

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Shaw v. Sameday Worldwide, Division of Day & Ross Inc.*,
2019 NSSM 37

Date: 2019-03-11

Docket: Sydney, No. 466144

Registry: Halifax

Between:

James Roger Shaw

Claimant

v.

Sameday Worldwide, Division of Day & Ross Inc.

Defendant

Adjudicator: Patricia Fricker-Bates

Heard: January 9, 2019

Decision: March 11, 2019

Appearances: James Roger Shaw, Claimant, self-represented;
Sameday Worldwide, Defendant, represented by
Charles Patrick Hardy, Recognized Agent for the
Defendant

BY THE COURT:

[1] On November 9, 2018, the Claimant James Roger Shaw filed a Notice of Claim for \$2,173.03 dollars or, in the alternative, the delivery to him of custom-made running boards for a Can Am Spyder. Mr. Shaw alleges the following as the reason for the claim:

I had hired Sameday shippers to pick up and ship running boards from Vertika Trikes Canada, 115 Montee Papineau, Plaisance, QC, J0V I50, to me in Baddeck, NS. According to a bill of lading and an email, they were picked up by Transit Nord-Plus for Sameday on May 11, 2018. I had been told at one time they had been shipped to Ontario by mistake but that was months ago. I believe they may have been lost as I have not received them. Sameday has told me I have no grounds for a claim because they were never

in their system. I would like to recoup the cost of these running boards.
Thank you.

The Claimant testified on his own behalf.

[2] The Defendant Sameday Worldwide filed a Defence by way of a letter dated October 10, 2018, and signed by Marjorie Shaw, Cargo Claims Adjuster. That letter states, in part:

Attached is a copy of the shipping bill of lading provided by the claimant, James Roger Shaw. These bills of lading are 3-part forms; top copy is driver driver (sic), 2nd copy is shipper copy, 3 copy is shipping labels. There is no confirmation of pick up from the shipper, Vertika Trikes Canada, on this document. ... There is no pick up driver name or signature, no unit #, pick update and no pick up time.

Charles Patrick Hardy, Terminal Manager of the Sydney Sameday Worldwide Depot, represented the Defendant.

[3] The Claimant maintains that he placed an order for running boards with Veritaka Canada at a cost of \$2,173.00 (see Exhibit No. 1, pg. 5-6). On May 11, 2018, he received a telephone call from Veritaka Canada to advise that the running boards were ready for pick up. The Claimant then called the Defendant to arrange for pick up of the running boards and paid \$320.61 in shipping fees (see Exhibit No. 1, pg. 1) through his Visa credit card.

[4] According to the Claimant, he is not a sophisticated purchaser of online products. He spoke with a representative of the Defendant who assured him that “they would take care of everything.” He was advised that his goods would arrive in approximately four days. When giving his Visa details, the Claimant testified that “the fellow said we would take care of everything” and that he “wasn’t asked

about insurance or the value of the running boards.” The Defendant confirmed that “it most definitely would be a call centre” with whom the Claimant spoke. The Defendant could not speak to the training provided to call centre employees dealing with Defendant business matters. As to the Claimant’s alleged exchange with the call centre employee, the Defendant could neither confirm nor refute it as he was not a party to the conversation and had no knowledge of training protocols.

[5] At the outset of the Claimant’s inquiries into the whereabouts of the running boards, and his filing of a Loss and Damage Claim with the Defendant, the Defendant initially took the position that the item wasn’t in its system (see Exhibit No. 1, pp. 9, 13). Due to the Claimant’s persistence, it was discovered that the item was picked up from Vertika Canada by Transit Nord Plus, an agent for the Defendant. The Defendant now is not disputing that their agent Transit Nord Plus picked up the running boards. Nor is the Defendant disputing the value of the goods at \$2,173.03.

[6] The Defendant’s position, however, is that in the Bill of Lading dated May 11, 2018, Vertika Trikes Canada failed to insert the declared value of the running boards in the lower right-hand section of the document (see Exhibit No. 1, pg. 17). Failure to have done so now limits the Defendant’s liability to \$2.00 per pound on the total weight of the shipment—in this case, 65 pounds.

