Civil Resolution Tribunal

Date Issued: May 16, 2024

File: SC-2023-005917

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Deban v. Canadian National Van Lines Inc.*, 2024 BCCRT 459

B E T W E E N :

MELINA DEBAN

APPLICANT

A N D :

CANADIAN NATIONAL VAN LINES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. Melina Deban hired Canadian National Van Lines Inc. (Canadian) to move her belongings from Calgary, Alberta to Vancouver, British Columbia.

2. Ms. Deban says Canadian delivered some of her belongings damaged. She also says that two bins she had secured with cable ties were cut open and four designer bags were missing from the bins. Ms. Deban claims $2,500, which she says includes compensation for her time pursuing a damage claim directly with Canadian.

3. Canadian says its coverage was limited to 60 cents per pound per article and owner-packed items were not covered. It further says there was a $425 deductible applicable. Given the limited weight of Ms. Deban's claimed damaged or lost items, Canadian says it owes Ms. Deban nothing.

4. Ms. Deban represents herself. Canadian is represented by its general manager.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

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. This dispute mostly turns on the parties' written contract. Neither party directly questions the other's credibility and neither party requests an oral hearing. Ultimately, 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.

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 court.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an

agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

9. CRT documents incorrectly show the respondent's name as Canadian National Van Lines, without the "Inc." The evidence included a contract with the name "Canadian National Van Lines Inc." As the parties' submissions indicated they assumed that the correct legal name was used, I asked CRT staff to obtain further submissions on the respondent's correct legal name. The respondent said its name is "Canadian National Van Lines Inc." Ms. Deban did not disagree. So, I have exercised my discretion under CRTA section 61 to direct the use of the respondent's correct legal name in these proceedings, and I have amended the respondent's name above.

ISSUES

10. The issues in this dispute are:

    a. Did Canadian's terms and conditions limit its liability for loss or damage?

    b. What are Ms. Deban's proven losses, and what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Ms. Deban must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. Emails show that Ms. Deban reserved her move and paid Canadian a deposit on October 13, 2022. The parties' agreement included packing services, and Canadian does not specifically dispute Ms. Deban's evidence that it packed all Ms. Deban's belongings except the two bins that she packed herself and secured with cable ties.

13. Canadian transported the belongings from Calgary to Vancouver and delivered them on January 12, 2023. Ms. Deban says that upon delivery, she noticed some of her

belongings were damaged, and the cable ties securing her 2 bins had been cut, with "at least" 4 designer bags missing from the bins. The next day, she filed a police report, a copy of which is in evidence.

14. On January 18, 2023, Ms. Deban filed a claim with Canadian. Canadian responded that the lost bags and a bathmat were "not covered under standard liability" because Ms. Deban packed the items herself. It accepted her claim for a damaged bed frame, missing under-bed drawer, and missing lower coffee table shelf. It said the total weight of these items was 70 lbs. based on "standard measurement scales", which it did not explain. Canadian said at 60 cents per pound she was therefore eligible for $42. However, because of a $425 deductible, she was not entitled to anything. Canadian offered Ms. Deban $40. Ms. Deban did not accept.

Did Canadian's terms and conditions limit its liability for loss or damage?

15. Canadian says it sent Ms. Deban a reservation agreement by email. It says the reservation agreement confirmed coverage limitations and provided options to purchase additional coverage. It says Ms. Deban responded to the reservation agreement confirming receipt. However, while the evidence shows that Canadian emailed something that could be considered a reservation agreement to Ms. Deban on October 14, 2022, the evidence does not include a response from Ms. Deban confirming receipt.

16. A limitation of liability clause is not effective or enforceable unless the party seeking to rely on it brought it to the attention of the other party when they made their contract (see *Apps v. Grouse Mountain Resorts Ltd.,* 2020 BCCA 78). This means that as the party seeking to rely on terms in the alleged reservation agreement, Canadian has the burden to prove that Ms. Deban was aware of, and agreed to, the liability-limiting clauses before the move. While Ms. Deban does not specifically dispute receiving the reservation agreement email, there is no evidence before me that she confirmed receipt of it or had her attention drawn to the liability-limiting clauses. Further, the clauses are confusingly found under the heading "In-Transit Coverage", which implies the customer is receiving a benefit rather than giving up a right (more on this below).

So, I find Canadian has not met its burden of proving that the liability-limiting clauses in the alleged reservation agreement were binding on Ms. Deban.

