



Civil Resolution Tribunal

Date Issued: March 8, 2022

File: SC-2021-003938

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Currie v. Bandstra Transportation Systems Ltd.*, 2022 BCCRT 248

BETWEEN:

GREGORY CURRIE

APPLICANT

AND:

BANDSTRA TRANSPORTATION SYSTEMS LTD. and
OVERLAND WEST FREIGHT LINES LTD.

RESPONDENTS

AND:

DAY & ROSS INC.

RESPONDENT BY THIRD PARTY CLAIMS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about shipping damage. The applicant, Gregory Currie, hired the respondent, Bandstra Transportation Systems Ltd. (Bandstra), to ship a crated canoe from New Brunswick to BC. Bandstra subcontracted the shipping to the respondent by third party claim, Day & Ross Inc. (Day & Ross). Day & Ross shipped the canoe part way, then subcontracted the respondent, Overland West Freight Lines Ltd. (Overland), to ship the canoe on the final portion of its journey and hold it until Mr. Currie picked it up.
2. Mr. Currie says the canoe was damaged during shipping. He claims \$5,000, the maximum CRT small claim amount, for repairs from Bandstra and Overland. I find Mr. Currie has abandoned any claim to amounts exceeding \$5,000.
3. Bandstra and Overland deny responsibility for the canoe damage claim. Bandstra also says its shipping contract with Mr. Currie limits its liability and any shipping damages. Further, Bandstra and Overland say that Day & Ross is responsible for any shipping damage. Both Bandstra and Overland make third party claims against Day & Ross for any shipping damages they are ordered to pay Mr. Currie in this dispute. Day & Ross denies any liability, but says that if any shipping damages are awarded, it is the responsible transportation provider and Overland is not responsible.
4. Mr. Currie is self-represented in this dispute. Bandstra and Overland are each represented by an authorized employee or principal. Day & Ross is represented by an in-house lawyer, Peter LeCain.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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 issue in Mr. Currie's claim is whether Bandstra and Overland are responsible to Mr. Currie for canoe damage, and if so, do they owe him \$5,000 or another amount?
10. The issue in Bandstra's and Overland's third party claims is, if Bandstra or Overland owes Mr. Currie canoe damages, is Day & Ross responsible for reimbursing them?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Currie must prove his claim against Bandstra and Overland on a balance of probabilities, meaning "more likely than not". Bandstra and Overland must prove their third party claims against Day & Ross to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

12. Mr. Currie says that the canoe arrived at its destination heavily damaged, despite being properly packed in a custom-built wooden shipping crate. I find he alleges, essentially, that Bandstra and Overland were negligent for failing to take reasonable care of the canoe during shipping.
13. This dispute involves the law of bailment, meaning a party's obligations to safeguard the possessions of another party. A bailor is someone that delivers possessions to another party, called the bailee. A voluntary bailee for reward is someone that agrees to receive goods as part of a transaction in which the bailee receives payment. In caring for a bailor's property, the bailee must exercise reasonable care in all the circumstances (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273 and *Pearson v. North River Towing (2004) Ltd.*, 2018 BCPC 229).
14. Bandstra undisputedly agreed to take possession of Mr. Currie's canoe and transport it in return for payment. So, I find that Mr. Currie was a bailor, and Bandstra was a voluntary bailee for reward.
15. Day & Ross agreed to actually ship the canoe under a subcontract with Bandstra. I find that Day & Ross took possession of Mr. Currie's canoe on Bandstra's behalf. So, I find Day & Ross was also in a bailment relationship, where it was a voluntary bailee for reward and Bandstra was the bailor. Further, Overland undisputedly agreed with Day & Ross that it would receive the canoe from Day & Ross part way through its journey, ship it to its destination, and hold the canoe for Mr. Currie to pick up. I find this was a third bailment, where Overland was a voluntary bailee for reward and Day & Ross was the bailor.
16. I also note that, subject to any express contract terms, contractors are responsible to the hiring party for properly completing contracted work, including any contract breaches caused by the fault of a sub-contractor (for example see *Kholghi v. Lammus and 1244211 British Columbia Ltd.*, 2022 BCPC 24 at paragraph 11). As further explained below, I find it was an implied term of each shipping contract and subcontract that the party in possession of the canoe would take reasonable care of

it. So, I find that each bailee and subcontractor was responsible to its respective bailor and contractor, to take reasonable care of the canoe while in its possession.

