



Civil Resolution Tribunal

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File: SC-2021-008103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ensemble Systems Inc. v. Best Buy Canada Ltd./Magasins Best Buy Ltee*,
2022 BCCRT 443

B E T W E E N :

ENSEMBLE SYSTEMS INC.

APPLICANT

A N D :

BEST BUY CANADA LTD./MAGASINS BEST BUY LTEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for allegedly stolen goods. The applicant, Ensemble Systems Inc. (Ensemble), says the respondent, Best Buy Canada

Ltd./Magasins Best Buy Ltee (Best Buy), negligently delivered Ensemble's package containing electronic devices, by having its courier toss the package over a fence in plain view. Ensemble says the package was stolen and claims \$1,988 for its contents.

2. Best Buy says its third party delivery service, T-Force, delivered the package inside a secure gated area outside the main entrance. Best Buy says the delivery area was "deemed safe". Best Buy also says Ensemble is responsible because it was aware the package was to be delivered on a "no signature required" basis and that there was no one available at the delivery address to receive the package.
3. Ensemble is represented by its Chief Executive Officer, Brian Bacinski. Best Buy is represented by its in-house counsel, Sasha Gritt.

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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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 Best Buy was negligent in its delivery of Ensemble's order that was later allegedly stolen, and if so, whether Best Buy must reimburse Ensemble \$1,988 for the goods' value.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ensemble must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In July 2021, Ensemble bought a variety of electronic equipment through its business account with Best Buy. The value undisputedly totaled the claimed \$1,988. The "ship to" address was Ensemble's business address in downtown Vancouver.
11. Ensemble's building is a street-level townhouse surrounded by a gated fence. The gate was not solid and so the inner courtyard and front door area is clearly visible from the street. This is not disputed and is evident from the photos and video in evidence of the package's delivery.
12. The parties agree the delivery in question was delivered by Best Buy's 3rd party courier company, T-Force, on Saturday, July 24, 2021. A delivery receipt in evidence shows the package in clear view from outside the fence, on a concrete landing just before steps go down towards the door. This location of the delivery package is

consistent with the video and still footage in evidence that show the area. A T-Force tracking receipt in evidence shows it delivered the package at 9:12 a.m.

13. Ensemble says the delivered package was stolen, which Best Buy says is unproven. I find it was stolen, based on Ensemble's correspondence with police in evidence, the still photos from the building's video, and the video itself, that shows the package and someone taking it.
14. I turn to the applicable law. An applicant such as Ensemble bears the burden of proving a negligence claim on a balance of probabilities. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
15. I find it is clear Best Buy owed its customer a duty of care, and this is undisputed. I have found above the package was stolen. So, if Best Buy breached the standard of care by delivering the package as it did, I find that breach caused Ensemble's claimed loss, which is the value of the items stolen.
16. The central issue in dispute is the standard of care. In particular, whether the delivery method, by dropping the package over a gated fence and leaving it unattended and visible from the street, fell below the applicable standard of care.
17. Best Buy submitted a typed list it says is T-Force's standard operating procedure or "SOP". T-Force stated that everything delivered requires "safe drop". T-Force wrote that for buildings with no concierge, it required customers to let them in and drop the items. T-Force wrote "drivers are never allowed to leave packages in front of the building on the street". However, for a "detached/townhouse", T-Force says it would "leave at a place that will not damage or risk the product, ring door bell, and take a picture" of the delivery.

18. First, I do not accept that T-Force's own SOP necessarily establishes the relevant standard of care. Rather, I find common sense here dictates what a reasonable professional delivery service would do given the delivery area. I note the parties' contract does not specify anything about how the package was to be delivered.
19. Second, I find T-Force's delivery fell below the standard of care. Based on the video and still photos, and the delivery receipt, I find it should have been obvious to T-Force that the package could be stolen if it was left unattended. This is because the package was clearly visible to passersby on a busy downtown Vancouver street. I find the delivery also failed to abide by T-Force's own SOP for delivery to a detached/townhouse, because it was not left at a place that would not risk the product. Significantly, from the video and still photos it is clear there were other more inconspicuous places the packages could have been left by or near the door, that would have been hidden from the street. I also agree with Ensemble that T-Force could simply have left a delivery slip for Ensemble to arrange a later delivery when it was present.
20. Next, while Best Buy argues T-Force's delivery was consistent with "industry standard", it submitted no evidence of this, such as from another professional courier company. In any event, I have found above that the delivery here was obviously deficient and fell below the applicable standard of care.
21. Best Buy also argues that the delivery location was "deemed safe" by T-Force's driver but submitted no statement from that driver. There is only the general SOP in evidence. I place no weight on the "deemed safe" allegation, given my observations of the video footage described above.
22. Next, contrary to Best Buy's argument, I find it irrelevant that Ensemble had frequently ordered from Best Buy in the past. The material point is that on the evidence before me this is the first time that Best Buy's chosen delivery agent left a package unattended and visible from the street such that it was foreseeably stolen.

23. I also do not accept Best Buy's unsupported argument that Ensemble failed to mitigate its damages. I find Ensemble had no obligation to specifically advise Best Buy that it would not be present on weekends at the delivery address. Rather, I find the obligation rested with Best Buy to reasonably ensure Ensemble would receive the delivery. While I am not going so far as to say leaving a package unattended is always necessarily negligent, I find it was in the circumstances here, particularly given Best Buy knew the package contained valuable electronics it sold to Ensemble.
24. Finally, while T-Force was the entity that delivered the package, I find Best Buy is responsible for T-Force's conduct, which is not disputed. I say this because Ensemble contracted with Best Buy for purchase and delivery of the goods, and Best Buy is responsible for that delivery even though it sub-contracted it to T-Force. I find the negligent method of delivery amounted to a breach of contract by Best Buy.
25. Given my conclusions above, I find Best Buy must pay Ensemble \$1,988 in damages, based on the undisputed value of the stolen goods.
26. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicant is entitled to pre-judgment interest under the COIA on the \$1,988. Calculated from July 24, 2021 to the date of this decision, this interest equals \$6.60.
27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ensemble was successful and so I find it is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

28. Within 21 days of this decision, I order Best Buy to pay Ensemble a total of \$2,119.60, broken down as follows:
 - a. \$1,988 in damages,
 - b. \$6.60 in pre-judgment interest under the COIA, and

c. \$125 in CRT fees.

29. Ensemble is entitled to post-judgment interest, as applicable.
30. 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.
31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair