



Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-003218

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Archer v. Accent Moving & Storage Ltd.*, 2022 BCCRT 132

B E T W E E N :

ALISON ARCHER and TROY JALBERT

APPLICANTS

A N D :

ACCENT MOVING & STORAGE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Alison Archer, says she hired the respondent, Accent Moving & Storage Ltd. (Accent), to move and store her and the applicant Troy Jalbert's personal belongings (items) in 2019. The applicants allege Accent broke or lost many of their items and they seek replacement costs or damages totalling \$4362.07.

2. Accent says the contract “clearly states” that Accent is not responsible for any missing items as it did not have an item list and it had no idea what Ms. Archer packed in the boxes. It says it also did not insure the items for damage. Further, Accent says it picked up approximately half of Ms. Archer’s items that had been previously moved by another moving company and stored in another company’s facility. Accent denies that it lost or broke the claimed items.
3. Ms. Archer represents both applicants and Accent is represented by its owner.
4. For the reasons that follow, I dismiss the applicants’ 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.
9. As a preliminary issue, Ms. Archer says Accent mistakenly delivered another client's photographs to her home. She says this worries her and she believes they should be returned to the family as she still has them. Somewhat inconsistently, Ms. Archer also says later in argument that she returned this family's photographs as she "happened upon them". To the extent that Ms. Archer seeks an order that Accent return the photographs to this other family, I decline to make that order. Apart from not including this issue in her initial claim, I have no authority under the CRTA's small claims jurisdiction to order Accent to return items to a third party.

ISSUES

10. The issues in this dispute are:
 - a. Did Accent lose or break the applicants' items?
 - b. If so, to what extent is Accent liable to pay the applicants the claimed damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (which means "more likely than not"). 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. I note Accent filed a Dispute Response disputing liability for the lost and broken items but chose not to submit evidence or make any argument in this proceeding, despite having the opportunity to so do.
12. As mentioned, Ms. Archer says she contracted with Accent to move and store some of her and Mr. Jalbert's items in Accent's storage facility and then move them to her new home at a later date in 2019. Based on Ms. Archer's submitted emails, I find some packed items were also moved by a different moving company and stored at a

“U-Lock Mini Storage” (U-Lock). At some point, Accent had also picked up the stored items from U-Lock’s storage facility and delivered them to Ms. Archer’s new home.

13. Accent never packed the applicants’ items into the boxes or containers and the applicants never gave Accent a list of the packed items. These facts are undisputed.
14. The applicants allege that Accent did not deliver all the stored items and that it broke many of the items it did return. The items are as follows:

Alleged lost items: floor lamp (\$195.99), “Creative” bath towels (\$119.99) milk crates (\$159.98), black tote (\$65.14) packed with “emergency food” (\$275.51), measuring cups and spoons (\$31), Jello mold (\$15), colander: (\$15), bakeware (\$190), mixing bowls (\$365.97), travel journal (\$100), travel “mementos” (\$100), skiing and outdoor related equipment and clothes (\$2,119.63).

Alleged broken items: picture frame (\$50), glassware (\$18), dishware (\$110), “Royal Albert” coffee mug (\$19.99), “Royal Albert” mint dish (\$24.99), “Franklin” porcelain unicorn figure (\$85.88); China cabinet door (\$300).

15. The applicants submitted witness statements from Ms. Archer’s partner and daughter that state that several of these items had significant sentimental value. They also stated that Accent’s storage facility was disorganized, and items were kept in open areas and mixed in other bins. As Accent did not refute these witness’s statements, I accept the facility was as described by these witnesses.
16. The applicants allege Accent breached the contract or was negligent in handling their items and it is only fair that Accent compensate them for their alleged damaged and lost items in the amounts set out above.
17. As mentioned, Accent said in the Dispute Response that it did not know what items were packed in the boxes (because there was no item list). It also said the claimed items could have been broken or lost by others, it does not insure the items, and is not responsible for the claimed damages and loss.

18. None of the parties submitted a copy of the full contract terms nor explained why not. The only contractual document is the first page of the parties' "Service Confirmation" or waybill for the December 2019 move from Accent's storage locker to Ms. Archer's new home. The waybill in evidence says there are additional terms and conditions on the reverse page. However, that reverse page is not in evidence and so, I do not know what those terms are. I note there is no waybill or other documents related to the initial move out of Ms. Archer's former home.
19. The first page of the waybill says Accent only accepts responsibility for damaged items when its staff packs or unpacks the "carton(s)" and that the coverage will be as declared. As it is undisputed that Accent did not pack the applicants' items and the declaration section is blank, I find Accent did not insure the items under the contract.
20. Even if I accept the applicants' evidence that the claimed items were packed, lost or broken during the move, I find this is not enough to prove Accent was at fault. There is no witness evidence or otherwise that suggests Accent's staff dropped any boxes or broke any of the specific items. Apart from photographs showing broken items had paper around them, there is no other evidence about how these fragile items were packed. In the circumstances, I find the items could as likely have broken from poor or insufficient packing rather than by mishandling.
21. Further, there is no record documenting what items were packed in the boxes that Accent moved or stored. Without a contemporary list of the stored items, I agree with Accent that it is not possible to know who lost or broke the items given that other companies were involved in the initial move and storage. I find the claimed items could equally have been lost, misplaced or broken by others if they were indeed packed and part of the move, which is also not proven.
22. As mentioned, the applicants have the burden to prove their claim on a balance of probabilities. While I appreciate the loss of personal items is upsetting, I find the applicants have not proven that Accent lost or broke any of the items claimed in this dispute. So, I find Accent is not responsible for the applicants' claimed losses and I dismiss the applicants' claim.

23. 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. As the applicants are unsuccessful, I dismiss their claim for CRT fees dispute-related expenses. Accent did not pay CRT fees nor claim dispute-related expenses and so, I award none.

ORDER

24. I dismiss the applicants' claims and this dispute.

Trisha Apland, Tribunal Member