

DECISION AND ORDER

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: RDRVB Moving Services Ltd. v. Surette, 2004 NSSM 21

BETWEEN:

Name: RDRVB MOVING SERVICES LTD.

- CLAIMANT

Name: ROBERT SURETTE

- DEFENDANT

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 8, 2007.

DATE OF HEARING: March 1, 2004

DECISION

Appearances: Raymond Van Bregt appeared on behalf of RDRVB Moving Services Limited

Robert and Diane Surette appeared in person.

- [1] This is a difficult case. RDRVB Moving Services Ltd. claims payment for moving the furniture of the Defendants, Robert and Dianne Surette. The Surettes had hired "Two Small Men with Big Hearts Moving Co." to take goods from their apartment and store them. They called "Two Small Men with Big Hearts" again when they wanted the goods delivered to their home in Annapolis County. By this time, the name Two Small Men had been taken over from an Ontario numbered company, 1503883 ONT Ltd., by RDRVB Moving Services Ltd. Mr. Van Bregt had worked for ONT Ltd. He created RDRVB to purchase the franchise. He intended to pick up the business as well, but he says he regarded Mr. Surette as ONT Ltd.'s

customer and told him that he should check with ONT Ltd. before hiring him. Mr. Surette says he did check with ONT Ltd. who referred him to Mr. Van Bregt. The invoice for the move to storage refers to Ontario Ltd. The invoice for the move to Annapolis County refers to RDRVB.

- [2] All would perhaps have been well, but when the parties went to the storage facility, the Surettes discovered an older, but expensive television and its stand were missing. The Surettes' goods had been stored with those of other people. The key to the storage had remained with the mover. Mr. Van Bregt acknowledged that no proper lists of the property had been kept.
- [3] Mr. Van Bregt, having just taken over the name and the business, refused to pay the storage charge. The original agreement had provided for storage charges of \$150.00 per month. The storage firm demanded more. The Surettes paid the bill. RDRVB delivered the goods to Annapolis County. RDRVB insisted on payment prior to unloading. The Surettes issued a cheque and then stopped payment on it. RDRVB sued. The Surettes counterclaimed for the value of the lost TV, the stand, and the added storage payment.
- [4] An expensive, if older, television went missing when in the care of the mover who was paid to be responsible for them.
- [5] The question is who is responsible, the Ontario company or RDRVB. I am satisfied that Mr. Van Bregt told the Surettes he was now operating a new business of his own. The discussions about payment for storage must, I think, have made this clear if earlier discussions did not. The Surettes did pay for the storage in an amount that exceeded the contract with Ontario Ltd. Mr. Surette testified that he felt he had no choice, but he could still have contracted with someone else then or after he discovered the television was missing. I conclude that the Surettes knew that Mr. Van Bregt was not accepting liability under the original contract for the added storage costs. I conclude that the Surettes entered into a new, separate contract with Mr. Van Bregt's new company. The Surettes had the goods delivered and then renege on payment seeking, it seems, to reimburse himself for the lost television.
- [6] RDRVB is entitled to payment for moving the goods from Halifax to Belleisle, Annapolis County in the amount of \$817.65, \$17.00 for the bad cheque, and \$75.00 for issuing the claim.

[7] If I had decided otherwise, then I would have awarded \$1,000.00 for the television and stand to be set off against the moving cost and awarded the difference to the Surettes. The Surettes have claimed the price of a brand new Sony television to replace their 1995 model. They cannot, in my view claim new for old, especially for something with such rapidly changing technology and decreasing prices such as a television.

ORDER

[8] I order Robert Surette to pay to RDRVB Moving Services Ltd. the sum of \$909.65.

Dated at Halifax, Nova Scotia
this 12th day of March, 2004.

J. WALTER THOMPSON, Q.C.
ADJUDICATOR

Original	Court File
Copy	Claimants(s)
Copy	Defendant(s)