17. Canadian also relies on the limitation of liability it says is contained in the bill of lading that Ms. Deban signed on December 22, 2022. If a company intends to limit or exclude its liability in a contract, it must do so in clear and unambiguous terms (see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.,* 1997 CanLII 307 (SCC)). I find the terms and conditions on the bill of lading are not sufficiently clear to limit Canadian's liability to 60 cents per pound with a $425 deductible. In reaching this conclusion, I am persuaded by the reasoning in *Belanger v. 2 Burley Men Moving Ltd.*, 2021 BCPC 270. In that case, the court found that misleading headings and poor legal drafting resulted in a document that was "anything but clear" and would take "a sophisticated reader some time to discern" that they were giving up legal rights.

18. First, where Ms. Deban signed, it said, "I understand that the carrier's liability is limited by a term or condition of carriage contained in this agreement and make the declaration of value set forth in condition 5 on the back of the contract." There is no copy of the back of the contract in evidence, so I do not know what "condition 5" said or whether Ms. Deban had the opportunity to read it. Second, there is a separate section for terms and conditions on the front page. It says, among other things, that if the shipper has not declared a value, the carrier's liability is 60 cents "for all losses and damages." Note it does not say 60 cents per pound or per article, but just 60 cents. Canadian does not say it relies on this clause.

19. Elsewhere in the bill of lading it says that Canadian's maximum liability is 60 cents per pound, per article, and that there is a $425 deductible applicable to each claim. However, this is near the bottom of the page, near the delivery acknowledgement, with a space for Ms. Deban's signature, which she did not sign. It is not close to Ms. Deban's signature above, and the way the document is organized, there is nothing to suggest that upon signing the upper portion, Ms. Deban should read the lower portion which is devoted to delivery receipt and charges.

20. For these reasons, I find Canadian has not limited its liability in clear and unambiguous terms that Ms. Deban accepted, and it cannot rely on the provisions that purport to do so in the bill of lading or the reservation agreement.

21. Finally, I considered whether Canadian's liability is limited by the *Bill of Lading and Conditions of Carriage Regulation* (BLCCR) under the Alberta *Traffic Safety Act*, which would apply because the parties made their contract in Alberta. However, I find that Canadian is not entitled to rely on the BLCCR's liability exceptions because there is no evidence that it complied with BLCCR sections 9(2) and 10(2) by stating that the conditions of carriage set out in Schedule 9 apply, among other requirements, and setting out the conditions of carriage on the reverse side of the bill of lading.

22. Absent an effective contractual limitation of liability, Canadian was subject to the duties of a bailee for reward (see *Belanger*) and must prove that any loss or damage was not caused by its negligence. It has not done so here. Canadian did not provide any evidence about the measures it takes to secure a shipper's goods. It does not say that it engaged in any kind of investigation as to why the cable ties securing Ms. Deban's bins were cut, such as by interviewing employees or reviewing security camera footage.

23. I accept that Ms. Deban's designer bags went missing from the bins, which is supported by her filing a police report the next day. I also accept that Canadian damaged her bed frame, lost one of the under-bed drawers, lost a coffee table bottom shelf, and broke some small items, all of which was supported by photos. Canadian did not specifically deny damaging or losing these items, or provide any written statements from the employees involved.

Remedy

24. In Ms. Deban's claim form, she valued the four bags at $1,000. The credit card statements she provided suggest that she paid around $700 for the bags. She said in her claim that she factored in inflation to reach $1,000. However, she does not

provide evidence of the replacement cost of similar bags today. On a judgment basis, I allow $600 for the bags, taking into account depreciation.

25. I turn to the damaged bed frame, lost drawer, lost coffee table shelf, and small broken items. Ms. Deban does not say what she claims as the value of each item. She does not claim anything for the small items. I accept, based on her credit card statements, that she purchased the bed for $436 and the coffee table for $73. The difficulty for Ms. Deban is that she has not given evidence about the condition of the items before the move, or about whether the items can be repaired or are still functional. She does not say whether an under-bed drawer or lower coffee table shelf can be purchased separately, or whether she can still use the items despite their flaws. She does not say whether she has purchased or will purchase a new bed. Given the limited evidence, I must be conservative in estimating damages. I allow $300 for all the damaged items. In total, I find Ms. Deban is entitled to $900.

26. As there is no evidence that Ms. Deban has paid anything to repair or replace the lost and damaged items, she is not entitled to interest.

27. As for time dealing with the initial claim with Canadian, I acknowledge that Ms. Deban found Canadian's claim process and response frustrating. However, she has not articulated why she is entitled to compensation for the inconvenience, nor has she provided an account of her time spent. I dismiss this aspect of her claim.

28. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Deban paid $125 in CRT fees and was partially successful. I find she is entitled to reimbursement of half these fees, or $62.50.

ORDERS

29. Within 21 days of the date of this order, I order Canadian to pay Ms. Deban a total of $962.50, broken down as $900 in damages and $62.50 for CRT fees.

30. Ms. Deban is entitled to post-judgment interest, as applicable.

31. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member