[7] In the case at bar, the shipper was Vertika Trikes Canada; the consignee was the Claimant; and Transit Nord Plus, an agent of the Defendant, was delegated to transport the goods. In his evidence, the Defendant pointed out that the bill of lading was not signed by the pick-up driver (Exhibit No. 1, pp. 17, 19). If I am reading the documentation correctly, there are two bills of lading: a Sameday

Worldwide bill of lading (Ex. No. 1, pg. 17) and a Transit Nord Plus bill of lading (Ex. No. 1, pg. 19). As noted above, the Defendant’s original position was that the shipped items were not in its system because on its shipping bill of lading there was no confirmation of pick up from the shipper, Vertika Trikes Canada—no pick-up driver name or signature, no unit number, pick-up date or pick-up time. However, the Transit Nord Plus bill of lading appears to be signed by a driver but lists the consignee as “Transit Nord Plus” rather than the Claimant. Nowhere on the Transit Nord Plus bill of lading is there a reference to the Claimant or his address as the consignee.

[8] “A bill of lading is a term used in the freight industry. It means an agreement between a freight company, such as Day & Ross, and their customer to pick up freight specified in the bill of lading at the shipper’s location and deliver it to the consignee’s location. When signed by the pick-up driver and the shipper, it becomes a legal contract”: *R. v. MacDonald*, 2018 NSSC 2018 at paras 96, 219.

[9] The Defendant argues that because the shipper, Vertika Trikes Canada, failed to declare the value of the goods on the face of the Bill of Lading, the Defendant’s liability is limited to \$2.00 per pound. If the Defendant relies on the Sameday Worldwide bill of lading (Ex. No. 1, pg. 17) in support of its position, the problem is obvious as per the *MacDonald* commentary on the contractual nature of the bill of lading: the driver did not sign or date the bill of lading. If the Defendant is relying on the Transit Nord Plus bill of lading (Ex. No. 1, pg. 19), the issue becomes that Transit Nord Plus lists itself as the ‘consignee’. Nowhere on that document is there a reference to the Claimant as the consignee or his address.

Decision of the Court

[10] In closing submission, the Defendant, referring to the bill(s) of lading, argued that: “We can only go with the paperwork.” The bill(s) of lading relating to the transport of the Claimant’s goods were materially defective. The Claimant, however, paid Sameday Worldwide on May 11, 2018, via Visa to pick up the running boards (Ex. No. 1, pg. 1). On that point, I am troubled by the evidence relating to the conversation between the Claimant and the call centre representative who assured the Claimant that “they would take care of everything.” The Defendant confirmed that “it most definitely would be a call centre” with whom the Claimant spoke. However, the Defendant could not speak to the training provided to call centre employees dealing with the Defendant’s business matters. For example, are call centre employees trained to alert customers to insurance and bill of lading issues? The Claimant, an unsophisticated online shopper, took the call centre employee at his word.

[11] The Defendant submitted the case of *Day & Ross Inc. v. Beaulieu*, 2005 NBCA 25 for consideration by this court. I find that the facts in *Beaulieu*, particularly as it relates to the number of and deficiencies in the bill(s) of lading, distinguish it from the case-at-bar.

[12] I find that there are material deficiencies in the bill(s) of lading relied upon by the Defendant to limit its liability. I find that the Defendant, in the circumstances of this case, cannot rely upon the limitation of liability clause in its own bill of lading form (Ex. No. 1, pg. 17) or that of its agent Transit Nord Plus (Ex. No. 1, pg. 19). Accordingly, I find that the Defendant Sameday Worldwide, Division of Day & Ross Inc. shall pay to the Claimant the amount of \$2, 173.03.

[13] There shall be no costs awarded in this matter.

Patricia Fricker-Bates, Adjudicator
Small Claims Court of Nova Scotia
March 11, 2019