



Civil Resolution Tribunal

Date Issued: December 19, 2018

File: SC-2018-004958 and SC-2018-005001

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *466095 B.C. LTD. doing business as MC Freight Systems v. HIMLIGHT TRADING CO INC.*, 2018 BCCRT 886

B E T W E E N :

466095 B.C. LTD. doing business as MC Freight Systems

APPLICANT

A N D :

HIMLIGHT TRADING CO INC.

RESPONDENT

B E T W E E N :

Nathan Himelfarb

APPLICANT BY COUNTERCLAIM

A N D :

466095 B.C. LTD. doing business as MC Freight Systems

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. 466095 B.C. LTD. doing business as MC Freight Systems (MC Freight) is a freight forwarding and logistics company. Himlight Trading Co Inc. hired MC Freight to ship furniture from Tacoma to Vancouver and from Vancouver to Toronto. Nathan Himelfarb is the operator of Himlight Trading Co Inc. I will refer to Nathan Himelfarb and Himlight Trading Co Inc. together as Himlight.¹
2. Himlight refuses to pay MC Freight's 2 invoices because some of the furniture was damaged during shipping. MC Freight claims \$721.99.
3. Himlight counterclaims for damage to the furniture for \$1,450. MC Freight says that it is not responsible for damage during shipping because it never handled the furniture.
4. MC Freight's Dispute Notice names the applicant as MC FREIGHT SYSTEMS. Himlight's Dispute Notice names the applicant as 466095 B.C. LTD. doing business as MC Freight Systems. I find that the MC Freight's Dispute Notice contains a typo and that 466095 B.C. LTD. doing business as MC Freight Systems is MC Freight's correct legal name. I order that the style of cause is amended accordingly.
5. MC Freight is represented by an employee. Himlight is represented by Nathan Himelfarb.

¹ Nathan Himelfarb brought the counterclaim in his personal capacity against MC Freight, rather than on behalf of Himlight Trading Co Inc.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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

10. The issues in this dispute is whether MC Freight is responsible for the damage to the furniture and whether Himlight must pay the shipping invoices.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, MC Freight must prove its case on a balance of probabilities. Himlight must prove its counterclaim on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. This dispute involves 2 separate shipments, which I will address one at a time.
13. First, on October 23, 2017, MC Freight arranged for a carrier to ship several pieces of furniture from Tacoma, Washington, to Himlight in Vancouver. MC Freight invoiced Himlight \$378.64.
14. On October 24, 2017, Himlight advised MC Freight that there was damage to some of the items in the shipment. MC Freight advised the Himlight that they would make a claim with the carrier on the Himlight's behalf once they received the necessary information from MC Freight.
15. Himlight stated that they had paid \$925 US Dollars for the damaged items.
16. MC Freight advised Himlight that the agreement between Himlight and the carrier limited the liability of the carrier to \$2 per pound and that they could only claim \$240 from the carrier. On January 26, 2018, MC Freight confirmed that the carrier had approved a \$240 credit, which MC Freight applied to Himlight's account.
17. Second, on October 27, 2017, MC Freight arranged for another carrier to ship a couch and a loveseat from Himlight in Vancouver to a customer in Ontario. MC Freight invoiced Himlight \$658.65.
18. On November 9, 2017, the customer told Himlight that the couch and loveseat were damaged. As with the first shipment, MC Freight made a claim with the carrier on Himlight's behalf.
19. On December 13, 2017, MC Freight advised Himlight that the carrier had accepted responsibility for the damage, but the customer had also made a claim with the

carrier. The carrier would only accept 1 claim per invoice. Because the customer made a claim before MC Freight, MC Freight was not able to maintain a claim on Himlight's behalf.

20. The carrier had agreed to pay the customer \$1,000 if the customer gave the carrier the damaged furniture. MC Freight asked Himlight to keep it informed of what happened with the customer. There is no evidence that Himlight did so. There is no evidence of how much, if anything, the carrier paid directly to the customer for damage to the couch.
21. The customer also made a claim against Himlight through their credit card provider. Himlight refunded the customer \$449.50.
22. MC Freight does not dispute that the items in the 2 shipments were damaged. MC Freight says that as a freight forwarding and logistics company, all it does is coordinate between a shipper and carrier to arrange for moving freight. It is undisputed that MC Freight never handled or controlled any item that was damaged.
23. Himlight says that even though MC Freight never had any control of the items, it is still responsible for any damage to them. Himlight does not say why MC Freight should be responsible for damage that is outside of its control, other than to generally say that MC Freight and Himlight had a contract.
24. There is no evidence before me of a written contract between the parties. I infer that Himlight believes that there was an express or implied term in the contract that places full responsibility on MC Freight for damage during shipping. I do not accept that there was such a term.
25. I rely on the email correspondence between MC Freight and Himlight about the damage to the items. In that correspondence, Himlight does not seek any money from MC Freight directly and implicitly accepts that its claim is against the carriers who caused the damage. Himlight never suggested that it expected reimbursement from MC Freight. If there was a term of the parties' contract that MC Freight would

reimburse Himlight for any damage, I find that Himlight would have demanded full reimbursement from MC Freight instead of cooperating with the claims process against the carriers, especially after MC Freight told Himlight that its claim against the carriers would be capped at \$2 per pound.

26. There is no suggestion that MC Freight did anything wrong in the fulfillment of its duties. Accordingly, I find that MC Freight fulfilled the terms of the contract and is entitled to be paid.
27. MC Freight claims that Himlight owes it \$721.99. I have reviewed the invoices and after taking into account the \$240 refund, I calculate a higher amount owing. Nevertheless, I am not prepared to order that Himlight should pay more than MC Freight claims. I award MC Freight \$721.99 plus prejudgment interest according to the *Court Order Interest Act*.
28. Because I have found that MC Freight fulfilled the terms of the contract, I dismiss Himlight's counterclaim. MC Freight is not responsible to pay for the furniture damage.
29. Under section 49 of the Act, and 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. MC Freight claimed \$10 in dispute-related expenses to send documents to Himlight, which I find is a reasonable sum. I find MC Freight is entitled to reimbursement of \$125 in tribunal fees and \$10 in dispute-related expenses.
30. Because I dismissed Himlight's counterclaim, I decline to award Himlight its tribunal fees or dispute-related expenses.

ORDERS

31. Within 14 days of the date of this order, I order Himlight to pay MC Freight a total of \$867.08, broken down as follows:

- a. \$721.99 as payment for the invoices,
 - b. \$10.09 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$135 for \$125 in tribunal fees and \$10 for dispute-related expenses.
32. MC Freight is entitled to post-judgment interest, as applicable.
33. The counterclaim is dismissed.
34. I order that the name of the applicant in Dispute SC-2018-004958 is amended to 466095 B.C. LTD. doing business as MC Freight Systems and that the style of cause is amended accordingly.
35. 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.
36. 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.

Eric Regehr, Tribunal Member