



Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2020-000798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ames v. Canpar Express Inc.*, 2020 BCCRT 739

BETWEEN:

DAVID AMES

APPLICANT

AND:

CANPAR EXPRESS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about damaged goods.
2. The applicant, David Ames, paid the Respondent, Canpar Express Inc. (Canpar), \$137 to deliver his guitar amp to a purchaser in Texas. Mr. Ames says the amp was

damaged or lost in transit and claims \$1,200 in damages. He also claims \$3,800 in punitive damages for loss of peace of mind.

3. Canpar denies that it damaged or lost the amp and says it already reimbursed Mr. Ames the declared value of \$800 and shipping costs of \$137 as a gesture of goodwill. Canpar says it diligently handled Mr. Ames' claim and so punitive damages are not warranted.
4. Mr. Ames represents himself. Canpar is represented by Mariam Guirguis, a lawyer.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
6. The CRT 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.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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.

ISSUES

9. The issues in this dispute are:
 - a. Must Canpar pay Mr. Ames for his damaged or lost guitar amp and, if so, how much?
 - b. Must Canpar pay Mr. Ames for punitive damages or mental distress damages, and if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, Mr. Ames must prove his claim on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I refer only to that which explains and gives context to my decision.
11. Mr. Ames says he sold his 1977 guitar amp to a purchaser in Texas through a third party. From a screen shot Mr. Ames provided, I find that he sold the amp for \$1,811.95 plus \$129 shipping.
12. On April 15, 2019 Mr. Ames took the amp to a Canpar agent, who packaged the amp for shipping with Canpar. There is no dispute that the agent was authorized to act on Canpar's behalf and Canpar agrees that it took possession of the amp for shipping. The agent is not a party to this dispute.
13. Mr. Ames provided page 3 of a 3-page Canpar Express shipping invoice which includes shipping details and a summary. From this I find Mr. Ames declared that the amp weighed 75 pounds and was valued at \$800. Mr. Ames paid Canpar a \$15 surcharge for the \$800 declared value and \$137 for the shipping costs.
14. Mr. Ames says that when the purchaser in Texas received the amp, it was badly damaged. Canpar submitted emails between itself and the third-party carrier it used to deliver the guitar amp. The third-party carrier wrote that the purchaser described a crushed external box and a broken amplifier frame. Mr. Ames submitted a news story which quoted the purchaser saying that the amp was badly damaged. Mr.

Ames also submitted an email from the purchaser about returning the damaged amp. Although there is no direct evidence of the damage, such as photographs, or a first-hand statement from the purchaser, I find the third-hand descriptions from the purchaser are consistent with each other, and therefore accept that the amp was damaged. I also find the amp was damaged while it was in transit, given that the box was crushed.

15. Canpar says Mr. Ames has not proven that Canpar damaged the amp and says it could have been the third-party carrier. As noted by Mr. Ames, he did not contract with the third-party carrier, but with Canpar, to deliver the amp to the purchaser in Texas. I find Canpar agreed to take responsibility for the amp until it was delivered to the purchaser. I find it an implied term of the agreement that Canpar would deliver the amp, undamaged, to the purchaser, whether it hired a third party carrier to deliver the package or not.
16. Canpar says that it has already reimbursed Mr. Ames' \$137 shipping costs, plus the \$800 declared value of the amp. I find this to be true, based on the settlement letter and copy of the cheque provided. I disagree with Mr. Ames' argument that the \$800 he received was from an insurance claim and is irrelevant to this case. Neither the shipment summary nor the settlement letter refer to insurance. Rather, the letter says the declared value of the amp limits Canpar's responsibility to \$800 for the package. Canpar's limit of liability, in the event of damage or loss, is relevant to this dispute.
17. Canpar says that, under its terms of service, its responsibility for damaged items is limited to \$1.00 per pound for used goods, which it says the guitar amp is. I find this to be true, based on the submitted terms of service. However, the terms of service also state that Canpar's maximum liability will be the declared value, where a value is declared and the applicable surcharge is paid, such as is the case here. I find Canpar's terms of service limit its liability for the damaged guitar amp to the \$800 declared value, which as noted Canpar has already paid to Mr. Ames.