17. Specifically, subject to any contractual limitations, I find Bandstra was contractually responsible to Mr. Currie for the canoe from when it was loaded for transport until Mr. Currie picked it up at its destination. I find Day & Ross, as the subcontracted transporter for the whole shipment, was contractually responsible to Bandstra for the canoe for that entire shipment period. I find Overland was contractually responsible to Day & Ross for the canoe from the time Overland received it from Day & Ross until Mr. Currie picked it up.
18. Sometimes a party may also be liable to an item's owner for negligence, even if there is no contract between them. Mr. Currie had no contract with Overland, but as explained below I find Overland's care of the canoe was not negligent.
19. First, is Bandstra liable to Mr. Currie? During email negotiations between Bandstra and Mr. Currie about the proposed shipment, Bandstra emailed on July 22, 2020, "by the way this is to be shipped at owners risk if the Canoe is used" (reproduced as written). Bandstra says this means it is not liable for any shipping damage.
20. I find that on July 22, 2020, the parties had not yet agreed to a specific shipment method, date, or price, and negotiations were ongoing. Mr. Currie did not explicitly agree that the shipment would be at his risk, although he later chose Bandstra as the shipper. I find that "owner's risk" was not mentioned again in any discussions or documentation between any of the parties, until Mr. Currie complained of shipping damage. Further, I find Bandstra's Bill of Lading did not mention anything about the shipment being at Mr. Currie's risk, and in fact stated that shipping damage was limited to \$2 per pound, not \$0. I find that shipping the canoe entirely at Mr. Currie's risk is an important term that Bandstra would need to explain clearly and prominently, but Bandstra failed to do so. On balance, I find the parties did not agree that Bandstra would ship the canoe at Mr. Currie's sole risk of damage.

21. Given that the shipment was not at Mr. Currie's sole risk, Bandstra agrees that if the canoe was damaged during shipping and not before it was loaded or after it arrived at its destination, Bandstra would be liable to Mr. Currie for damages. Bandstra says its contract with Mr. Currie limits such damages to \$1,200, as discussed below.
22. Mr. Currie provided several photographs of the canoe, including in its packed position in the crate before it was shipped. I find the canoe was on a padded wooden frame within the crate, and did not touch any of the crate's sides. I find the canoe was thoroughly strapped to the frame, and the pre-shipment photographs do not show any of the damage that was identified after transport. On the evidence before me, I find the canoe was undamaged when it departed, and was securely fastened within the crate, which was clearly marked "Fragile do not stack".
23. Overland says that when it received the crated canoe from Day & Ross part way through its travel, the crate was already damaged. Overland says it noted this damage on a proof of delivery form for the transfer. This is consistent with a handwritten note on a November 29, 2020 proof of delivery form, that said the shipment was received damaged and pictures were taken. A photo of the damaged crate, taken when Overland received it from Day & Ross, showed severe damage to the top of the crate. A structural wooden cross-member and a large part of the top sheathing were broken and appeared to have been caved in. Bandstra says it appears that something heavy may have been stacked on top of the crate, contrary to the crate's warning label, which I find is consistent with the damage shown in the photo. The canoe is only partially visible in the photo, but I find the crate top was pushed in far enough to have contacted the canoe. Day & Ross offers no explanation for the damage.
24. Bandstra and Day & Ross say Overland and Mr. Currie did not note any damage in other documents, so their signatures on those documents indicated they received the shipment in good order. Bandstra and Day & Ross do not say why Overland needed to indicate damage in more than one place. They also do not say why Mr. Currie needed to acknowledge damage on a delivery receipt when Overland had already

informed him of it before the pick up date. On balance, I find that the crate was already damaged when Overland received it from Day & Ross, meaning the crate damage occurred while it was in Day & Ross' possession. Based on crate photos on the pick up date, I find it was not damaged any further while in Overland's possession. So, I dismiss Mr. Currie's claim against Overland.

25. Bandstra and Day & Ross suggest that the canoe was not necessarily damaged when the crate was damaged, and that the canoe might have been damaged after Mr. Currie picked it up. They rely on the fact Mr. Currie did not identify any damage on the December 29, 2020 Overland delivery receipt.
26. Mr. Currie says the delivery receipt was incorrect because Overland did not identify the obvious crate damage on it, despite reporting the damage to him earlier. He also says he did not notice the canoe damage until he brought it home, and that no damage occurred after he picked it up from Overland on December 29, 2020. Emails in evidence show he complained to Bandstra about canoe damage the following day.
27. Submitted photos show the canoe being uncrated at Overland on December 29, 2020 and loaded onto Mr. Currie's vehicle. I find those photos are not detailed enough to show any canoe damage. However, photos taken after the canoe arrived at Mr. Currie's house show that many wooden ribs were cracked and broken, as was the outer skin of the canoe and other parts. I find that there were no obvious holes in the hull or significant displacements of the cracked ribs, and that the damage was not immediately obvious with only casual observation.
28. I find Bandstra's suggestion that the damage occurred after Mr. Currie picked up the canoe is speculative and unlikely. I find the canoe damage is consistent with the severe crate damage, and the evidence before me does not show that the crate was defective or otherwise unfit to ship the canoe. On balance, I find the canoe was likely damaged at the same time as the crate, while it was in Day & Ross' possession during shipping. Given the significant shipping damage, I find Bandstra broke its implied contractual obligation to reasonably care for the canoe during shipping, and is responsible to Mr. Currie for the canoe damage because of that contract breach.

29. As noted, Mr. Currie claims \$5,000 to repair the canoe. He undisputedly paid \$1,000 to purchase it in June 2020, \$1,597.25 for the crate, and \$1,569.75 for shipping. A January 7, 2021 Kettle River Canoes repair estimate said repairs would total \$5,040. Bandstra and Day & Ross say not all of the estimated work was for shipping damage.
30. Subject to any express limitations in a contract, a party is entitled to be put in the position they would have been in if the contract had been completed without the other party's breach. So, I find Mr. Currie is entitled to the cost of repairing the shipping damage, subject to any limitations in his contract with Bandstra.
31. Mr. Currie did not declare a value for the shipment. He does not directly address the fact that the Bandstra Bill of Lading said shipping damage was therefore limited to \$2 per pound for the 600-pound shipment. This equals \$1,200. Mr. Currie does not directly deny that the Bill of Lading and section 1(1) of the Canadian *Conditions of Carriage Regulations – Motor Vehicle Transport Act* say that limitations of liability under New Brunswick law applied to the shipment. He also does not deny that under the New Brunswick *Commercial Vehicle Bill of Lading and Cargo Insurance Regulation – Motor Vehicle Act*, liability for damage to shipments with no declared value is limited to \$4.41 per kilogram (\$2 per pound), even if caused by the carrier's negligence (see section 6(6) and Schedule B).
32. I find that the shipping damage included 19 broken canoe ribs, which the estimate said would cost \$1,710 plus tax to replace. However, I find that the contract between Mr. Currie and Bandstra, and applicable law, limited Bandstra's liability to \$1,200. I allow Mr. Currie's claim against Bandstra in the amount of \$1,200.
33. Turning to the third party claims, Day & Ross agrees that it, and not Overland, is the responsible shipper for any proven shipping damages. As noted, Day & Ross provided no submissions on the actual cause of the damage. Further, I found above that the canoe was likely damaged because of unreasonable care while it was in Day & Ross' possession. On balance, I find Day & Ross is responsible to Bandstra, under its implied subcontract term and as bailee, for the canoe damages Bandstra owes Mr. Currie. So, I allow Bandstra's third party claim against Day & Ross, for \$1,200. I

dismiss Overland's third party claim against Day & Ross, because Overland owes Mr. Currie nothing for canoe damage.

CRT Fees, Expenses, and Interest

34. I find Mr. Currie is not entitled to interest on the \$1,200 in damages, because the evidence does not show that he has paid anything to repair the canoe.
35. Under section 49 of the CRTA, and the 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. No party claimed dispute-related expenses. Mr. Currie was partly successful in his claim against Bandstra, was unsuccessful against Overland, and Bandstra and Overland paid no CRT fees for that claim. So, I find Mr. Currie is entitled to reimbursement from Bandstra for half the CRT fees he paid, which equals \$87.50.
36. As Bandstra was successful in its third party claim, I find Day & Ross must reimburse Bandstra \$125 for CRT fees. Overland was unsuccessful in its third party claim against Day & Ross, but Day & Ross paid no CRT fees, so I order no reimbursements for Overland's third party claim.

ORDERS

37. Within 30 days of the date of this decision, I order Bandstra to pay Mr. Currie a total of \$1,287.50, broken down as follows:
 - a. \$1,200 in damages for canoe repairs, and
 - b. \$87.50 in CRT fees.
38. Within 30 days of the date of this decision, I order Day & Ross to pay Bandstra a total of \$1,325, broken down as follows:
 - a. \$1,200 in damages for canoe repair damages Bandstra owes Mr. Currie, and

b. \$125 in CRT fees.

39. I dismiss Mr. Currie's claim against Overland, and Overland's third party claim against Day & Ross.

40. 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.

41. 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.

Chad McCarthy, Tribunal Member