



Civil Resolution Tribunal

Decision Issued: May 14, 2020

File: SC-2019-004138

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wild Coast Productions & Event Rentals Inc. v. Parklane Insurance Brokers Inc.*, 2020 BCCRT 531

B E T W E E N :

WILD COAST PRODUCTIONS & EVENT RENTALS INC. and
ALL THINGS CHEER AND DANCE INC.

APPLICANTS

A N D :

PARKLANE INSURANCE BROKERS INC., EUNDERWRITERS
MANAGING GENERAL AGENT LTD., and 2410974 Ontario Inc. dba
NJ Transport

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The respondent, 2410974 Ontario Inc. dba NJ Transport (NJT), is a shipping company. The applicant, Wild Coast Productions & Event Rentals Inc. (WCP), says that NJT damaged its equipment and lost its packing supplies while transporting

them from Richmond, B.C. to Mississauga, Ont. WCP seeks \$4,916.60 for the cost of the items that were damaged or lost.

2. The role of the applicant, All Things Cheer and Dance Inc. (ATC), was not explained in the Dispute Notice or any of the parties' submissions. This issue is discussed in more detail below.
3. NJT did not file a Dispute Response as required and is in default, which I also discuss below.
4. The respondent, Parklane Insurance Brokers Inc. (Parklane), says it sold motor vehicle cargo insurance to NJT but should not be named as a party to the dispute because it is NJT's insurance agent, not NJT's insurer. It also says that NJT breached the insurance policy by reloading WCP's equipment to another trailer.
5. The respondent, EUnderwriters Managing General Agent Ltd. (EUnderwriters), says that it should not be named as a party and that the dispute is between the applicants and Parklane. It also says that the applicants should be making a claim against MIA who it identifies as the "third party administrator".
6. The respondents, Parklane, and E-Underwriters are each represented by their own employee.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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.
11. I first issued a decision in this dispute on April 7, 2020, finding that WCP had not provided evidence about the value of the damaged equipment and lost supplies. WCP then raised a concern that its evidence had not been considered in my April 7, 2020 decision. Upon reviewing the matter, I found that, through inadvertence, WCP's evidence had been provided but I did not consider it when I made my April 7, 2020 decision.
12. Because both sides did not have an equal opportunity to be heard, I found that it would be unfair to allow that decision to dispose of the issues between them. On May 13, 2020, I made an order that my April 7, 2020 decision was a nullity (meaning 'of no effect') because through tribunal inadvertence the applicant's evidence was not reviewed prior to the decision being made and issued.
13. In reaching my conclusion, I relied on section 51(3) of the CRTA that permits reopening a dispute, on the request of a party, to "cure a jurisdictional defect. I also relied upon the decision in *Chandler v. Assn. of Architects (Alberta)*, [1989] 2 SCR 848, where the Supreme Court of Canada held that a tribunal may reopen a dispute to discharge the function committed to it, if the tribunal has failed to dispose of an issue fairly before it, and where the legislation indicates that the dispute may be

reopened. *Chandler* also says that where there is a denial of natural justice that takes away the legal force of the proceeding, the tribunal must start afresh. This determination is also consistent with the reasoning of the courts in *St. George's Lawn Tennis Club v. Halifax (Regional Municipality)* 2007 NSSC 26, and *Fraser Health Authority v. British Columbia (Workers' Compensation Appeal Tribunal)* 2014 BCCA 499, appeal upheld on other issues at 2016 SCC 25.

14. Below is the fresh decision in this dispute, which I made after reviewing the evidence from WCP and the respondents.

ISSUES

15. The issue in this dispute is whether NJT, Parklane, or EUnderwriters are responsible for WCP's damaged equipment and lost packing supplies.

EVIDENCE AND ANALYSIS

16. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities. I will not refer to all of the evidence or address each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
17. As stated above, ATC's role in this dispute has not been explained by any of the parties. Also, ATC did not claim any damages against any of the respondents. Due to a lack of evidence, I dismiss ATC's claims against the respondents.
18. WCP says the following:
 - a. It hired NJT to transport equipment from Richmond, BC to Mississauga, Ont.
 - b. It loaded the equipment onto NJT's trailer and secured it for shipment. The equipment was in working condition when it was loaded.

