



Civil Resolution Tribunal

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File: SC-2021-007090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shapka v. All-Can Express Ltd. dba A.C.E. Courier Services*,
2022 BCCRT 322

B E T W E E N :

JOHN JACK SHAPKA

APPLICANT

A N D :

ALL-CAN EXPRESS LTD. dba A.C.E COURIER SERVICES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about courier services. The applicant, John Jack Shapka, hired the respondent, All-Can Express Ltd. dba A.C.E. Courier Services (ACE), to ship a 1934 Dodge windshield frame from one location to another on Vancouver Island, BC. Mr.

Shapka says ACE damaged the windshield frame during shipping. He claims \$941.40 for repair costs.

2. ACE says Mr. Shapka signed the waybill on delivery confirming the windshield was received in “good order”. ACE also says if there was any damage, it was “concealed”, and so it could have been damaged before it left the shipper. In any event, ACE says its liability for damage is contractually limited to \$100.
3. Mr. Shapka is self-represented. ACE is represented by an employee.

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). 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.
5. 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.
6. 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.

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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether ACE damaged Mr. Shapka's windshield frame, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Shapka must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
10. Mr. Shapka's windshield frame was being restored at VP, a company in Esquimalt, BC. Mr. Shapka says the frame was ready on May 14, 2021, and he contacted ACE by phone to arrange for ACE to ship the frame from VP back to him in Comox, BC. He says when he unpacked the frame on May 17, he discovered the glass channel and inner frame were crushed in the frame's mid-section, and the chrome plating was cracked and peeling off in that area. Mr. Shapka says the damage occurred during shipping, so ACE is responsible for it.
11. Based on the photos of the frame in evidence and Mr. Shapka's May 17, 2021 email to ACE reporting the damage, I find the frame was delivered to him damaged, as claimed. However, the fact that the frame arrived damaged does not necessarily mean that ACE is responsible for that damage.
12. As noted, VP shipped the frame, and I find it was responsible for the frame's packaging. Mr. Shapka provided an email from VP in evidence that stated it wrapped the frame in bubble wrap, which I find is supported by the photos in evidence. Mr. Shapka also says the frame was first wrapped in paper, with the bubble wrap on top.

There is no evidence that the frame had any additional packaging, such as being contained in a box, a padded envelope, or with any other packaging over the bubble wrap. The waybill in evidence describes the package contents as “frame” with its dimensions and weight. However, there is no notation indicating the how the item was packed or whether it was fragile.

13. I note that Mr. Shapka submits that ACE picked the frame up from VP on May 14 rather than on May 17, as he requested. It is unclear how this timing is relevant other than to say that the frame was undisputedly in ACE’s possession for 3 days before delivery. Mr. Shapka also submits that ACE transported the frame first to Nanaimo where it was transferred to another vehicle before being delivered to him in Comox. Mr. Shapka suggests the damage may have occurred during the transition between vehicles. ACE did not have the opportunity to respond to this submission, as it was first raised in Mr. Shapka’s final reply. In any event, I find neither the timing of ACE’s pickup nor whether ACE transferred the frame to another vehicle during shipping, is determinative of how the frame was damaged.
14. I find that VP had an obligation to take the care a reasonable person would take of Mr. Shapka’s windshield frame while it was in VP’s possession. I find this included an obligation to properly pack the frame for shipping. I find the evidence shows the frame was relatively fragile, yet it appears VP wrapped it only in paper and bubble wrap, with no other supportive packaging, and no indication that the package was fragile.
15. I also note that the back of ACE’s waybill slip includes several terms and conditions, including one that the carrier (ACE) is not liable for damage caused by improper packaging or containers used by the shipper (VP) to insulate the shipment from damage in the normal course of handling the shipment. Given that Mr. Shapka signed the waybill upon accepting delivery of his frame, I find he accepted these terms and conditions.
16. On balance, I find that even if the frame was damaged during shipping, it was caused by VP’s poor packaging and not because ACE failed to take reasonable care of the

package. For this reason alone, I find that Mr. Shapka's claim against ACE must fail, and I dismiss it.

17. 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. Given that Mr. Shapka was unsuccessful, I dismiss his claim for CRT fees and expenses. As the successful party, ACE did not pay any fees or claim any expenses, so I make no order.

ORDER

18. I dismiss Mr. Shapka's claims, and this dispute.

Kristin Gardner, Tribunal Member