



Civil Resolution Tribunal

Date Issued: June 13, 2018

File: SC-2017-006580

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Can-Trust-Funeral Ltd. v. Sunshine Logistics Inc.*, 2018 BCCRT 251

B E T W E E N :

Can-Trust-Funeral Ltd.

APPLICANT

A N D :

Sunshine Logistics Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Can-Trust-Funeral Ltd. hired the respondent Sunshine Logistics Inc. to arrange a container shipment of caskets from China to Vancouver. The applicant says the respondent was late in delivering the shipment and then the

trucker did not bring a cutter tool so the applicant could not open the cargo. The applicant says the associated delay caused him financial loss. The parties are self-represented.

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. None of the parties requested 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: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:

- a. Did the respondent breach the parties' agreement and cause the applicant financial loss due to delay, by i) delivering the cargo late, and ii) failing to ensure the trucker brought a cutter tool?
- b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. The applicant claims \$1,000 in damages: a \$380 refund of the trucking fee, \$270 reimbursement for moving labour costs, and \$200 for 3 hours of his family's time. The applicant also \$150 for his own time, which I infer is a dispute-related expense claim for time spent dealing with this dispute.
9. On October 24, 2017, the applicant's principal emailed the respondent at 6:13 p.m. stating that he wanted the cargo delivered to his warehouse on Wednesday October 25, 2017 at 8 pm "if possible". He wrote that if this was not possible, he wanted the cargo delivered on Friday night and he would "have someone to open it on next Tuesday".
10. The applicant asked the respondent for delivery at night on October 27, 2017, apparently to avoid storage and demurrage charges that would have been incurred had the delivery waited until October 31, 2017, the date the applicant originally desired. A night delivery was during the respondent's published closed hours, meaning that the respondent was not available to troubleshoot any problems. The applicant's principal was away between October 26 and 31, 2017, and so he had made arrangements with family and movers to assist with the delivery.
11. Payment was arranged and in the morning of October 27, 2017 the applicant asked for the time of arrival and said he "will have people unload it right away". The respondent's reply email stated that the cargo would be delivered on October

27, 2017 “around 7 p.m.”. The respondent said it was “the same trucker” as the last shipment.

12. It is undisputed that the shipment was delayed by the port operations and the trucker was not able to pull the container out until 7:15 p.m. The trucker advised the applicant of the delay immediately. The container arrived at the applicant’s address at 7:50 p.m. on October 27, 2017.
13. The applicant’s primary argument is that the driver should have brought a cutter. Because the applicant’s family and his hired movers were unable to open the container, the driver left with the cargo. As a courtesy, the respondent arranged at its expense for the cargo to be re-delivered on October 30 or 31, 2017 and asked for that driver to bring a cutter.
14. First, I find the parties’ agreement did not promise a specific delivery time, as suggested by the applicant. The nature of international cargo shipments that includes examination by Canada Customs would necessarily preclude such a guarantee. The respondent’s October 23, 2017 email to the applicant explained that they simply needed to wait for the container to come out of the customs examination warehouse, and that the associated timing was out of their control.
15. Second, contrary to the applicant’s submission, the respondent says that “trucker” refers to the trucking company and there was no promise to provide the same driver as had been sent previously with an earlier shipment. I find the applicant has not proved the parties’ agreement included providing the same driver. The applicant relies upon this because the first driver had cut the container seal or lock for the applicant and also helped him unload the products. While that may have been helpful, the applicant has not proved that doing so was part of the parties’ contract before me.
16. In particular, the quotation that became part of the parties’ contract included the term “CY/CY shipping”, meaning “container yard to container yard”. The respondent’s invoice included various charges related to customs clearance and

examination, and a \$380 “trucking fee”. Further, the parties agree the cargo was shipped “shipper’s count, load and seal”, meaning the shipper sealed the cargo. There is nothing in the parties’ agreement to suggest that once the container was delivered to the applicant’s address that the respondent was additionally responsible for opening the container with a cutting tool or helping to unload the cargo.

17. It is unfortunate that the applicant’s family and movers were not immediately able to break the seal of the cargo container. However, I find that is not the respondent’s responsibility. The parties’ contract was to facilitate the shipment of the cargo container from China to Vancouver, clear it through customs, and deliver it to the applicant’s delivery address. The respondent fulfilled the contract. The contract did not include opening or unloading the cargo container. While the applicant says his warehouse is not a commercial warehouse, he did not advise the respondent of this. The respondent only knew the delivery address was not a residence. The applicant never asked the respondent to have the trucker bring a cutting tool.
18. I find the delays and additional costs at issue in this dispute were primarily the result of the applicant being unable to open the container and unload it. That situation is not the respondent’s responsibility, under the terms of their contract. I therefore do not need to address the specifics of the applicant’s damages claims. I dismiss the applicant’s claims.
19. In accordance with the tribunal’s rules, as the applicant was unsuccessful I dismiss his claim for reimbursement of tribunal fees.

ORDER

20. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair