



# Civil Resolution Tribunal

Date Issued: July 31, 2024

File: SC-2023-003500

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kazazi v. Madi*, 2024 BCCRT 736

BETWEEN:

MONIKA MOJGAN KAZAZI

**APPLICANT**

AND:

DANIEL MADI and BURLY BOYZ MOVING INC.

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. This dispute is about moving expenses and damaged items.
2. The applicant, Monika Mojgan Kazazi, hired the respondent, Burly Boyz Moving Inc. (Burly), to move items to a storage unit. She says Burly overcharged her, negligently loaded the items into the storage unit, and damaged several items. Ms. Kazazi claims

\$600 for overcharged fees, \$260 for the cost to hire another mover to rearrange the storage unit, and \$4,132 for damaged items.

3. Burly denies it overcharged Ms. Kazazi. Burly says Ms. Kazazi did not provide it with an accurate inventory for its estimate, it moved more items than initially quoted, and Ms. Kazazi added an extra drop-off that was not quoted. Burly denies it was negligent in loading the items and claims Ms. Kazazi needed to be at the storage unit to accept the items. Finally, Burly disputes the amount it owes Ms. Kazazi for any items that were allegedly damaged. It argues Ms. Kazazi signed a cargo protection plan that limits her claim amount to \$0.60 per pound per item.
4. Daniel Madi says they are the operations manager for Burly's Edmonton branch. Daniel Madi argues they did not personally interact with Ms. Kazazi in any way, and they should not be included in this dispute.
5. Ms. Kazazi and Daniel Madi are self-represented. Burly is represented by someone I infer is an employee. Daniel Madi did not provide pronouns or a title on request, so I respectfully refer to Daniel Madi as "they" in this decision.

## **JURISDICTION AND PROCEDURE**

6. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Downing v. Strata Plan VR2356*, 2023 BCCA 100, in which the court recognized that oral hearings are not always needed where credibility is in issue. Neither party

requested an oral hearing. So, bearing in mind that the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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. Where permitted by CRTA section 118, 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. Did Burly overcharge Ms. Kazazi, and if so, by how much?
  - b. Was Burly negligent when loading the items into the storage unit?
  - c. How much, if anything, does Burly owe Ms. Kazazi for the allegedly damaged items?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Kazazi, as the applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). Ms. Kazazi did not provide reply submissions, despite having the opportunity to do so. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

### ***Daniel Madi's Liability***

12. At the outset, I note that Ms. Kazazi has claimed against both Burly and Daniel Madi. The evidence shows Ms. Kazazi contracted with Burly for the move, not with Daniel

Madi personally. As noted above, Daniel Madi says they are the operations manager for Burly's Edmonton branch. At law, a corporation's employee is not personally liable unless they have committed a wrongful act independent from that of the corporation (see *XY, LLC v. Zhu*, 2013 BCCA 352 at para 73).

13. Ms. Kazazi included Daniel Madi as a party in her Dispute Notice. However, Ms. Kazazi did not refer to Daniel Madi in her Claim Description, or in her submissions. So, I dismiss Ms. Kazazi's claims against Daniel Madi.

### ***The Move***

14. On January 19, 2023, Ms. Kazazi hired Burly to move items from her apartment to a New Westminster storage facility. Ms. Kazazi paid a deposit, and the parties scheduled the move for January 29, 2023.
15. Ms. Kazazi says on January 29, 2023, 2 movers showed up at her apartment around 10:30 a.m. She says the move was painfully slow and the movers finished loading the truck at 2:00 p.m. When they arrived at the storage facility, Ms. Kazazi says she discovered that the movers had broken 4 bookshelves. Due to stress, Ms. Kazazi says she did not stay at the storage facility while the movers unloaded the items.
16. Ms. Kazazi says on January 30, 2023, she went to the storage unit to pick up a suitcase. She claims the storage unit was a mess. Ms. Kazazi says she called Burly to discuss the issue. However, she says an employee, CS, told her Burly would charge by the hour to visit the storage unit and view the damaged items. So, Ms. Kazazi says she hired another moving company to rearrange the storage unit.

