

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Ruttan v. Green Moving and Storage Inc.*, 2016 NSSM 65

Claim No: SCK 452896

BETWEEN:

Sara R. Ruttan

Claimant

v.

Green Moving and Storage Inc.

Defendant

Date of Hearing: September 21, 2016

Date of Decision: October 3, 2016

Sara Ruttan appeared on her own behalf;

The Defendant did not appear;

DECISION

This is a claim for the breach of a moving contract between the Claimant, Sara Ruttan, and the Defendant, Green Moving and Storage Inc. The Claimant seeks compensation for damage to several of her items while the items were being shipped in transit. In addition, she seeks a full refund of all of her moving costs. The Defendant was personally served with the Notice of Claim for this matter within the timelines required, however, nobody represented the Defendant at the hearing. The matter had originally been before another adjudicator, but no evidence was called at the time. There is no indication in the file that he was seized with jurisdiction. I was satisfied that the Defendant did not intend to appear and the matter could be heard by me.

Background

The Claimant, Sara Ruttan, and her husband, Brian Sauvé, moved to Nova Scotia from Lethbridge, Alberta. She hired the Defendant to pack and move their household contents from their home in Lethbridge to their new home in Brooklyn in Hants County, Nova Scotia. The estimated cost was \$1740 plus taxes. The actual cost charged by the movers before the items were released was \$4353.90.

The pickup date was scheduled for February 7-9, 2016. The goods were not actually picked up until February 10, 2016. Ms. Ruttan and Mr. Sauvé were scheduled to travel to Nova Scotia on February 10. A friend oversaw the loading of the truck by the movers. Ms. Ruttan and Mr. Sauvé packed what they could in boxes and bags to be transported. The furniture items were packed by the movers. The Claimant submitted pictures showing damage and how the larger items of furniture were packed by the movers.

While loading the Claimant's items on the truck, the movers prepared an inventory showing the list of items loaded and their condition. On the list were several numerical codes to show the condition of the items. The numbers represent a deficiency at the time of packing: "2. Broken; 3. Chipped; 4. Dented; 5. Gouged; 6. Scratched; and 7. Owner's Risk." Each item on the list is marked with the code "2-3-4-5-6-7", regardless of the nature of the item.

The numerical sequence appears at the top and bottom of each column with an arrow through the remainder of the boxes, which I find was intended by the Defendant's employee to cover every item on each page. This includes several descriptions which make little sense in the context, such as "chipped" and "dented" used to apply to items described as "textiles", "pillows" the box spring and mattress and various boxes. These are but a few typical examples of a larger list. I find the employees made little effort to ascertain the items' actual condition and record the information accurately. I reject every notation. That said, the items are obviously not new. I find the goods for which compensation has been sought were in used condition and showed signs of ordinary wear and tear at the time they were packed.

When their belongings arrived in Nova Scotia, Ms. Ruttan and Mr. Sauvé unpacked them and discovered several items that were damaged. They made a claim with the company and were offered \$304.80 based on an estimated weight of 508 pounds at \$0.60 per pound.

The Defendants are seeking \$5978. The figure represents a full refund of their moving costs, \$4353.90, damages of \$1345 and costs of \$279.10.

Following the hearing, I indicated to Ms. Ruttan that I was satisfied she has proven liability for damages on the balance of probabilities. However, I required a further breakdown of the amount she was seeking. She provided a table itemizing each item for which she was claiming compensation for damage. I indicated that I would issue a decision with written reasons, particularly if I disagreed with their estimation and valuation. These are those reasons.

Jurisdiction

There were concerns raised by the previous adjudicator regarding the jurisdiction of the Small Claims Court to hear this claim. The reason for that is the parties were originally located in Alberta, the Defendant's head office is in Toronto, Ontario, and the delivery took place in Nova Scotia. I find the contract was formed in Alberta but the circumstances of the breach took place

when the goods were transferred and unpacked in Nova Scotia. In addition, the issue of the delivery price was also raised when the Claimant and her husband were in Nova Scotia.

Section 19 of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430, provides that a claim may be filed where the cause of action arose. As a result of the breach, I find the cause of action arose in Hants County. The claim was properly filed at the Kentville Justice Centre, which has jurisdiction over matters to be heard in Windsor, Nova Scotia. As a result, there is no further need to consider the “substantial connection test” or the provisions of the *Court Jurisdiction and Proceedings Transfer Act*, S.N.S. 2003, c. 3. This Court has jurisdiction to hear this matter.

Claim

I find liability is not an issue. The goods arrived with 9 items partially damaged. In addition, I find the shipment was picked up and delivered late and the costs were in excess of that originally quoted.

In awarding damages for breach of contract, a court is required to put the parties in the same position as if the breach had not occurred. In this case, that means if the contract had been successful, the goods would have arrived in Nova Scotia on time and without damage.

Damage to Goods

The contract provided by the Claimant was a copy of a photocopy, which, according to Ms. Ruttan, was the only version the Claimant had been provided by the Defendant. Unfortunately, the “terms and conditions” section is covered over by a copy of the receipt issued when the Claimant paid her deposit, which presumably describes the limitation of liability. Ms. Ruttan was also provided with a written estimate. In that document, there is mention of “Basic Insurance Coverage” of \$0.60 per lb., and “Cargo Insurance” of \$75,000. It is not clear in the circumstances how basic insurance coverage differs from a claim under cargo insurance.

