



Civil Resolution Tribunal

Date Issued: June 21, 2019

File: SC-2018-005042

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Estes v. TLL MOVING & STORAGE INC.*, 2019 BCCRT 762

BETWEEN:

Charles Estes

APPLICANT

AND:

TLL MOVING & STORAGE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the amount charged for moving services. The applicant, Charles Estes, says that he hired the respondent, TLL Moving & Storage Inc., to move goods from Vancouver, BC to Houston, Texas. He states that the respondent breached the parties' contract by overcharging him and seeks reimbursement of

\$4,418.00. The applicant also submits that respondent did not properly pack the applicant's goods and as a result they were damaged by a third-party carrier. He says that the respondent should cover his losses under an insurance claim.

2. The respondent disagrees that it breached the parties' contract. It says the applicant's claim of overcharging relates to the price charged by a third-party carrier. It also denies that it caused damage to the applicant's goods or entered into an insurance agreement with him.
3. The applicant is self-represented. The respondent is represented by Thomas Petereith, whom I infer is a principal or employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
6. 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.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make an order 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

8. The issues in this dispute are as follows:
 - a. Is the respondent liable for fraudulent or negligent misrepresentation, or a breach of contract?
 - b. If the respondent is liable, what is the appropriate remedy?

FACTS AND EVIDENCE

9. 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.
10. The parties agree that the applicant hired the respondent to assist in moving goods from Vancouver to Houston. In June 2018 the respondent arrived at the applicant's home, packed his goods, and shipped them in a truck to the local airport. WC, a third-party carrier, transported the goods by air into Texas.
11. The applicant submits that the respondent agreed to ship his goods at a rate of \$1 CAD per pound. However, the respondent instead charged \$1 USD or \$1.56 CAD per pound, leading to a substantial increase in price.
12. I find that the applicant's claim is largely about the amount WC charged the applicant, rather than the respondent. In a bill of lading and invoice dated June 8,

2018, the respondent provided a global estimate of the total amount to move the applicant's goods. The bill notes that the "shipment will be handled by [WC]" and states in handwriting that WC would charge \$1 USD per pound. The estimated weight of shipped goods was 4,000 pounds and a subtotal price of \$4,000. I find it reasonably clear that the \$4,000 was in US dollars.

13. The bill also states that packing will be \$525. I find the packing amount to be the estimate of the applicant's task of packing and shipping the applicant's goods to the local airport. The bill also states that all amounts shown are subject to the weight of the goods when weighed on a scale, as well as other unspecified charges. A moving date of June 21, 2018 is specified. Finally, the bill is signed by the respondent and by DE, whom I infer was acting for the applicant. The applicant produced an unsigned copy, but I find the parties eventually signed it.
14. On the moving date of June 21, 2018, a second updated bill was produced. It provides a revised estimated weight of 5,376 pounds and a subtotal price of \$5,300. Although the estimate did not refer to currency type, simple arithmetic suggests the respondent used the rate of \$1 USD per pound. The bill also specifies \$625.00 as the packing price. Both the first and second bills state at the bottom of the document that further conditions on the reverse apply. These conditions appear to include a limitation of liability. However, I was not provided a copy of the back of the bills and the parties did not raise it as relevant.
15. The applicant acknowledges that in June 2018 he saw the respondent write on the June 8, 2018 bill that the estimate for the WC bill would be in US dollars. However, he submits that in multiple phone conversations and visits to their home the respondent never advised that WC would charge in US dollars. In contrast, the respondent submits that it told the applicant that the shipment would be handled by WC and charged in US dollars. On balance I prefer the respondent's submission as it is consistent with the June 8, 2018 bill.
16. The applicant's goods were eventually sent by air from Vancouver to Houston, Texas. WC invoiced DE on July 4, 2018, for \$6,876.18 USD. This amount included

a \$650 CAD charge for local pickup. I infer this refers to the respondent's services. According to a July 5, 2018 text message from the respondent to the applicant, WC waived this amount.