### ***Did Burly Overcharge Ms. Kazazi for the Move?***

17. Ms. Kazazi argues Burly misrepresented its moving costs and the final invoice was more than the original estimate. Ms. Kazazi claims \$600 for the overcharges.
18. Ms. Kazazi says she paid Burly a total of \$1,130.93 for the move. She says this included:

- a. \$200 for a deposit that she paid on January 19, 2023,
  - b. \$800.93 for the remaining moving expenses that she paid on her debit card on January 29, 2023, before she left the storage facility, and
  - c. \$130 to move a recliner chair to Surrey that she paid in cash on January 29, 2023.
19. In its submissions, Burly did not address whether Ms. Kazazi paid the above amounts, including the \$130 in cash. So, without any evidence disputing these amounts, I find Ms. Kazazi paid \$1,130.93 to Burly for the move.
20. In her Dispute Notice, Ms. Kazazi says on January 19, 2023, Burly quoted her \$684.06 to complete the move. In her submissions, Ms. Kazazi changed her position. Ms. Kazazi now claims Burly originally quoted her \$684.06, but they negotiated the price down to \$549.
21. In evidence, Burly provided their January 19, 2023 signed estimate for \$684.06. Ms. Kazazi did not provide reply submissions to dispute she signed this estimate. The estimate includes a moving date of January 29th and an estimated moving weight of 2,795 pounds. The estimate quotes 4.5 hours for the move.
22. Ms. Kazazi provided a different estimate to support her claim. The estimate for \$549 quotes 3.5 hours for the move. The estimate was sent on January 19, 2023, but approved on February 10, 2023. The move date is listed as TBD. Ms. Kazazi's electronic signature appears to be superimposed at the bottom and dated "2023-02". The margin is cut off and I cannot read the full date.
23. I find that Burly's estimate is likely the estimate agreed to by the parties. I say this because Ms. Kazazi undisputedly signed Burly's estimate on January 19, 2023. In comparison, Ms. Kazazi's estimate shows it was signed on "2023-02" and approved on February 10, 2023. Ms. Kazazi does not say why her estimate was signed and approved after the move. I find Ms. Kazazi's estimate was likely a draft estimate and the parties agreed to the Burly estimate.

24. In evidence, Burly provided its February 1, 2023 invoice for \$1,050.51. Burly's invoice includes 2 changes from its original estimate. Burly charged 5.5 hours for the move, instead of the quoted 4.5 hours. Burly also charged \$210 for an extra "pickup/dropoff" fee. I address each extra charge below.
25. Ms. Kazazi also argues that Burly charged her \$15.99 for a mattress cover. She claims Burly never wrapped her mattress. Ms. Kazazi did not provide any evidence to support this claim, including a picture of the unwrapped mattress. So, I find Ms. Kazazi has not proven Burly overcharged her for the mattress cover.

#### *An Additional Hour Spent Moving*

26. Burly says it estimates its moving time based on an inventory provided by the customer. Burly argues Ms. Kazazi did not provide it with an accurate inventory. In support, Burly provided an inventory it claims it created and sent to Ms. Kazazi for review. The inventory lists several items and totals 2,795 pounds. Ms. Kazazi did not provide reply submissions to dispute this evidence. So, I accept this evidence as the list of items Ms. Kazazi approved for the estimate.
27. Burly's estimate states, "this estimate is based on the Inventory List that was supplied by the customer. Additions or deletions will impact the total costs." Ms. Kazazi admits between January 19, 2023, and January 29, 2023, she gave away and donated a lot of household furniture.
28. Ms. Kazazi says she kept an antique chest, a chest of drawers, a power lift, a power chair, a hospital bed frame, a bed and orthopedic mattress, clothes, bedding, sheets, pillows, a framed print, a few boxes of books, 4 bookshelves, 2 TV's, mirrors, suitcases and a reclining chair. I find many of these items were not included in Burly's moving inventory. As noted, Burly's estimate says changes to the inventory list will affect the total cost. Since Ms. Kazazi did not provide Burly with an accurate inventory list, I find she cannot rely on the estimate.
29. Burly argues that many bulky items, such as the bookshelves, the large antique trunk, and the medical equipment would have increased the moving time. Ms. Kazazi did

not provide reply submissions to dispute this. Further, Ms. Kazazi did not provide any competing quotes or opinion evidence from another moving company to show that 5.5 hours was an unreasonable length of time for the move. So, in the absence of such evidence, I find Ms. Kazazi has not proven that Burly overcharged her for the extra hour spent moving.

