



Civil Resolution Tribunal

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File: SC-2020-001974

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shahrokh Monjazeb dba Canada Audio Video Supplies Importer v. GPS Logistics and Warehousing Services Ltd.*, 2020 BCCRT 848

B E T W E E N :

SHAHROKH MONJAZEB (Doing Business As CANADA AUDIO VIDEO
SUPPLIES IMPORTER)

APPLICANT

A N D :

GPS LOGISTICS AND WAREHOUSING SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is over missing warehouse goods. The applicant, Shahrokh Monjazeb dba Canada Audio Video Supplies Importer, stored a commercial inventory of audio-visual goods at the respondent, GPS Logistics and Warehousing Services

Ltd.'s (GPS) warehouse. Mr. Monjazebe claims that GPS lost an Integra DRX-5 AV receiver (Integra receiver), a pair of OSD AP525P speakers (OSD speakers), and a Samsung UE590 UHD 4K monitor (Samsung monitor). Mr. Monjazebe requests compensation of \$3,576.43 for the value and freight costs of the missing goods.

2. GPS denies the claim. GPS says Mr. Monjazebe removed the inventory himself so he cannot prove that the items are missing. GPS also says Mr. Monjazebe has not proved it was negligent and because the contract permits small inventory losses.
3. Mr. Monjazebe is self-represented. GPS is represented by their president.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

7. 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 CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether GPS owes Mr. Monjazez compensation for missing goods? If so, how much?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, as the applicant Mr. Monjazez must prove their case on the 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.
10. Mr. Monjazez says GPS agreed to store his products at its warehouse on November 1, 2017. Mr. Monjazez says GPS also agreed to assist with inventory management, shipping and receiving and order fulfillment.
11. Mr. Monjazez says they did not have a written contract, but GPS says they did. GPS emailed Mr. Monjazez a file named "AV-SI Proposal" on November 1, 2017. I am satisfied that Mr. Monjazez received this email because Mr. Monjazez used that email address for other communications with GPS and Mr. Monjazez did not dispute receiving the email. The document sent to Mr. Monjazez included GPS' service rates and fees, a credit application and a set of standard commercial warehouse contract terms. I find that this document was a contract proposal.
12. The proposal was not signed by either party. In *Crosse Estate (Re)*, 2012 BCSC 26 (CanLII), the British Columbia Supreme Court said unsigned agreements can be binding, and acceptance can be implied by the parties' conduct.

13. Mr. Monjazez says GPS' contract proposal was not signed because GPS said it would prepare a different, customized agreement. Mr. Monjazez says GPS needed a customized agreement because GPS generally does not regularly accept low volume customers like Mr. Monjazez's business. Mr. Monjazez says however that GPS never delivered a customized agreement.
14. In contrast, GPS says there was never a discussion to create a custom warehouse agreement for Mr. Monjazez. GPS says it sent its standard contract terms to Mr. Monjazez because GPS intended to bind the parties to those terms. GPS argues that they would not have sent their contract proposal if GPS did not intend to apply those terms. GPS also argues that they would not amend their contract which protects their business to make a special contract for a new client they are not familiar with. I find GPS' argument persuasive and I find its version of the events more likely to be accurate than Mr. Monjazez's. In the absence of corroborating evidence, I am not satisfied that Mr. Monjazez rejected GPS' contract proposal. Rather, I find that it more likely that Mr. Monjazez accepted the terms offered by GPS by delivering his products to GPS' warehouse. So, I find that GPS' proposal became a binding contract.
15. Mr. Monjazez says he delivered his initial inventory to GPS and he prepared a handwritten opening inventory statement in GPS's presence on November 6, 2017. Mr. Monjazez says GPS entered the handwritten inventory statement into their computer and provided a complete inventory report on January 2, 2018. Since GPS did not dispute this, I accept Mr. Monjazez's submissions.
16. The inventory reports note the presence of a pair of OSD speakers and a Samsung monitor. Based on the inventory records prepared by both parties, I find that Mr. Monjazez's pair of OSD speakers and Samsung monitor were delivered to GPS' warehouse.
17. GPS' records show that 2 Integra receivers were received by GPS on June 25, 2018 and Mr. Monjazez removed 1 Integra receiver on August 30, 2018. I find that GPS had possession of 1 Integra receiver after August 30, 2018.

