Civil Resolution Tribunal

Date Issued: April 18, 2018

File: SC-2017-002818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnston v. 2 Burley Men Moving Ltd.,* 2018 BCCRT 141

B E T W E E N :

Marguerite Johnston

APPLICANT

A N D :

2 Burley Men Moving Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrew D. Gay, Q.C.

INTRODUCTION

1. The applicant hired the respondent moving company to transport household goods by truck. The applicant alleges that the respondent's employees damaged some of those goods and seeks $1500 as compensation. The respondent does not

deny that some goods were damaged, but says it is not obligated to pay for the damage under the terms of the parties' contract.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

4. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

5. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

    a. order a party to do or stop doing something;

    b. order a party to pay money;

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:

    a. Did the respondent's employees damage some of the applicant's household goods?

    b. If so, is the respondent obligated to pay for that damage?

    c. If so, how much is the respondent obligated to pay?

EVIDENCE AND ANALYSIS

Background

7. In December of 2016 the respondent provided the applicant with an estimate of what it would cost to move the applicant's goods from Cobble Hill to Kimberley. The applicant says that the respondent told her "everything would be insured" and that it was not necessary to sign an agreement at that time.

8. In a December 31, 2016 email, the respondent gave the applicant a cost estimate and said that "full insurance" was included in the price. The email does not mention any exclusions from the "full insurance" coverage. On January 1, 2017, the applicant's husband told the respondent that he and the applicant agreed to the December 31, 2016 estimate.

9. On February 7, 2017, the respondent loaded the applicant's goods into a moving truck. The applicant says the only damage during the loading process was to a large garden planter and to a sewing machine, both of which she says were dropped. The respondent agrees that the planter was dropped, but does not concede that the sewing machine was dropped.

10. The applicant says that on the following day the respondent's representative, Mr. Burley, advised that the load was too heavy for one truck and would have to be transported in two trucks. This involved some unloading and re-loading of the applicant's goods.

11. The first truck arrived in Kimberley on February 14, 2017. The applicant says that the driver required her to sign a waybill before he would begin unloading. The reverse side of the waybill sets out the "Terms and Conditions" that apply to the respondent's services. The Terms and Conditions provide that there is no insurance coverage for certain kinds of goods, including mirrors. The applicant says she read the waybill and was not happy with its content, but she and her husband felt they had no choice but to sign it. Accordingly, her husband signed it.

12. The applicant says that she was not aware of the limits on insurance coverage until she read the waybill at the time of delivery. The waybill also contained an acknowledgement that the shipment was received in "good condition" and the applicant says she signed this acknowledgement before any of the goods were unloaded from the truck. Once they were unloaded she saw that many of the items were not in good condition. The applicant further alleges that one item, a carved walking cane, was lost.

13. On March 26, 2017, the date of the second delivery, the applicant's husband signed the second waybill.

The Contract Between the Parties and Responsibility for the Loss

14. The respondent argues that the applicant agreed to the respondent's "Terms and Conditions", including the limits on insurance, by signing the waybill. However, I accept the applicant's evidence that she and her husband were not shown the waybill or the Terms and Conditions until the time of delivery. There is no evidence that the applicant accepted the Terms and Conditions at the time the parties agreed to do business. The respondent did not suggest that the applicant was made aware of the Terms and Conditions at any time prior to delivery. The only signed copy of the Terms and Conditions produced by the respondent in this proceeding is dated March 26, 2017, the date of the second delivery.

15. I find that a contract between the parties was made on or about January 1, 2017, when the applicant's husband agreed to the terms set out in the respondent's December 31, 2016 email. At that time, the respondent made a representation that "full insurance" was provided as part of the price quoted and I find the applicant clearly relied upon that representation. Insurance coverage limits were not part of the parties' contract.

16. I find that it was reasonable for the applicant to assume, in the absence of any contrary information, that "full insurance" meant that if any goods were accidentally broken during the move, the repair or replacement cost would be insured. It does not matter that limits on insurance coverage may be an industry standard, because there is no evidence that the applicant knew this. If the respondent wanted to limit its liability in accordance with industry standards, it should have advised the applicant of this at the time the parties made their agreement, not at the time of delivery.

17. The respondent says that limits on insurance are necessary in a context where the customer is packing the goods. That makes sense, but this was not stated to the applicant. The applicant states that she and her husband used strong containers and generous padding, and that Mr. Burley said he thought the packing done by the applicant was adequate. The respondent did not provide any evidence from Mr. Burley disputing this.

18. The respondent did not contest the applicant's statement that the respondent's driver said the waybill would have to be signed before unloading began. I accept that in this context the applicant had little choice but to sign the form. There was no opportunity for the applicant to inspect the transported items before they were unloaded, and accordingly before the form was signed. In these circumstances, I find that the respondent cannot rely upon the fact that the applicant's husband signed the waybills as a basis for limiting its responsibility for the damage to the applicant's goods.

19. I find that the respondent is bound by its representation that the price for the move included “full insurance” in the event goods were damaged during transport, and accordingly that the respondent must reimburse the applicant for items that were damaged or lost by its employees.

20. I note that damage to the planter and sewing machine was witnessed by the applicant and her husband prior to signing the acknowledgment that goods were received in good order. However, I do not conclude that this means the applicant is prohibited from claiming compensation for these items. The respondent agrees the planter was dropped and damaged, and does not specifically deny that the sewing machine was dropped. In this context, I find that it was not the parties’ intent that a signed acknowledgement at the time of delivery was meant to address items which the parties witnessed being dropped during the loading process.

The Damaged Goods

21. The applicant has produced photographs showing that two mirrors and a fish bowl were badly broken. She has also produced invoices showing that she paid $179.20 to have the glass replaced in two mirrors, $266.56 to replace a broken urn, $190.15 to repair the sewing machine, in addition to evidence showing she paid $212 for the fish bowl that was broken. She did not produce any further records justifying the claim for $1500 in total damages. She also claims for the lost walking cane but led no evidence of what it was worth or what it would cost to replace it. The respondent denies any knowledge of what happened to the cane.

22. I accept the applicant’s evidence that the sewing machine was dropped. It is a position she consistently took in dealings with the respondent and the tribunal, and the respondent has not provided any evidence from its employees on this issue. I also accept the applicant’s evidence that she left the walking cane with the respondent’s employees and that they lost it.

23. I award to the applicant the above sums to repair and replace her broken goods. In the absence of evidence concerning the value of the walking cane, I award the nominal sum of $50 for its loss. Accordingly, the total damages are $897.91.

24. The applicant is entitled to pre-judgment interest in the amount of $7.91 pursuant to the *Court Order Interest Act* (the "COIA").

25. Under section 49 of the Act, and section 129 of the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore find that the respondent must reimburse the applicant for tribunal fees of $175.

ORDERS

26. I order that 2 Burley Men Moving Company Ltd. pay to Marguerite Johnston the sum of $1080.82 within 14 days of the date of this order, broken down as follows:

    a. $897.91 in damages for the lost and damaged goods;

    b. $7.91 in pre-judgment interest under the COIA; and

    c. $175 of tribunal fees.

27. The applicant is entitled to post-judgment interest under the COIA.

28. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

29. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has

been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrew D. Gay, Q.C., Tribunal Member