



Civil Resolution Tribunal

Date Issued: June 7, 2021

File: SC-2021-000596

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2264236 Ontario Inc. dba Ameri-Can Systems v. Paige Logistics Ltd.*,
2021 BCCRT 621

B E T W E E N :

2264236 ONTARIO INC. DBA AMERI-CAN SYSTEMS

APPLICANT

A N D :

PAIGE LOGISTICS LTD.

RESPONDENT

A N D :

2264236 ONTARIO INC. DBA AMERI-CAN SYSTEMS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant (and respondent by counterclaim) 2264236 Ontario Inc. dba Ameri-Can Systems (Ameri-Can) is a freight company. The respondent (and applicant by counterclaim) Paige Logistics Ltd. (Paige) is a freight broker. Paige hired Ameri-Can to move 14 pallets of food from Delta, BC, to New Jersey. Paige never paid Ameri-Can's \$2,700 invoice. Ameri-Can asks for an order that Paige pay this \$2,700.
2. Paige says that the pallets arrived in New Jersey full of slugs, so the recipient rejected the shipment. Paige blames Ameri-Can's decision to put "inappropriate freight" next to the food. Paige says that it spent \$1,200 USD to move the pallets to a warehouse for cleaning and rewrapping, and another \$3,600 to ship the pallets back to Delta. Paige counterclaims for \$5,000, the maximum amount under the Civil Resolution Tribunal's (CRT) small claims jurisdiction.
3. Ameri-Can says that Paige, as a freight broker, had no legal interest in the food at issue. Ameri-Can says that Paige paid to have the shipment cleaned, rewrapped, and shipped back to Delta voluntarily. So, it argues that Paige cannot claim these costs against Ameri-Can. Ameri-Can also argues that Paige's claim is barred by section 37.39 of the *Motor Vehicle Act Regulations* (MVAR), which limits a carrier's liability for damaged goods. Finally, Ameri-Can denies that it was negligent in how it transported the food.
4. Ameri-Can is represented by a manager. Paige is represented by its owner.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA).

Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
7. Section 42 of the CRTA says 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Was Paige's payment to clean, rewrap and ship the food back to Delta voluntary? If so, can Paige claim these costs from Ameri-Can?
 - b. Does section 37.39 of the MVAR bar Paige's claims?
 - c. Was Ameri-Can negligent in how it handled the food shipment?
 - d. What remedy is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ameri-Can as the applicant must prove its claims on a balance of probabilities. Paige must prove its counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The background facts are not disputed. On September 27, 2019, Paige contacted Ameri-Can to move 14 pallets of food from Delta, BC, to New Jersey, for \$2,700. The shipment of food belonged to Paige's client, SDL, which is not a party to this dispute. Ameri-Can picked up the shipment on September 30, 2019, and delivered it to the recipient on October 7, 2019.
12. On October 9, 2019, SDL sent Paige an email that the recipient had "found snails on the product". There are photos in evidence of what appear to be slugs on the pallets and wrapping, and Ameri-Can does not dispute that there were slugs on the shipment. Ameri-Can invoiced Paige \$2,700 on October 10, 2019. Paige refused to pay the invoice because of the slugs.
13. In the days after October 9, 2019, the parties disputed what had caused the slug infestation. Paige said that Ameri-Can's decision to pick up a load of galvanized steel in Ontario on the way to New Jersey introduced the slugs to the truck. Ameri-Can said that the steel had been stored inside and needed to be kept dry, so the slugs must have been pre-existing at SDL's facility in Delta.
14. Paige says that it asked Ameri-Can to take the shipment back to Delta, but Ameri-Can refused. So, Paige arranged for another freight company to move the pallets to another warehouse in New Jersey, where they were cleaned and re-wrapped, at a cost of \$1200 USD. On October 22, 2019, Paige hired another freight company to ship the pallets back to Delta at a cost of \$3,600.

Was Paige's payment to clean, rewrap and ship the food back to Delta voluntary? If so, can Paige claim these costs from Ameri-Can?