18. Mr. Ames says the terms of service limiting Canpar's responsibility were never brought to his attention and disagrees that the terms were clearly stated, or visible, on the contract he signed. However, Mr. Ames did not provide a full copy of a signed contract, only the last page containing a summary, and I do not see a signature on that page.
19. Despite not having a copy of the full contract, I find it likely that Mr. Ames knew, or ought to have known, that if his guitar amp was damaged in transit his reimbursement would be limited to the \$800 value that he himself declared. I find the fact that Mr. Ames declared a value at all, and paid a surcharge based on that value, shows that Mr. Ames turned his mind to potential damage or loss to his amp.
20. Mr. Ames says he did not declare the full \$2,000 value of the amp as he could not afford a more expensive surcharge. While I acknowledge his reasons for declaring an \$800 value, I find that Mr. Ames is now bound by that declaration. I find the full limit of Canpar's responsibility for the damaged amp is \$800, which they have already paid. I dismiss Mr. Ames' \$1,200 claim for the guitar amp.

Punitive damages

21. Mr. Ames says he was unable to get in contact with anyone at Canpar about his claim, received the 'run around', and had to wait 2 to 3 months to see if his claim would be accepted and paid out. He disputes Canpar's claim that it diligently handled his claim.
22. Mr. Ames provided no details or supporting evidence about how he tried, but was unable to, get in touch with anyone at Canpar about his claim. According to Canpar's claims history report, it opened an investigation, contacted Mr. Ames, and requested information from the third-party carrier within a few days of the damage report. The report also shows that Canpar attempted to communicate with Mr. Ames several times over the next few weeks, asking for an invoice for the amp. I find Canpar paid the claim approximately 6 weeks after it received a report of damage. I find this was not an unreasonable period of time in the circumstances.

23. Punitive damages are meant to punish extreme conduct worthy of condemnation, and can only be awarded to punish harsh, vindictive, reprehensible and malicious behavior (see *Vorvis v. ICBC*, [1985] 1 SCR 1085). I find that Canpar has not acted in a harsh, vindictive, reprehensible or malicious manner and so I decline to award punitive damages against Canpar.
24. Mr. Ames claims damages for his loss of peace of mind. He says the stress of the loss and waiting for payment resulted in sleepless nights.
25. Damages for disappointment, mental distress, inconvenience, and upset have been allowed in “peace of mind” contract cases, such as a lost holiday or damaged wedding photography (see *Wilson v. Sooter Studios Ltd.*, 1988 CanLii 3100 (BCCA), *Jarvis v. Swan Tours Ltd.*, [1973] Q.B. 233 (C.A.)). In those cases, a major portion of the contract is to provide pleasure, relaxation, or peace of mind, which I find is not the case here. I find Mr. Ames’ contract with Canpar was for economic reasons, to ship a sold item to a purchaser.
26. Next, in order to succeed in a claim for mental injury, Mr. Ames must show something more than mere psychological upset. He must show that his mental disturbance is serious, prolonged and rises above the ordinary annoyances, anxieties and fears that come with living in civil society (see *Saadati v. Moorehead*, 2017 SCC 28). Mr. Ames has not provided any medical evidence. I find that sleepless nights alone show nothing more than ‘mere psychological upset’ and find that Mr. Ames has not proven mental distress. I dismiss Mr. Ames’ claim for \$3,800 in punitive damages and for mental distress.
27. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Neither party paid any CRT fees nor claimed any dispute-related expenses and so I make no order for CRT fees or dispute-related expenses.

ORDER

28. I dismiss Mr. Ames' claims and this dispute.

Sherelle Goodwin, Tribunal Member