18. Mr. Monjazez says he conducted an inventory with a warehouse employee on March 11, 2019. Mr. Monjazez says both parties participated in the inventory process and signed the completed inventory record. The inventory record indicated that it was signed by 2 individuals and dated March 11, 2019. GPS did not dispute these submissions.
19. The March 11, 2019 inventory indicates that the Integra receiver, Samsung monitor and OSD speakers were missing. Based on Mr. Monjazez undisputed submissions and the jointly conducted inventory, I find that Mr. Monjazez's Integra receiver, Samsung monitor and a pair of OSD speakers were missing as of March 11, 2019.
20. Mr. Monjazez says he removed his goods from the warehouse on March 15, 2019. GPS says that Mr. Monjazez removed his products himself so there is no way of determining whether the missing items were actually taken by Mr. Monjazez. However, based on the jointly completed inventory taken just 4 days earlier, I am satisfied that the Integra receiver, Samsung monitor and OSD speakers were missing while under GPS' control.
21. The *Warehouse Receipt Act* (WRA) says a warehouse, such as GPS, is liable for the loss of goods caused by the warehouse's failure to exercise the care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances. The WRA also imposes a reverse onus on the warehouse to prove they met their duty. (See, *Kruger Products Limited v. First Choice Logistics Inc.*, 2010 BCSC 1242 (CanLII).)
22. GPS refers to section 10(g) of the contract which says a warehouse is only liable for the loss of goods if the client establishes the warehouse breached the standard of care. This would appear to put the onus of proof on Mr. Monjazez to prove negligence rather than GPS. However, the Supreme Court of Canada in *Evans Products Co. Ltd. v. Crest Warehousing Co. Ltd.*, 1979 CanLII 170 (SCC) said that a warehouse's obligations under the WRA are statutory and cannot be modified by a private contract. So, I find section 10(g) of the contract is not enforceable and

GPS has the onus of proving that it exercised the required care and diligence. For the reasons that follow, I find that GPS has failed to do so.

23. GPS is running a warehouse business and they accepted the responsibility of storing and managing Mr. Monjazebe's commercial inventory. However, GPS did not provide inventory tracking records or a statement explaining the procedures it took to safeguard Mr. Monjazebe's goods. I find GPS has not provided sufficient evidence to prove that they exercised the care required by the *WRA*.
24. I have also considered GPS' argument that the contract permits a small loss of inventory from shrinkage. Specifically, the contract says GPS is not responsible for losses under 0.5% of the inventory. In this matter, GPS lost 3 items out of a closing inventory of 46 items. This loss exceeds 0.5% of Mr. Monjazebe's inventory. So, I find the contract's shrinkage provision does not apply to this claim.
25. I am satisfied that GPS owes Mr. Monjazebe compensation for failing to reasonably safeguard the Integra receiver, Samsung monitor and OSD speakers. So how much does GPS owe Mr. Monjazebe?
26. Section 9(d) of the contract says GPS' liability is limited to \$50 per item unless Mr. Monjazebe specifically requested a higher limit in writing and declared an excess value. There is no evidence before me that Mr. Monjazebe requested such a higher limit.
27. The Supreme Court of Canada discussed a limitation of liability clause in standard warehouse contracts in *Evans*. The Supreme Court found that the \$50 liability limit in the standard warehouse contract was enforceable even if the warehouser was negligent. As the Supreme Court of Canada decision is binding authority, I find that the contract limits GPS' liability to \$50 per item.
28. Mr. Monjazebe provided a receipt showing the Integra receiver cost \$1,820. Mr. Monjazebe also provided internet listing showing the Samsung monitor was worth \$369.99 and the OSD speakers were worth \$108. I am satisfied that value of each

of the 3 missing items exceeds the \$50 liability maximum. So, I find that GPS owes Mr. Monjazez the contract maximum of \$150 for the loss of these 3 items.

29. The *Court Order Interest Act* applies to the CRT. Mr. Monjazez is entitled to pre-judgment interest on the \$150 compensation from March 15, 2019, the date Mr. Monjazez removed his goods from the warehouse, to the date of this decision. This equals \$3.85.

30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Monjazez is entitled to reimbursement of \$175 in CRT fees. Neither party requested reimbursement dispute-related expenses so none are ordered.

ORDERS

31. Within 30 days of the date of this order, I order GPS to pay Mr. Monjazez a total of \$328.85, broken down as follows:

- a. \$150 in damages as compensation for missing goods,
- b. \$3.85 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

32. Mr. Monjazez is entitled to post-judgment interest, as applicable.

33. Under section 48 of the CRTA, the CRT 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 CRT's final decision. 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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of

emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member