Civil Resolution Tribunal

Date Issued: September 8, 2020

File: SC-2020-002621

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seaville Transport Logistics Ltd. v. Vancouver Freeze Dry Ltd.,* 2020 BCCRT 1007

B E T W E E N :

SEAVILLE TRANSPORT LOGISTICS LTD.

**APPLICANT**

A N D :

VANCOUVER FREEZE DRY LTD.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a stolen shipping container. The applicant, Seaville Transport Logistics Ltd. (Seaville), says it delivered a container from the port to the

respondent, Vancouver Freeze Dry Ltd. (VFD), and the container was stolen from VFD's property. Seaville claims $4,702.28, which it says the steamship line required it to pay for the stolen container.

2. VFD says it has no contractual relationship with Seaville. VFD also says it did not move the container after it was delivered by a trucking company N to a public dock, from where VFD unloaded the container. VFD says the container was stolen from that public dock, not from VFD's property. VFD says it had no responsibilities to safeguard the container and so it says it owes nothing.

3. Seaville is represented by its manager, JK. VFD is represented by FZ, who is an employee or principal.

## 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, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## ISSUE

8. The issue in this dispute is whether VFD was responsible to safeguard the stolen container, and if so, what is the appropriate remedy.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, as the applicant Seaville bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. Seaville says the container was delivered to VFD, and relies on a "proof of delivery" submitted in evidence, which was signed by VFD's employee JH. The February 21, 2019 waybill in evidence shows JH's signature, and it shows Seaville as the "shipper" and VFD as the "destination". However, there is nothing on the waybill to indicate that the container was in fact left on VFD's property. Seaville alleges the container went missing from VFD's property and so Seaville says VFD should be responsible for the missing container charges.

11. The steamship company's invoice, and Seaville's September 12, 2019 cheque for the missing container, reflects a $3,579.21 USD charge. I infer the claimed $4,702.28 was Seaville's conversion to Canadian funds.

12. I am satisfied that the evidence, including the steamship company's invoice for the missing container, shows the container at issue was stolen. The issue in this dispute is whether it was delivered onto VFD's property, and, whether VFD was responsible to safeguard it.

13. As noted above, VFD says N's truck driver delivered the container to a public dock. VFD says it did not move the container, and instead unloaded it from the location it

was dropped. VFD says N's driver said he would be back the next day to pick up the container, but the container was still in the same location on the public dock the following day. VFD denies it is responsible to safeguard the container left on public property. N is not a party to this dispute.

14. First, the waybill says, "the Company" (Seaville, as the consignor) agrees to carry the goods to the destination's (VFD's) "usual place of delivery at said destination".

15. I find the weight of the evidence before me, comprised of contemporaneous emails around the time the container was discovered missing, shows N delivered the container to a public dock and not to VFD's property. Notably, Seaville did not submit a statement from N or its driver to the contrary, and one of the emails in evidence between N and VFD indicates N conceded it might have left the container on public property. So, I find Seaville did not deliver the container to "its usual place of delivery at said destination", because its chosen trucker N dropped the container on public property, not VFD's.

16. Second, there is nothing on the face of the waybill that indicates VFD takes responsibility to safeguard the container itself once delivered.

17. I turn to the applicable law. The law of bailment is about the obligations on one party to safeguard the possessions of another party. It is where the personal property of one person, the "bailor", is held or stored by another person, the "bailee". Here, I find that VFD was the bailee for the container's contents, but not for the container itself. Again, I say this because I have found N's driver dropped the container onto public property and VFD was not responsible for safeguarding it.

18. I also note a container is not a small item that VFD could easily have moved onto its property to safeguard it. It is a large item that requires special equipment to move. So, even if VFD had been a bailee for the container, given it was large and left on public property, I find that there is no evidence to show that VFD failed to exercise reasonable care in the circumstances (see: *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).

19. So, given my conclusions above that VFD did not receive the container on its property and was not a bailee responsible for safeguarding it, I find Seaville's claims against VFD must be dismissed.

20. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. As Seaville was unsuccessful, I find it is not entitled to reimbursement of his paid CRT fees. The successful respondent VFD did not pay CRT fees. No dispute-related expenses were claimed.

## ORDER

21. I order Seaville's claims and this dispute dismissed.

Shelley Lopez, Vice Chair