



Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-006569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sherlock v. Sirva Canada LP*, 2022 BCCRT 441

B E T W E E N :

JOY SHERLOCK and PHILIP ALEXANDER SHERLOCK

APPLICANTS

A N D :

SIRVA CANADA LP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about damage to personal property. The applicants, Joy Sherlock and Philip Alexander Sherlock, say they hired the respondent moving company, Sirva Canada LP (Sirva). The Sherlocks allege that Sirva damaged their electronics and plastic moving totes. The Sherlocks claim a total of \$898.30, which is less than the \$3,144.02 originally claimed in the Dispute Notice.

2. Sirva denies liability. It says the Sherlocks packed their own items and likely in an improper manner, so it is not responsible for the damaged items. It also says Mr. Sherlock refused its offer for extra replacement coverage, so it should not compensate the Sherlocks.
3. Mrs. Sherlock represents the Sherlocks. A manager represents Sirva.
4. For the reasons that follow, I find the Sherlocks have only proven a minor part of their claims and make the orders set out below.

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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Mrs. Sherlocks' Standing

9. Mrs. Sherlock was originally the sole applicant and Sirva denied liability on the basis that it did not contract with her. However, Mr. Sherlock was subsequently added as a party. Further, a carrier is liable to the owner of goods transported even if there is no contract between them. So, I am satisfied both of the Sherlocks have standing in this dispute. See the non-binding Alberta decision of *Talajic v. Hi-Way 9 Express Ltd.*, 2008 ABPC 289 at paragraph 9. I find Albert law applies as discussed below.

ISSUES

10. The issues in this dispute are as follows:
 - a. Did Sirva breach the parties' contract by failing to exercise due care and diligence to protect the Sherlocks' goods from damage?
 - b. If so, what is the appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the Sherlocks as applicants must prove their claims on a balance of probabilities. This means more likely than not. 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. Sherlock signed a written contract for Sirva to ship household goods from the Sherlocks' old home in Alberta to a new home in BC. The contract, or bill of lading, specified that Sirva would pick up the goods on May 20, 2021 and deliver them within a range of dates in early July 2021.
13. In submissions Sirva says Mr. Sherlock entered into a contract with Allied Van Lines Canada (Allied). I acknowledge that Allied is prominently printed at the top of the contract. However, I find that Allied is not a legal entity. This is because the contract says at the bottom that Allied is only a division of Sirva. So, I find Allied is only a name that Sirva carries on business as, and Mr. Sherlock contracted with Sirva.
14. Based on the parties' submissions, I find that the parties made their contract in Alberta, before the Sherlocks moved into their new BC home in July 2021. The contract does not have a forum selection or choice of law clause. Given where the contract was made, I find Alberta law applies to the parties' contract. Accordingly, I also find that the Alberta *Bill of Lading and Conditions of Carriage Regulation* (BLCC regulation) applies to this dispute. The BLCC regulation is made under the Alberta *Traffic Safety Act*. Section 10(1) of the BLCC regulation deems agreements for the transportation of household goods to include the conditions of carriage in Schedule 9. So, I find that Schedule 9 is part of the parties' contract.
15. Consistent with my conclusion, Sirva provided a 1-page document titled Conditions of Carriage that it says was part of the parties' contract. Save for typos, I find its wording is essentially identical to Schedule 9 of the BLCC regulation. Further, section 10(2) of the BLCC regulation says Schedule 9 must be set out on the reverse side of the bill of lading. I find the Conditions of Carriage were likely printed on the back of the contract as the contract explicitly refers to them being on its back. I discuss Schedule 9's terms in detail below.
16. It is undisputed that Sirva shipped the Sherlocks' goods, and they arrived on July 7, 2021, with some items damaged.

Issue #1. Did Sirva breach the parties' contract by failing to exercise due care and diligence to protect the Sherlocks' goods from damage?

