



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shakibaei v. 2 Burley Men Moving Ltd.*, 2024 BCCRT 1270

B E T W E E N :

SHAMIM SHAKIBAEI

APPLICANT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a residential move.
2. Shamim Shakibaei hired 2 Burley Men Moving Ltd. (Burley) to complete his long-haul residential move. Mr. Shakibaei says Burley breached the parties' moving contract, and initially claimed \$3,062.85 in damages. However, in submissions, Mr. Shakibaei

lowers the amount of his claim to \$1,569.12. The revised amount includes a transfer fee Mr. Shakibaei says he never agreed to, the cost of repairing or replacing damaged and missing items, and Burley's refusal to reassemble his furniture.

3. Burley says it explained its billing, including the transfer fee, to Mr. Shakibaei before booking the move. It also says Mr. Shakibaei did not notify it of any damaged or missing items, and is now prohibited from recovering under the terms and conditions of its waybill (invoice). Finally, Burley says it does not offer a guaranteed disassembly and reassembly service for furniture unless there is only one crew involved in the move and if time allows, which was not the case here.
4. Mr. Shakibaei, a lawyer, is self-represented. An employee represents Burley.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says 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. These are the CRT's formal written reasons.
6. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The parties in this dispute question each other's credibility, or truthfulness. However, an oral hearing is not necessarily required where credibility is in issue.¹ Here, neither party asked for an oral hearing, the claimed amount is relatively low, and I find I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

¹ *Downing v. Strata Plan VR2356*, 2023 BCCA 100.

7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. 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.

ISSUE

9. The issue in this dispute is whether Mr. Shakibaei is entitled to the claimed \$1,569.12, or another amount, for various breaches of the moving contract.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Shakibaei must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.
11. In early May 2021, Mr. Shakibaei contacted Burley about a long-haul residential move. It is undisputed that Burley quoted Mr. Shakibaei a rate of \$750 per 1,000 pounds, plus a \$75 scale fee.

The contract

12. There is no written contract in evidence. However, Mr. Shakibaei submitted what I find are his handwritten contemporaneous notes of a telephone conversation he had with Burley when he contacted it about the move. These notes confirm the rate and scale fee above, but do not mention any other applicable fees. They also record that Burley would pick up Mr. Shakibaei's belongings on May 25 or 26, that it would take three to four days for delivery, and that Burley would "assemble the bed for (Mr. Shakibaei)".

13. Burley submitted a statement from one of its long-haul sales managers explaining how a long-haul move is booked, and what customers are told. First, customers are given an estimated weight of their belongings based on description, and are told they pay by the pound, with additional charges for the scale fee, fuel, motels, and food. The pickup date can be earlier or later than expected. In addition, customers may be subject to a transfer fee where the movers need to change trucks. For example, the movers may need to change trucks if there is no suitable parking at the pick-up or delivery location for a big truck. The manager's statement did not mention anything about disassembling or reassembling furniture. Though Burley says it emailed Mr. Shakibaei its terms and conditions, which relate primarily to liability, it did not provide a copy of that email, or specifically say it included any of the information described above.
14. While Burley's statement may reflect what is meant to be its standard operating procedure upon booking a move, I find it this is not what it always or only communicates to a customer. I say this because neither party says Burley told Mr. Shakibaei he would be charged for fuel, motels, and food. Also, the manager's statement makes no mention of disassembling or reassembling furniture, but in submissions, Burley describes circumstances where that may be part of the service.
15. Given the above, I find Mr. Shakibaei's contemporaneous notes most accurately reflect what Burley told him when he phoned to book his move, and what the parties agreed during that call. With that, I turn to whether Burley breached the verbal moving contract.

Alleged contract breaches

Transfer fee

16. Burley says it was entitled to charge Mr. Shakibaei a \$400 transfer fee because it was necessary to transfer his belongings to a different truck. Based on Mr. Shakibaei's notes, I find there was no contractual provision for a transfer fee, so Burley was not allowed to charge one.

17. Even if I had found the parties agreed to a transfer fee, I still would not have found Burley was entitled to charge it for the following reasons.
18. Burley relies on a May 27, 2021 waybill that includes the notation "\$400 transfer fee?" Text message evidence shows Mr. Shakibaei questioned the transfer fee on delivery of his belongings on June 1. Burley told him it charged the transfer fee because he had not been available for delivery at the time the truck arrived. However, earlier correspondence between Mr. Shakibaei and Burley shows Burley's truck had broken down, and Burley had to transfer Mr. Shakibaei's belongings to a different truck on May 31. Consequently, the new truck arrived a day later than planned on June 1, and attempted delivery before the 4pm arrival time Mr. Shakibaei had arranged with the driver. Burley does not say it had to make further transfers on June 1, or on any other day. So, I find Burley likely charged Mr. Shakibaei \$400 for the May 31 transfer that was entirely beyond Mr. Shakibaei's control. Based on Burley's own description of the circumstances where a transfer fee applies, I would have found this was a breach of contract had I not already determined the parties never agreed to a transfer fee.
19. I order Burley to reimburse Mr. Shakibaei \$420 for the transfer fee, including tax.