I have reviewed the items submitted by the Claimant. Below are the amounts sought together with the amount allowed. Unfortunately, there is nothing other than Ms. Ruttan’s and Mr. Sauvé’s estimate of damages to support this amount. Their unsupported estimates appear high, although that could be rebutted with supporting documentation. For example, the scratches to the gun safe and dressers are surface damage. Although unsightly, they appear from the picture to be able to be repaired by buffing and refinishing. The “picture in frame” does not show any damage to the print itself, or at least not that can be determined from the photograph. I disallow the replacement value but allow \$20 for the combined damage to it and the frame. I am not satisfied without further evidence that \$600 is an appropriate cost to repair the Ms. Pac-Man arcade game. I am satisfied the damage shown was not present before it was moved. I allow \$300 for that item.

In summary, I allow the following items of damage:

Item	Purchase Price	Amount Claimed	Allowed
Gun Safe	\$180	\$50	\$25
Box Spring/Mattress	\$1000 (combined)	\$200 (combined)	\$100 (combined)
Picture in frame	\$65 (print)	\$65 (print)	\$0.00 for print \$20 for frame
Picture Frame	\$40	\$40	\$20
Purple Dresser	\$600	\$100	\$100 (combined with blue)
Blue Dresser	\$600	\$250	
Ms. PacMan	\$2100	\$600	\$300
Steel Stock Pot	\$40	\$40	\$40
Total			\$605

Contract Price

The written estimate provided in Lethbridge shows an estimate of \$1700.00 plus a scale fee of \$40.00 for a total of \$1740 plus HST or \$2019.00. The Claimant and her husband entered into the contract and paid a deposit of \$100, expecting to pay the difference upon their arrival. When the delivery arrived in Toronto, Mr. Sauvé was contacted by Brock Oz of Green Moving and Storage. Mr. Oz advised Mr. Sauvé that he owed an additional \$4253.90, rather than \$1919 as expected. The final invoice shows the load weighed 4020 lbs.

In a typical moving contract, the moving company provides an estimate and advises their customer that the load will be weighed and the price adjusted. Indeed, at first glance that appears to be the case. However, the documentation tempers this interpretation.

The written estimate includes the notation that “the average weight of a 2 bedroom (home) is between 2000-4000 lbs.” The rate is shown as \$0.80 per pound and the calculation based on this range is \$1740.00:

“Please note: The information provided above is based on the estimated weight. The final total will be calculated once the actual weight has been determined”. (underlining mine)

There are two versions of the Moving Contract in evidence, the initial version received at the time the truck was loaded. It contains a box which shows the Estimated Weight of between 4000-5000 lbs. (underlining mine). This box contains the further notation “Actual weight charges will apply.”

The same term, “estimated weight” is used in both documents, but with reference to two different sets of numbers. This is open to at least two interpretations:

- The overall weight is charged at \$0.80 per pound based on the actual weight of the load. According to the documentation that is 4020 lbs. That is the position which most favours the Defendant. That formula yields a before tax estimate of \$3216.
- An estimate of \$1740 where the term “estimated weight” is used consistently in both documents. Thus, the price based on an estimated weight of either 2000-4000 lbs as well as between 4000-5000 lbs. The weight reported by the movers is 4020 lbs. This is what Mr. Sauvé and Ms. Ruttan believe was the figure they were quoted.

It is a well-established principle of contract law that a contract is to be interpreted based on the plain language of the document. In cases of ambiguity, the interpretation goes against the drafter of a standard form contract. This is a standard form contract. There is no evidence provided by the Defendant. I find the two documents should be read together. The “estimated weight” for a load between 4000 – 5000 lbs is \$1740.00. There was no reference in the quote to “Origin Area Surcharge” or “Extra Pick Up or Delievery”. I would have disallowed those items if they had not been paid when the deposit was provided.

Thus, the moving cost as contracted was:

Moving Charge/Destination Surcharge/Scale Fee	\$1740.00
Origin Area Surcharge	\$ 250.00
Extra Pick Ups	<u>\$ 630.00</u>
Subtotal	<u>\$2590.00</u>
HST	<u>\$ 423.00</u>
Total	\$3013.00

The couple paid \$4353.90. Thus, they are entitled to \$1340.90 reimbursement for overpayment. I also award \$100 for lateness.

The Claimant had originally sought a full refund of her contract price. As noted above, the object of an award of damages for breach of contract is to put the parties in the same position had the contract not been breached. In this case, 9 out of 123 listed items showed up with damage. The truck arrived a day late and, as I have found, the Claimant was charged more than quoted. While there were problems, this was not a case of a failure of consideration such as would warrant a full refund. This does not amount to a failure of consideration.

General Damages

As a result of the actions of the Defendant, the Claimant suffered considerable inconvenience and undue stress. The Small Claims Court is limited to \$100 to award as general damages. I assess general damages at \$100.00.

Prejudgment Interest and Costs

The Claimant shall be entitled to prejudgment interest at 4% per annum commencing March 2, 2016 to the date of the hearing. They shall also receive costs for the filing fee and service of documents.

Summary

Overpayment	\$1340.90
Lateness	\$ 100.00
Damages to Goods	\$ 605.00
General Damages	\$ 100.00
Prejudgment Interest	\$ 41.48
Costs:	<u>\$ 278.45</u>
Total	\$2465.83

An order shall issue accordingly.

Dated at Halifax, NS,
on October 3, 2016;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)