



Civil Resolution Tribunal

Date Issued: July 5, 2021

File: SC-2020-009758

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CTC Logistics (Canada) Inc. v. Markus dba Two Meters Apart, 2021*
BCCRT 735

B E T W E E N :

CTC LOGISTICS (CANADA) INC.

APPLICANT

A N D :

ANTAL MARKUS (Doing Business As TWO METERS APART)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about a freight charge for the delivery of goods. The applicant, CTC Logistics (Canada) Inc. (CTC), says the respondent, Antal Markus, doing business as Two Meters Apart (TMA), refused to pay for the freight charge.

2. CTC claims for \$2,278, plus interest, for the freight charge. TMA disagrees and says that it does not need to pay because the freight delivery was cancelled.
3. CTC is represented by an employee. TMA is represented by its owner, Antal Markus.
4. For the reasons to follow, I agree with TMA and dismiss CTC's claims.

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). 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Whether the freight was cancelled, and
 - b. If so, whether TMA must pay CTC for the freight charges.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant CTC must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The background facts are largely undisputed.
12. TMA contracted with CTC to ship goods from China to British Columbia. There is no formal contract between the parties. I find that the parties' emails formed the substance of their agreement.
13. On May 14, 2020, CTC quoted TMA a total freight charge of \$1,835.65 to ship 107 kilograms of TMA trademarked goods. CTC confirmed this quote to TMA on 3 separate occasions. It is unclear from the evidence whether CTC quoted TMA in Canadian dollars (CAD) or in United States of America dollars (USD), but I infer from the evidence that CTC quoted TMA in USD.
14. On May 21, 2020, CTC notified TMA the total freight charge had increased to \$2,966.25, which CTC specifically stated it was in USD currency. This price increase was due to the goods allegedly weighed more than 107 kilograms. The parties never determined why the goods' weight had increased.
15. On the same day, TMA notified CTC that TMA had not agreed to this price and that TMA had insufficient funds to pay the increased amount. CTC notified TMA it had 30 minutes to cancel the order. Within the 30-minute cancellation window, TMA cancelled the order. CTC confirmed with TMA 5 separate times that the order had

been cancelled. I find that once CTC offered TMA the right to cancel the freight and TMA accepted, the freight contract was cancelled.

16. On May 22, 2020, CTC notified TMA that CTC had been unable to cancel the freight. The warehouse used by CTC in China mistakenly shipped TMA's goods despite the order being cancelled.
17. On an unspecified date, CTC invoiced TMA for the freight, which TMA refused to pay. CTC did not submit the invoice into evidence.
18. On or about May 26, 2020, TMA's goods arrived in British Columbia. CTC had the goods moved to CTC's British Columbia warehouse. CTC refused to release the goods to TMA until TMA paid the freight charge.
19. Through a series of emails, the parties then entered into negotiations for CTC to release TMA's goods. Ultimately, TMA offered to pay CTC \$1,700 USD plus \$500 CAD for the goods' release, which CTC accepted. TMA says it offered to settle with CTC under duress. However, given my conclusion below, I find nothing turns on this allegation.
20. While CTC says TMA agreed to the \$1,700 USD plus \$500 CAD payment as payment for the freight charge, I disagree. The evidence does not support that TMA had agreed to pay for the freight charge at all. Rather, the evidence shows that the parties' negotiation was in the context of the goods' release. The evidence shows TMA only agreed to the settlement to prevent CTC from selling TMA's trademarked goods, which TMA described as being held as "ransom". While CTC says this is not true because TMA allegedly said CTC could sell the goods, CTC did not provide any evidence of this. The evidence shows that throughout the parties' negotiations, TMA was not agreeable to paying CTC anything, other than the cost of the goods' delivery from CTC's warehouse to TMA. It was not until TMA learned that CTC may sell TMA's trademarked goods that TMA capitulated and offered to pay CTC for the goods' release. So, on the evidence and submissions before me, I find that TMA had agreed to a settlement for the goods' release and not the freight charge.

21. On May 29, 2020, TMA provided a post-dated \$1,700 CAD cheque to CTC. The parties had further discussions about TMA's outstanding balance, all of which I find irrelevant to this dispute given my conclusion below. Ultimately, CTC released the goods to TMA.
22. On September 3, 2020, CTC tried to cash TMA's cheque. The bank rejected the cheque because TMA had insufficient funds. As a result, CTC started this dispute.
23. As noted above, CTC makes a claim for \$2,278 for the freight charge. While unclear how CTC came to this valuation, I infer from the evidence that CTC's valuation is based on TMA's \$1,835.65 USD freight quote converted into CAD.
24. As previously stated, the burden of proof in this case is on CTC. I find that CTC's evidence does not prove the facts necessary for its freight charge claim. CTC has proven that CTC had failed to pay the \$1,700 USD plus \$500 CAD payment for the goods' release, however, this is not CTC's claim. Rather, CTC's claim as set out in its Dispute Notice is for the freight charge, which was a separate agreement with a separate amount. For CTC to have an enforceable freight contract there must be a 'meeting of minds' between the parties. In other words, there must be a mutual understanding about the contract's fundamental terms. Price is a fundamental term of a contract. I find that when the freight price had changed, the parties no longer reached an agreement for CTC's freight services. For this reason, I do not find that CTC can enforce the freight contract and I find there is no contractual basis to find TMA liable to pay CTC under the freight agreement.
25. Further, on the facts before me, I am unable to find that the erroneous delivery of the goods shows an implied contract for TMA to pay the freight charge. The mistaken delivery of the goods alone is insufficient evidence of a contractual agreement. The only evidence before me is that TMA had agreed to pay for the goods' release, which is not the subject matter of this dispute. For these reasons, I find that CTC has failed to prove its freight charge claim.

26. I have also considered a principle known in law as unjust enrichment. The legal test for unjust enrichment is that the CTC must show that TMA was enriched, that CTC suffered a corresponding deprivation or loss, and there is no valid basis or “juristic reason” for the enrichment (see *Kosaka v Chan*, 2009 BCCA 467). While I accept that CTC has sustained a loss in that it paid for the freight, I do not accept that there is no valid basis for the enrichment. The valid basis is that the goods’ erroneous shipment occurred through no fault of TMA. Put another way, TMA was not responsible for the freight charge that CTC incurred. I find that CTC cannot succeed on the basis of unjust enrichment. I therefore dismiss CTC’s claims and this dispute.
27. 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. As CTC was unsuccessful, I also dismiss its claims for reimbursement of tribunal fees and interest. TMA did not pay any CRT fees and did not claim any dispute-related expenses, and so I award none.

ORDERS

28. I dismiss CTC’s claims and this dispute.

Roy Ho, Tribunal Member