LAW AND ANALYSIS

Breach of Contract and Fraudulent or Negligent Misrepresentation – The Estimates

17. The applicant submits that the respondent breached the parties' contract by overcharging him. However, I find that no such breach occurred. In this dispute the roles of the respondent and WC are distinct. The two bills show that the respondent's role was limited to packing and shipping the applicant's goods to the local airport. The parties agree that the respondent performed this part of the contract and the applicant paid the respondent for it. The bills indicate that the amount WC will charge is an estimate, and that the estimated amount is subject to change, including the ultimate weight of the shipped goods. WC's price was not guaranteed.

18. The applicant submits that the respondent misled him. If he had known that the estimate was in US dollars, he says he would not have hired the respondent. I have therefore considered the law of fraudulent and negligent misrepresentation. A misrepresentation is a false statement of fact, made during a negotiation to induce the buyer into a sale. As noted in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, a fraudulent misrepresentation occurs when
 - a. the seller made a false representation to the buyer;
 - b. the seller knew that the representation was false, or made the representation recklessly, not knowing if it was true or false; and
 - c. the false representation caused the buyer to act; and
 - d. the buyer's actions resulted in a loss.

19. In *Queen v. Cognos Inc.*, [1993] 1 SCR 87, the Court wrote that negligent misrepresentation occurs when
- a. there is a duty of care based on a “special relationship” between the seller and buyer;
 - b. the representation was untrue, inaccurate, or misleading;
 - c. the seller acted negligently in making the representation;
 - d. the buyer, acting reasonably, relied on the negligent misrepresentation; and
 - e. the reliance was detrimental to the buyer and resulted in damages.
20. From the evidence I find the respondent did not induce the applicant into a contract through a fraudulent or negligent misrepresentation. The June 8, 2018 bill of lading states in handwriting that WC would charge \$1 USD per pound of shipped goods. This was accurate and not misleading. I have also found that the respondent advised the applicant that WC would charge in US dollars.
21. The respondent submits that this handwritten portion of the June 8, 2018 bill was unreadable or confusing, and that the respondent should have explained what it meant. I disagree and find that it was not objectively illegible or difficult to understand. The applicant signed the bill. He acknowledges being present when this writing was added. He therefore had the opportunity to read the document and ask questions if he found it confusing but decided not to.
22. The second bill of June 21, 2018 is less clear because it does not refer to US dollars at all. However, this bill was produced two weeks after the first bill. Given the timing, the applicant could not have relied or acted upon this omission to enter into the parties’ contract.
23. Even if the respondent had misrepresented WC’s shipping rate, it is unclear if the applicant suffered any resulting damages. The applicant paid WC more than he expected. However, there is no evidence that WC charged an unreasonable price

for its services. It is also unclear if the applicant would have, or could have, moved his goods through a cheaper means than air travel, had he understood the true cost.

24. Given the above, I dismiss this portion of the applicant's claim.

Breach of Contract – Damage to Goods

25. As noted above, the applicant submits that the respondent improperly packed his goods. This resulted in damage when WC moved the same goods. However, the applicant provided no details beyond these assertions. He did not describe the damage or quantify his losses. Given the lack of relevant submissions or evidence, I dismiss this portion of the claim.

Breach of Contract – Insurance

26. The applicant submits that the applicant wrongfully denied his insurance claim for the damaged goods. He refers to a section of the June 8 and 21, 2018 bills of lading in support of his position. In both bills that section states that the respondent was covered for \$0.60 per pound per item, "or less". I find that this statement does not assist the applicant. It leaves open the possibility that the applicant is uninsured.

27. The applicant does not submit that he purchased insurance with the respondent and there is no insurance agreement in evidence. The respondent submits, and I accept, that the respondent never sold the applicant insurance. I therefore dismiss this portion of the applicant's claim.

TRIBUNAL FEES

28. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I dismiss his claims for reimbursement of tribunal fees.

ORDER

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

David Jiang, Tribunal Member