismissive behaviour” is a claim for mental distress damages.

29. In general, when a party breaches a contract, the other party cannot get compensated for mental distress. The exception is where a reason for the contract was to provide “peace of mind”, or to secure a particular psychological benefit. In these cases, damages for mental distress are recoverable where they were within the parties’ reasonable contemplation when they made the contract. (see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30). Courts have awarded mental distress damages for breaches of vacation contracts, wedding service contracts, funeral service contracts, and disability insurance contracts.
30. Some CRT decision have found part of the reason to hire movers is to make moving less stressful, which is a psychological benefit (see, 2 *Burley Men Moving Ltd. v. Maxfield*, 2021 BCCRT 223, and *Micro Logistics Group Inc. v. Gorski*, 2023 BCCRT 1127). These decisions each awarded \$100 for mental distress damages. CRT decisions are not binding on me. As I explain below, I decline to award mental distress damages.
31. I accept Ms. Watson’s evidence about what transpired between when they made the contract and when Move Me delivered their belongings, and how it affected them. I find Move Me breached the contract by delivering Ms. Watson’s belongings 5 days later than it agreed to when the parties made their contract. I accept that this was inconvenient for Ms. Watson. I also accept that Ms. Watson was frustrated on the delivery day by Move Me’s failure to provide an accurate delivery time and by having to be up late that night when they had to wake up early the next morning. I find it was unreasonable for Move Me to only send one mover given that there were large items like a massage chair. This meant Ms. Watson had to rely on the generosity of others to help Move Me with both pick-up and delivery. Finally, I accept that when Move Me did not respond to Ms. Watson’s two attempts to claim for property damage, it exacerbated their stress over the situation.

32. However, the law distinguishes between psychological disturbance that rises to the level of personal injury and psychological upset that does not amount to injury and therefore is not compensable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9, and *Lau v. Royal Bank of Canada*, 2017 BCCA 253, at paragraphs 47-50). Agitation, anxiety and other mental states that fall short of injury are generally not compensable. In *Fidler*, the harm was serious and prolonged, and there was extensive medical evidence documenting the stress and anxiety that Ms. Fidler experienced. There is no medical evidence here, and the evidence overall falls short of establishing an injury. I find Ms. Watson experienced relatively minor and transient stress caused by relatively minor inconveniences. I therefore decline to award damages for mental distress.

Interest, CRT fees and expenses

33. The *Court Order Interest Act* applies to the CRT. However, because there is no evidence Ms. Watson has paid anything to repair or replace the damaged items to date, I find they are not entitled to interest.

34. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Watson was partially successful, so I find they are entitled to reimbursement of \$62.50 for half their paid \$125 CRT fees. I decline to allow anything for claimed registered mail costs because Ms. Watson did not provide a receipt or explain what they mailed, and CRT records indicate Move Me acknowledged receiving the Dispute Notice by email.

ORDERS

35. Within 14 days of the date of this order, I order Move Me to pay Ms. Watson a total of \$532.50, broken down as \$470 in damages and \$62.50 in CRT fees.

36. Ms. Watson is entitled to post-judgment interest, as applicable.

37. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member