### *The Extra Pickup/Dropoff Fee*

30. Ms. Kazazi says after paying \$800.93 on her debit card, she gave the mover a Surrey address for dropping off a reclining chair. She says the mover told her they had not charged her for another drop-off location. Ms. Kazazi says she paid \$130 in cash to have the mover drop off the recliner in Surrey.
31. Burly says that for an added drop-off location, it normally charges a customer \$200 + tax, plus the time it takes to drop off the item. However, Burly did not dispute that its mover received \$130 in cash from Ms. Kazazi to move the recliner. There is also no evidence before me that Burly ever communicated a \$200 charge to Ms. Kazazi before including it on her invoice. So, I find the mover, as Burly's representative, agreed to move the recliner to Surrey for \$130.
32. Since Burly's final invoice includes \$210 for the added drop-off location, I find Burly overcharged Ms. Kazazi by \$80. So, I find Burly's invoice should be reduced to \$970.51. Since Ms. Kazazi undisputedly paid Burly \$1,130.93, I find she is entitled to a \$160.42 refund.

### ***Was Burly Negligent When Loading the Items into the Storage Unit?***

33. Ms. Kazazi argues that Burly was negligent when the movers loaded the items into the storage unit. Ms. Kazazi claims \$260 for the cost to have MVM Moving and Storage Inc. (MVM) rearrange the unit.
34. Burly argues that its terms and conditions require a customer to be present at the drop-off location to receive their goods. Since Ms. Kazazi left before the move was complete, Burly says it delivered the items to a third party. So, Burly claims it cannot

comment on the state of the items or in what state Ms. Kazazi found them. Burly also argues MVM could have further damaged the items when rearranging the unit.

35. Burly did not provide a copy of its terms and conditions to support its argument. However, nothing turns on this as I find Ms. Kazazi has failed to prove Burly was negligent when loading the storage unit.
36. To prove Burly was negligent, Ms. Kazazi must show Burly owed her a duty of care, Burly breached the standard of care, Ms. Kazazi suffered a loss, and Burly's breach caused the loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
37. As a moving company, I find Burly owed a duty of care to its customers, including Ms. Kazazi. However, I find Ms. Kazazi has not provided sufficient evidence to prove Burly breached the standard of care. Normally in a claim of professional negligence like this one, expert opinion evidence is needed to prove a professional breached the standard of care. This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. There is an exception where a party is obviously negligent (see *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2015 BCSC 845 at paras 22-27).
38. Ms. Kazazi did not provide opinion evidence from an expert. Instead, Ms. Kazazi provided MVM's invoice. The invoice notes, "Two movers of MVM Moving and Storage reported that the storage was not organized professionally, and some items were severely damaged because of the lack of experience of the previous movers."
39. I find MVM's invoice notes are not sufficient to prove Burly breached the standard of care. CRT rule 8.3 requires an expert to state their qualifications. Ms. Kazazi did not provide a statement from either MVM mover. So, there is no evidence before me about who the movers are, or their qualifications. I find the notes also do not explain why Burly's work was unprofessional.
40. Ms. Kazazi provided pictures of the storage unit. However, I find the pictures only show a storage unit full of items. I find the pictures do not show Burly was obviously negligent when loading the unit.

41. Since Ms. Kazazi did not prove Burly breached the standard of care, I find Ms. Kazazi did not prove Burly was negligent when loading the storage unit. So, I dismiss Ms. Kazazi's \$260 claim.

***Does Burly Owe Ms. Kazazi for the Allegedly Damaged Items?***

42. Ms. Kazazi argues Burly damaged several items during the move. In her Dispute Notice, Ms. Kazazi said the estimated damage to her items was worth \$7,756 and claimed the maximum award available. I note that a party can make submissions on damages greater than the CRT's \$5,000 small claim limit, but I am only able to award a maximum of \$5,000. In her submissions, Ms. Kazazi only referred to damages totaling \$4,132. So, I will only address those damages.

43. Burly argues Ms. Kazazi signed a cargo protection plan before starting the move, which it says limits Ms. Kazazi's claim to \$0.60 per pound per item. Burly says after the move, it tried to offer Ms. Kazazi the protection plan coverage. Burly says it asked Ms. Kazazi for a list of damaged items and pictures showing the damage, but she refused. I infer from Burly's submissions that it is willing to pay Ms. Kazazi for any damaged items at \$0.60 per pound per item, if she can prove the item was damaged.

44. Ms. Kazazi says her \$4,132 claim includes the following:

- a. \$896 for 4 bookshelves,
- b. \$864 for an antique chest,
- c. \$334 for a print (couple touring Paris),
- d. \$1,638 for a mobile lift, and
- e. \$400 for ripped accent chairs.