- c. After the trailer left WCP's warehouse, NJT transferred the equipment to a different trailer without WCP's consent.
 - d. NJT lost WCP's pallet jack, dolly, straps, and load bars (packing supplies) when it transferred WCP's equipment to the other trailer.
 - e. The equipment fell and was damaged during transport because NJT did not stack and strap the equipment properly in the other trailer.
 - f. The equipment would not have been damaged if NJT had left it in the original trailer.
19. WCP says that the following equipment was damaged and also provided its estimated replacement costs:
- a. Hog PC Wing (\$1,500),
 - b. 2 Chauvet DMX Distros (\$250),
 - c. 208V power supply rack mount (\$1,000), and
 - d. Touchscreen monitor case (\$200).
20. WCP also says the following items were missing:
- a. Pallet Jack (\$600),
 - b. 4 x E-Track Load Bars (\$80),
 - c. 19 x E-Track Load Straps (\$30), and
 - d. Big Wheel Dolly (\$250).
21. WCP says it tried to contact NJT after it received the equipment but NJT did not reply. It then contacted Parklane who provided proof of insurance.
22. NJT did not file a Dispute Response, despite being properly served. Therefore, as noted above, it is in default. Where a respondent is in default, liability is assumed.

This means that because NJT refused to participate, it is generally reasonable to assume that WCP's position is correct about the issue at hand. I find NJT agreed to transport WCP's equipment from BC to Ontario. I find NJT transferred WCP's equipment to another trailer without WCP's consent and lost WCP's packing supplies in the process. I find NJT did not properly secure the equipment and it was damaged during transport.

23. I asked WCP for further evidence of the value of the damaged equipment and lost supplies through the tribunal's case manager. WCP provided screen shots from several websites. WCP says it estimated the replacement costs for used equipment and packing supplies based on the prices from these websites. None of the respondents disputed WCP's estimates.
24. I have reviewed WCP's additional evidence and I find its claimed amounts for the cost of replacing damaged and lost equipment is reasonable. I find the total value of the damaged and lost equipment is \$4,690 based on the estimated prices provided by WCP. I find WCP is entitled to receive \$4,690 from NJT.
25. This leaves WCP's claims against Parklane and EUnderwriters. Parklane admitted that the cost of WCP's damaged equipment and lost packing supplies came within the policy's deductible. However, it says NJT may not be covered by the insurance policy because NJT breached the insurance policy when it transferred WCP's equipment to a different trailer. It says WCP should address this issue directly with NJT.
26. WCP says that Parklane issued the proof of insurance on behalf of EUnderwriters for NJT so they are equally responsible. It says they should pay the claim and reconcile it with NJT.
27. I am bound by the court's decision in *N & H Contracting Ltd. v. Gordon*, 1993 CarswellBC 5 (BCCA) where the BC Court of Appeal addressed the issue of an insurance company's contractual relationship with a third party. In that case the insured's house was damaged in a fire. The plaintiff contractor repaired the house

and brought a claim against the insured and the insurer for payment of its final invoice. The court declared there was no direct contractual arrangement between the contractor and the insurer. Likewise, I find there was no contractual relationship between the applicants and either Parklane or EUnderwriters. I dismiss WCP's claims against Parklane and EUnderwriters.

TRIBUNAL FEES, EXPENSES, AND INTEREST

28. The *Court Order Interest Act* applies to the tribunal. WCP is entitled to pre-judgment interest on \$4,690 in damages, calculated from the date of loss, January 24, 2018, until the date of this decision. This equals \$192.81.
29. 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. I find WCP is entitled to reimbursement of \$175 in tribunal fees. It did not claim dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the respondent, 2410974 Ontario Inc. dba NJ Transport, to pay the applicant, Wild Coast Productions & Event Rentals Inc., a total of \$5,057.81, broken down as follows:
 - a. \$4,690 in damages,
 - b. \$192.81 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
31. Wild Coast Productions & Event Rentals Inc. is entitled to post-judgment interest, as applicable.

32. I dismiss Wild Coast Productions & Event Rentals Inc.'s claims against Parklane Insurance Brokers Inc. and Eunderwriters Managing General Agent Ltd.
33. I dismiss All Things Cheer And Dance Inc.'s claims against the respondents.
34. 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.
35. Since 2410974 Ontario Inc. dba NJ Transport is in default, it has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.
36. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
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.

Rama Sood, Tribunal Member