Damaged and missing items

20. It is generally an implied term in contracts for professional services that the service-provider will perform the services to a reasonably competent standard. I find that in contracts for residential moves, that includes not damaging or losing a customer's belongings. Here, Mr. Shakibaei says Burley:
 - a. Lost pieces of his shelf-desk combination,
 - b. Broke his dishes and glassware,
 - c. Damaged his bicycle, and
 - d. Lost his cycling gloves, multi-tool, headlight, and Ray-ban sunglasses.

21. I find photo and video evidence show damage to the dishes, glassware, and bicycle, as well as missing shelf-desk pieces.
22. Other CRT decisions have found that in moving disputes, the mover bears the burden of disproving negligence.² While previous CRT decisions are not binding on me, I agree with the reasoning in these decisions. I find Burley must prove it did not damage or lose Mr. Shakibaei's belongings as alleged.
23. Burley does not dispute that it damaged Mr. Shakibaei's bike, lost pieces of his shelf-desk, or lost the items specified above. However, Burley does say that "owner (placed) cartons are not covered". From this, I infer Burley denies responsibility for boxes Mr. Shakibaei handled. There is no evidence Mr. Shakibaei moved or handled any of the boxes. So, I find Burley has not disproven it was negligent.
24. I turn to the question of damages. Burley says Mr. Shakibaei did not notify it of the damaged or missing belongings within 14 days of the move being completed, as required by the terms and conditions on the reverse side of the waybill Mr. Shakibaei signed. Those terms and conditions also indicate Burley's protection plan only covers \$0.60 per pound.
25. Mr. Shakibaei denies signing the waybill. There is a signature in the waybill's consignee box, but I cannot tell if it is Mr. Shakibaei's. I note it looks significantly different to the signature on his witness statement. Burley also says its terms and conditions are available on its website, though it does not say it drew Mr. Shakibaei's attention to them there. So, on the evidence before me, I find it unproven that Mr. Shakibaei agreed to any terms requiring him to report damage within a certain period, or limiting the amount for which Burley may be liable.
26. In any case, I note that to limit or exclude liability in a contract a business must do so in clear, unambiguous terms.³ Other CRT decisions have found that Burley's \$0.60

² See, for example, *2 Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 and *2 Burley Men Moving Ltd. v. Jenner*, 2022 BCCRT 1088.

³ *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII (SCC) at paragraph 28.

per pound coverage does not limit its liability for damaged items.⁴ I find the reasoning in these decisions persuasive, and I adopt it here. That is, even if Mr. Shakibaei had agreed to Burley's protection plan, I find Burley did not clearly indicate its coverage limited its responsibility for damaged items to \$0.60 per pound. So, I find Burley is responsible for Mr. Shakibaei's proven damages. I discuss these below.

27. First, Mr. Shakibaei says he went to two different IKEA stores to try and find replacement pieces for his shelf-desk, but could not source enough pieces. He claims \$151.42 for the pieces he was able to replace, and \$472.45 for a replacement desk, supported by receipts. I find this reasonable in the circumstances. I also find the \$24.90 Mr. Shakibaei claims for mileage to travel to IKEA reasonable. Second, Mr. Shakibaei claims \$47.25 for bicycle repairs. I allow this amount, based on Mr. Shakibaei's submitted receipt. Third, Mr. Shakibaei estimates \$50 for the broken dishes and glassware, \$50 for the cycling gloves, multi-tool, and headlight, and \$200 for the Ray-ban sunglasses. I find these amounts reasonable for these items.
28. In total, I order Burley to pay Mr. Shakibaei \$996.02 for items it damaged or lost during the move.

Furniture reassembly

29. Mr. Shakibaei says the movers refused to reassemble his furniture on delivery. For this, Mr. Shakibaei claims \$153.10, or five per cent of the total amount Burley charged him. I find this amount excessive in the context of a long-haul move. Also, based on Mr. Shakibaei's handwritten notes, I find Burley only agreed to reassemble his bed. So, I find \$25 for Burley's failure to reassemble Mr. Shakibaei's bed is fair and reasonable compensation, and I order it to pay him that amount.
30. Finally, Mr. Shakibaei says Burley picked up and delivered his belongings late. However, he did not claim damages for any delay, so I do not address this issue further.

⁴ See, for example, *2 Burley Men Moving Ltd. v. Delmage*, 2020 BCCRT 498 at paragraphs 26 to 28, and *Wilson v. 2 Burley Men Ltd.*, 2021 BCCRT 1133 at paragraphs 27 to 28)

INTEREST, FEES, AND EXPENSES

31. The *Court Order Interest Act* applies to the CRT. Mr. Shakibaei is entitled to pre-judgment interest on the damages award from June 1, 2021, the date of the waybill, to the date of this decision. This equals \$156.93.
32. 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. I find the applicant is entitled to reimbursement of \$175 in CRT fees. I also allow Mr. Shakibaei's claim for \$12.27 for registered mail to serve the Dispute Notice issued at the start of this proceeding on Burley.

ORDERS

33. Within 30 days of the date of this order, I order Burley to pay Mr. Shakibaei a total of \$1,785.22, broken down as follows:
 - a. \$1,441.02 in damages,
 - b. \$156.93 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$187.27, for \$175 in CRT fees and \$12.27 for dispute-related expenses.
34. Mr. Shakibaei is entitled to post-judgment interest, as applicable.
35. 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.

Megan Stewart, Tribunal Member