17. Section 14 of the BLCC regulation states that a carrier transporting goods shall exercise due care and diligence to protect the goods from loss or damage. Section 5(b)(ii) of Schedule 9 says that the carrier is not liable for damage to electronic equipment unless servicing and preparation was performed by the contracting carrier, carrier's agent, or employee. However, this does not apply to loss caused by negligence of the carrier, carrier's agent, or employee. Section 5 also says the burden of proving the absence of such negligence is on the carrier. I note this reverses the normal burden of proof.
18. Given the above, I find that Sirva had a duty of care to move the Sherlocks' goods with due care and diligence. The CRT has previously held that the standard of care under the BLCC regulation is that of a reasonably prudent mover taking reasonable care not to damage or lose the customer's belongings. See the non-binding decision of *Cottle v. 2 Burley Men Moving Ltd.*, 2019 BCCRT 1118. I agree and find that standard applies here as well.
19. Sirva provided no evidence from its movers about the move. It provided no evidence about its standards or procedures, or why it was otherwise not negligent. I find it did not provide evidence that the Sherlocks packed the damaged items improperly. So, I find that Sirva has not met the burden of proof and find it liable in negligence. I next turn to the measure of damages.

Issue #2. What is the appropriate remedy?

20. The Sherlocks provided pictures of a smashed computer monitor and 2 damaged plastic totes. They also provided receipts for a computer monitor purchase, a laptop repair bill, and a desktop repair bill. Given this, I accept the Sherlocks' submission that their actual loss was \$898.30. However, that does not end the analysis.
21. Section 9 of Schedule 9 says that compensable loss or damage is normally computed on the basis of the value of the lost or damaged article at the time of shipment.

However, section 10(2) says that that where the consignor releases the shipment to a value of \$1.32 per kilogram per article or less in writing, the amount of any loss or damage computed under section 9 shall not exceed this amount.

22. In the non-binding decision of *McColman v. Duckering's International Freight Services Inc.*, 2007 ABPC 17 at paragraphs 15 and 20, citing *Hi-Tech Business Systems Ltd. v. Purolator Courier Ltd.*, [1996] A.J. No. 1157, the court outlined the rationale for this statutory limitation of liability. Only the shipper knows what is in a shipped package and how much it is worth. So, it is unreasonable to expect a carrier to insure the value of all goods lost or destroyed in shipment when it does not know the amount in advance and does not receive additional compensation for such insurance. However, a shipper of goods may avoid the statutory limit on a carrier's liability by declaring the goods' true value.
23. Here, Mr. Sherlock checked a box to indicate the shipment had "a value not exceeding \$0.60 per pound per article". He also signed the area next to this declaration. He left blank the area that allowed him to instead declare a total lump sum value for the shipment. So, I find Mr. Sherlock did not declare the true value of the goods, and the statutory limitation of liability applies.
24. The Sherlocks say the limitation of liability should only apply if the items were damaged due to a cause outside of Sirva's normal services, such as a road accident or theft. However, I find that submission unsupported by law.
25. The question that remains is what weight the damaged articles had. Case law shows that the carrier bears the burden of proving the weight of a shipment if it wishes to rely on the statutory limitation of liability. However, if neither party provides direct evidence on a shipment's weight, the court may make a finding on the available evidence. See *Talajic* at paragraphs 13 to 17.
26. Here, neither party provided direct evidence of the goods' weight. On a judgment basis, I find the computer monitor, desktop computer, laptop, and 2 plastic totes likely

weighed a total of 50 pounds. Based on the rate of \$0.60 per pound, I find the Sherlocks' damages are limited to \$30.

27. The *Court Order Interest Act* applies to the CRT. I find the Sherlocks are entitled to pre-judgment interest on the damages of \$30 from the delivery date of July 7, 2021, to the date of this decision. This equals \$0.10.
28. 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. In submissions the Sherlocks said Sirva provided a cheque for \$26.24, which they have not cashed. This is close to the awarded amount. In these circumstances I find it appropriate for the parties to bear their own costs and dismiss all claims for reimbursement.
29. I note that I have not reduced Sirva's amount owing by the cheque because I find it unclear on the evidence if the cheque was cancelled or expired through the passage of time. I leave that for the parties to consider.

ORDERS

30. Within 14 days of the date of this order, I order Sirva to pay the Sherlocks a total of \$30.10, broken down as follows:
 - a. \$30 as damages, and
 - b. \$0.10 in pre-judgment interest under the *Court Order Interest Act*.
31. The Sherlocks are entitled to post-judgment interest, as applicable.
32. I dismiss the Sherlocks' remaining claims.
33. 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.

34. 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.

David Jiang, Tribunal Member