45. To support her claim, Ms. Kazazi provided several pictures. Ms. Kazazi labeled a few pictures with short captions, but she also included many unlabeled pictures. I place little weight on this evidence. I say this because Ms. Kazazi's captions were unclear, and I find it difficult to understand why she included certain pictures. Most importantly,

Ms. Kazazi did not describe in her submissions how each item was damaged. So, I find I am unable to use the pictures to evaluate most of the alleged damage.

46. For the 4 bookshelves, print (couple touring Paris), mobile lift, and accent chairs, Ms. Kazazi provided pictures showing these items. The bookshelves and mobile lift pictures included captions that read, “bookshelves missing (4)” and “broken power idrive.” From the pictures provided, I find I cannot identify the alleged damage. So, I find Ms. Kazazi has not provided sufficient evidence to prove Burly damaged these items, and I dismiss this part of her claim.
47. For the antique chest, Ms. Kazazi provided pictures clearly showing a damaged chest. Based on the damage, I find the chest is not repairable. I note Ms. Kazazi did not provide a picture showing an undamaged chest before the move. However, Burly did not challenge Ms. Kazazi’s evidence or deny it damaged the chest. So, I accept this evidence and I find Burly damaged the chest in the move. I now turn to what Burly owes Ms. Kazazi for the damage.
48. It is undisputed that Ms. Kazazi signed the cargo protection plan. However, Ms. Kazazi argues she should not be bound by the plan’s limits. Ms. Kazazi says she would not have signed a document that limits her total claim amount to \$250. However, she does not say how she calculated this number. I find that Ms. Kazazi is arguing that the doctrine of *non est factum* applies.
49. To establish *non est factum*, Ms. Kazazi must show that the protection plan was fundamentally different from what she believed she was signing. Ms. Kazazi must also show that she took reasonable steps to ensure the accuracy of the document before signing it (see *Araki v. Wlodyka*, 1983 CanLII 3631 (BC SC)). For the following reasons, I find Ms. Kazazi cannot rely on *non est factum* to avoid the plan’s limits.
50. First, I find the protection plan clearly outlined Burly’s liability. The protection plan says, “the option you select establishes your mover’s maximum liability for your goods.” Ms. Kazazi initialed the released value protection option beside a caption that reads, “the value of my shipment is \$0.60 cents per lb.” Under this option, the plan

says if any article is lost or destroyed while in the mover's custody, the mover's liability is limited to the actual weight of the lost or destroyed article multiplied by \$0.60 per pound per article. Finally, Ms. Kazazi signed the plan below a caption that reads, "I acknowledge that I have declared a value and liability for my shipment."

51. Second, Ms. Kazazi has not provided any evidence or submissions showing that she took any care to read the protection plan or make inquiries about the plan's terms before signing it. Notably, Ms. Kazazi admits the mover referred to the protection plan as "insurance papers." So, I find that Ms. Kazazi has failed to show that she took reasonable precautions before signing the protection plan.
52. Finally, there is no evidence before me that the mover misrepresented the protection plan. So, I find the protection plan is valid and Ms. Kazazi's claim is limited to \$0.60 per pound per item.
53. The moving inventory provided by Burly includes average weights for a list of items. Burly says it would classify the antique chest as a large trunk, which has a listed average weight of 100 pounds. Ms. Kazazi did not dispute this evidence. So, I find at \$0.60 per pound Ms. Kazazi is entitled to \$60 for the antique chest.

### ***Conclusion***

54. In conclusion, I find Burly overcharged Ms. Kazazi by \$160.42 for the move and destroyed her antique chest, with damages limited to \$60. So, I order Burly to pay Ms. Kazazi \$220.42 in damages.
55. The *Court Order Interest Act* applies to the CRT. Ms. Kazazi is entitled to pre-judgment interest on the \$220.42 damages award from January 29, 2023, the date of the move, to the date of this decision. This equals \$16.25.
56. 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 Ms. Kazazi was only partially successful in her claims,

I find she is entitled to reimbursement of \$100, which is half her paid CRT fees. Ms. Kazazi did not claim dispute-related expenses, so I order none.

## **ORDERS**

57. Within 15 days of the date of this order, I order Burly to pay Ms. Kazazi a total of \$336.67, broken down as follows:

- a. \$220.42 in damages,
- b. \$16.25 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$100 for CRT fees.

58. Ms. Kazazi is entitled to post-judgment interest, as applicable.

59. I dismiss Ms. Kazazi's claims against Daniel Madi.

60. 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.

---

Jeffrey Drozdiak, Tribunal Member