15. Ameri-Can argues that Paige had no legal interest in the food and that SDL did not assign any legal rights to Paige. On that basis, Ameri-Can says that Paige has no right to claim the amount it paid to rewrap and return the shipment because those payments were voluntary. In response, Paige argues that Ameri-Can is trying to avoid responsibility for its clear failure to protect the shipment from pests.
16. First, I agree with Ameri-Can that there is no evidence that Paige had a legal obligation to pay to clean, rewrap and ship the food back to Delta. For example, there is no evidence that Paige guaranteed to SDL that the shipment would arrive in a condition acceptable to the recipient. Rather, the evidence suggests that Paige's role was limited to the logistics of having Ameri-Can ship SDL's food. I find that after the recipient rejected the shipment, it was SDL's legal obligation to deal with the unclaimed load. There is no evidence before me to suggest that Paige would be legally responsible for it. I find that Paige likely helped SDL as a customer service or under a sense of moral obligation, believing that it would eventually be able to collect its costs from Ameri-Can.
17. Ameri-Can relies on *2020494 Ontario Inc. v. RBA Financial*, 2015 ONSC 1855. The facts of that case are very similar to this dispute. There, a farm hired a freight broker to arrange to ship cauliflower from Manitoba to Quebec. The cauliflower spoiled on the way, and the recipient refused the shipment. The freight broker paid the farm the value of the spoiled cauliflower and refused to pay the freight company's invoice, claiming a set-off of the value of the spoiled cauliflower.
18. The court ordered the freight broker to pay the freight company's invoice without a set-off. The court found that even if the freight company's negligence had caused the cauliflower to spoil, the freight broker had no legal obligation to reimburse the farm. Because the freight broker's payment to the shipper was voluntary, the court concluded that the freight broker could not use the payment to offset the amount it owed the freight company.

19. Ontario court cases are not binding on me. However, the BC Supreme Court has applied the same principle in different circumstances. In *Society of Notaries Public of British Columbia v. Dowson*, 1995 CanLII 487 (BC SC), a notary public stole money from their clients and disappeared. The Society of Notaries Public of British Columbia (Society) reimbursed those clients and sued the notary public's auditor. The court considered these payments voluntary because the Society had no legal obligation to reimburse the clients. Because the payments were voluntary, the Society could not claim them as damages from the auditor even if the auditor was negligent.
20. I find the court's reasoning in *2020494 Ontario* to be persuasive, and I choose to follow it here. The only real difference between that case and this dispute is that Paige claims the money it paid to third parties and in *2020494 Ontario* the freight broker paid for the value of food directly to its customer. I find that this distinction makes no difference to the outcome of the dispute. I find that the same principle applies. In both cases, the freight broker paid money it had no legal obligation to pay based on its belief that the freight company was negligent, and then tried to claim those payments from the freight company.
21. I find that Paige's decision to pay to clean, rewrap and return the food to Delta was voluntary. Since there is no suggestion that SDL assigned to Paige its right to claim against Ameri-Can, I find that Paige cannot claim these costs from Ameri-Can. For the same reasons, these costs cannot be set off of the amount Paige owes Ameri-Can.
22. I therefore find that Paige's counterclaims must fail, and that Paige must pay the outstanding \$2,700 invoice. I find that I do not need to address the parties' other arguments, including whether Ameri-Can was negligent in how it transported the shipment.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Paige argues that Ameri-Can should not receive any interest because Paige was willing to pay the invoice if Ameri-Can had helped to deal with the tainted shipment. However, the COIA is

mandatory and I must award prejudgment interest. Therefore, I find that Ameri-Can is entitled to pre-judgment interest from October 10, 2019, the date of the invoice, to the date of this decision. This equals \$49.43.

24. 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 find Ameri-Can is entitled to reimbursement of \$125 in CRT fees. Ameri-Can did not claim any dispute-related expenses. I dismiss Paige's claim for CRT fees and dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Paige to pay Ameri-Can a total of \$2,874.43, broken down as follows:

- a. \$2,700 in debt,
- b. \$49.43 in pre-judgment interest under the COIA, and
- c. \$125 for CRT fees.

26. I dismiss Paige's counterclaims.

27. Ameri-Can is entitled to post-judgment interest under the COIA, as applicable.

28. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

29. 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.

Eric Regehr, Tribunal Member