



Civil Resolution Tribunal

Date Issued: January 10, 2020

File: SC-2019-004908

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mirochembiotech Ltd v. United Maple Logistics Inc.*, 2020 BCCRT 38

B E T W E E N :

MIROCHEMBIOTECH LTD

APPLICANT

A N D :

UNITED MAPLE LOGISTICS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Mirochembiotech Ltd, claims \$1,942.62 as reimbursement for the cost of replacing damaged laboratory equipment. This amount includes delivery and other related fees. The applicant says the equipment was damaged while being

shipped overseas by AMASS Freight International Co. Ltd. (AMASS). AMASS is not a party to this dispute. The respondent, United Maple Logistics Inc., held the equipment until the applicant paid port fees. The applicant says the respondent is liable for the damage because it acts for AMASS locally.

2. The respondent denies the applicant's claim. It says it is separate from AMASS and never agreed to assume liability for the equipment during transport.
3. Oleksandr Miroshnychenko represents the applicant. Diana Chen represents the respondent. I infer the representatives are employees or principals of each party.

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* (CRTA). 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. 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.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. Should the respondent reimburse the applicant \$1,942.62 for replacing damaged laboratory equipment?

EVIDENCE AND ANALYSIS

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 applicant says that the respondent is responsible for the condition of the equipment because it is AMASS' delivery agent.
11. In contrast, the respondent says it played no role in shipping the equipment and never accepted liability for loss or damage during transport. I turn to the relevant chronology.
12. The applicant purchased laboratory equipment from Qingdao Blue Ocean Foundation Laboratory Equipment Co., Ltd. (Qingdao). Qingdao used AMASS to ship the equipment overseas from China to the respondent in Canada, BC.
13. The applicant says that this was a "CIF" delivery, without explanation. I infer this means that Qingdao agreed to pay costs, insurance, and freight for shipping the equipment.
14. There is little of the shipping agreement in evidence. The applicant provided a document excerpt showing the cost of shipping the equipment, including insurance. However, no other details are visible.
15. The applicant also produced a bill of lading from AMASS. It states that Qingdao is the shipper, the applicant is the consignee, and the respondent is the delivery agent. The bill of lading indicates a shipping vessel delivered the equipment.

16. Based on the bill of lading, I find that Qingdao entered into an agreement with AMASS to ship the equipment to the respondent for pickup. I note that the bill of lading is very brief and refers to other terms and conditions that are not in evidence.
17. On April 24, 2019, the respondent notified the applicant that his equipment had arrived at their warehouse for pickup.
18. The applicant arrived at the warehouse and asked to inspect the equipment. The respondent refused and said that the applicant had to pay port fees before it could remove the equipment from the warehouse. The fees totaled \$335.39, as documented in an April 24, 2019 invoice. They included a container freight station fee, port security fee, and handling fees.
19. The respondent said that if the equipment was not taken, storage fees would accumulate. The applicant paid the port fees and took photos of the equipment. The photos show damage to the equipment.
20. The applicant says that the respondent delayed access to the equipment to hide the fact that it was damaged. I find this to be speculative. I find it more likely that the applicant wanted its fees paid before dealing with the equipment.
21. The applicant says that at some point the plywood box containing the equipment was replaced. The applicant provided a photo of the box when it was sent, and a photo of the box received. As they differ, I accept the box enclosing the equipment was replaced at some point.
22. The applicant says the goods sustained damaged while being transported from China to the respondent's warehouse. The applicant was vague about whether the respondent damaged the equipment or how it happened. The applicant said that the cargo was repackaged and damaged by "the co-loader". The applicant may have been referring to the respondent. In any event, the applicant did not explain why it was more likely that respondent damaged the equipment, rather than AMASS or Qingdao. The respondent's role was limited in comparison to them. On balance, I find that the respondent did not damage the equipment.

23. In order to succeed the applicant must show a legal basis for his claim, such as a breach of contract or negligence by the respondent.
24. There is little evidence of any agreement between the applicant and the respondent. As noted above, the respondent provided the applicant the April 24, 2019 invoice. There is nothing in this document that says the respondent assumed the risk of damage to the equipment during shipping.
25. The applicant says the respondent should be liable because it is named as AMASS' delivery agent in the bill of lading. I do not find this to be of special significance. The evidence and submissions before me support the conclusion that a delivery agent only holds a delivery until port fees are paid. The applicant did not explain why a delivery agent would have the same obligations as the shipper.
26. The respondent says the applicant's claim is with AMASS or his insurer. The applicant acknowledges the equipment is insured. The applicant did not provide any evidence from AMASS or his insurer that might support his submissions.
27. I find it speculative that the respondent was negligent. The applicant did not explain how the respondent damaged the equipment. I also found the applicant's submissions equivocal on whether the damage was caused by AMASS or the respondent.
28. Finally, even if I were to find the applicant's favour, I find the applicant has not proven his damages. He provided no invoices or receipts to support the claimed amounts.
29. In summary, I conclude that the applicant has not shown, on a balance of probabilities, that the respondent should pay for replacing the damaged equipment.
30. I dismiss the applicant's claims.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

31. Under section 49 of the CRTA 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.
32. The respondent is the successful party. It seeks \$50.00 in paid tribunal fees for setting aside a default decision. The applicant made the respondent's cancellation request necessary through his claims, which I have dismissed. I order the applicant to pay the \$50.00 amount. The parties did not claim dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order the applicant to pay the respondent \$50.00 in tribunal fees.
34. I dismiss the applicant's claims.
35. The respondent is entitled to post-judgment interest, as applicable.
36. Under section 48 of the CRTA, 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.



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37. Under section 58.1 of the CRTA, 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.

David Jiang, Tribunal Member