



Civil Resolution Tribunal

Date Issued: March 8, 2023

File: SC-2022-003307

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robinson v. Wells Fargo & Co. Express Ltd. (dba AMJ Campbell Van Lines)*,

2023 BCCRT 192

BETWEEN:

MARK ROBINSON

APPLICANT

AND:

WELLS FARGO & CO. EXPRESS LTD. dba AMJ CAMPBELL VAN
LINES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about alleged moving damages.

2. The applicant, Mark Robinson, hired the respondent, Wells Fargo & Co. Express Ltd. dba AMJ Campbell Van Lines (AMJ), for an overseas move. Mr. Robinson says that, when his belongings were unpacked, he discovered damaged and missing items. Mr. Robinson claims \$720 to replace those items.
3. AMJ does not dispute that Mr. Robinson's claimed items were damaged during the move or that AMJ must compensate Mr. Robinson for the damaged items. However, AMJ says Mr. Robinson undervalued his household goods and personal effects by either 31%, 13% or 26% in his insurance application. So, AMJ says Mr. Robinson's claimed damages must be reduced by the same applicable percentage. Mr. Robinson's insurer is not a party to this dispute.
4. Mr. Robinson represents himself. AMJ is represented by an officer or employee.

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.

ISSUE

9. The issue in this dispute is how much AMJ must pay Mr. Robinson for his missing or damaged household items.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one the applicant Mr. Robinson must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.
11. In August 2020, Mr. Robinson hired AMJ to pack, move, and unpack his household goods and personal effects overseas. When he received the goods in December 2020, Mr. Robinson discovered a number of broken and missing items. An AMJ agent documented the damaged items and provided those documents to AMJ in British Columbia around December 24, 2020. None of this is disputed.
12. As AMJ is engaged in the residential moving business, it is known as a “common carrier”. As such, it is obliged to deliver the goods entrusted to it without damage or loss. In the event of damage or loss, the mover will be found responsible unless it can prove it was not negligent (see *Trident Freight Logistics Ltd. v. Meyer’s Sheet Metal Ltd.*, 2003 BCCA 342). Here AMJ has not attempted to argue it was not negligent with Mr. Robinson’s belongings. Rather, it admits that it is responsible to pay Mr. Robinson for the damaged and lost items. So, I find AMJ must compensate Mr. Robinson. The issue is how much AMJ must pay.

13. As noted above, AMJ says it is only responsible for paying Mr. Robinson a percentage of his claimed damages, as he undervalued his shipment for insurance purposes.
14. Based on Mr. Robinson's completed insurance application form and September 9, 2020 insurance certificate, I find Mr. Robinson insured his shipment for \$36,765 with a third-party insurance broker who is not a party to this dispute.
15. AMJ says the insurer required a minimum valuation of \$8 per pound and so Mr. Robinson should have valued his estimated 5,298 pounds of goods at \$42,240 or more. The insurance policy does explain that, if a shipment is undervalued, then any accepted insurance claim will be reduced by the same ratio as the undervaluation. This is referred to as a co-insurance penalty. However, I find the policy does not specify an \$8 per pound minimum requirement, or any minimum value if the insurer submits a detailed inventory, as I find Mr. Robinson did here.
16. Even if the insurance policy did contain a minimum valuation requirement, I would not find such a term would limit AMJ's liability to Mr. Robinson in this dispute. I find the insurance policy is a contract between Mr. Robinson and the insurer. AMJ is not a party to that contract, and so the policy terms do not apply to AMJ.
17. AMJ submitted as evidence its August 6, 2020 written estimate. The estimate says AMJ offers cargo protection, at 2.5% of the declared value. The estimate says AMJ's "full protection transit insurance policy" is for full replacement coverage, based on the customer's detailed inventory valuation, with a \$10 per pound minimum.
18. I do not find the estimate creates a contractual obligation for Mr. Robinson to purchase a minimum value insurance policy. Rather, I find the estimate informs Mr. Robinson of the availability of insurance, and its cost.
19. It is possible that AMJ's contract with Mr. Robinson limits AMJ's liability in case of loss or damage. However, AMJ did not submit a copy of the parties' contract in this dispute, even though parties are told to submit all relevant evidence.

20. So, on the evidence before me, I find AMJ has failed to prove its liability to Mr. Robinson is limited. I do not find that AMJ is entitled to reduce Mr. Robinson's claimed damages because he undervalued his shipment for the purpose of his insurance with a third-party insurer.
21. As noted above, AMJ does not dispute that Mr. Robinson's damaged and lost items would cost \$720 to replace. Based on his submitted photos, and damaged item inventory with associated replacement costs, I find Mr. Robinson's claimed \$720 is reasonable and I allow his claim.
22. The *Court Order Interest Act* applies to the CRT. I find Mr. Robinson is entitled to pre-judgment interest on the \$720 in damages from the day he discovered the damage (December 24, 2020) to the date of this decision. This equals \$16.97.
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 find Mr. Robinson is entitled to reimbursement of \$125 in CRT fees. He claimed no dispute-related expenses.

ORDERS

24. Within 14 days of the date of this order, I order AMJ to pay Mr. Robinson a total of \$861.97, broken down as follows:
 - a. \$720 as damages,
 - b. \$16.97 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
25. Mr. Robinson is entitled to post-judgment interest, as applicable.
26. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member