

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Clark v. Canada Post, 2016 NSSM 18

BETWEEN:

DAVID WAYNE CLARK

Claimant

- and -

CANADA POST

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 3, 2016

Decision rendered on May 13, 2016

APPEARANCES

For the Claimant

self-represented

For the Defendant

Don Robinson, Corporate Security

BY THE COURT:

[1] The Claimant resides on Autumn Drive in the Spryfield area of Halifax. Like many people, he receives his mail in a community mailbox.

[2] The Claimant is an avid purchaser of sports memorabilia (such as hockey cards) on eBay, which items he then sells at a profit. Once he knows he has been the successful bidder on an eBay item, he knows that it will arrive in the mail in a few days, and watches out for it.

[3] On or about the 11th of February 2016, the mailbox for his neighbourhood broke, in the sense that the slot for his address could not be securely locked. He reported this to Canada Post and was told that it would be repaired, and that no mail would be placed therein until it was once again secure. He was told that it would probably take about a week to repair. He was also told that any mail addressed to him would be held at the main post office on Almon Street.

[4] That following week, he successfully bid on a Conner McDavid hockey card, at a price of \$140.00. He was convinced that he could resell it for as much as \$300.00. Based on his past experience with mailing times, he was expecting the card on or about February 19. His expectation was that, if the mailbox was not secure, the item would be held at Almon Street or simply delivered later.

[5] Despite the mailbox being insecure, he checked it periodically. He testified that some mail was still being put in there, and that some pieces of mail addressed to him or his mother, were on the street, suggesting that people were tampering with his mail. On February 19, he says that he found the envelope

containing the Conner McDavid card in his mailbox, completely destroyed - ripped up. He was, of course, furious and complained to Canada Post.

[6] The box was not fixed until February 23.

[7] Canada Post called as its only witness Paul Messervey, a letter carrier who serves the route which includes the Claimant's mailbox. He swore that no mail was delivered during the time the box was inoperative. He says that he kept the mail for this address and personally handed it to the Claimant on February 25. He says that the package of mail he delivered appeared to contain some envelopes that contained cards.

[8] Mr. Messervey also testified that no other mail carrier worked that route during the relevant time, although he conceded that he sometimes has an assistant to help him on his route, but he was sure that the Autumn Drive box was only served by himself.

[9] Before considering a legal issue raised by Canada Post, I must make a finding of fact. On a balance of probabilities, I find that some of the mail - including the Conner McDavid hockey card - did get through during the relevant time. I also find it more probable than not that the insecure mail was vandalized, and the Claimant lost an item for which he had paid \$140.00.

[10] My finding does not rest on a belief that Ms. Messervey was lying; rather, it is more likely that an error was made and some mail must have been delivered by his assistant. The Claimant had actually seen this assistant at or near the mailbox during the relevant time, and accurately described him. As for the

Claimant himself, he seemed basically credible and I am unwilling to find that he made all of this up.

[11] Canada Post says that the Claimant's claim is foreclosed by s.40 (1) of the *Canada Post Corporation Act*, the federal statute which governs the activity of Canada Post. That section reads:

40 (1) Subject to this Act and the regulations, Her Majesty, the Minister and the Corporation are not liable to any person for any claim arising from the loss, delay or mishandling of anything posted.

[12] The Claimant argued that this section does not apply, because what he is claiming is that the Defendant was grossly negligent in failing to secure the mailbox. He believes the mail was vandalized after it was delivered, which only happened because the Defendant negligently delivered mail into an insecure community mailbox.

[13] No case law was provided by either party, interpreting this provision.

[14] The ordinary meaning of the words suggests that Parliament sought to insulate Canada Post from liability for damage to "anything posted" while such items were in its custody. An item is "posted" when placed in a mailbox or otherwise put in the custody of a Canada Post facility. It remains posted while being transferred to other facilities, run through sorting machines, transported to its city of destination, handled any number of times by human hands, and eventually delivered to the recipient. Logically, some mail will be damaged with all of this handling, and Parliament thought it best that Canada Post not have to answer civilly for claims arising from those instances. At the point of delivery,

however, in my view, it ceases to be “posted.” Had this item been damaged at any time while in Canada Post’s custody, the Claimant would clearly be out of luck. This is one of the reasons that Canada Post offers insurance on items mailed using one of its premium delivery methods.

[15] On the evidence, I find it impossible to believe that the item in question was damaged while in the custody of Canada Post. As described by the Claimant, it was “destroyed; ripped up.” This almost certainly happened after delivery.

[16] In my opinion, s.40 (1) does not apply to insulate Canada Post from responsibility. In my further opinion, Canada Post was negligent in delivering the mail to an insecure mail box where it might be vandalized.

[17] Negligence is a tort claim, and the measure of damages in tort is to put the injured party in the same position as he would have been in if the tort had not occurred. Damages in tort are calculated to restore the claimant to his pre-incident position. This can be contrasted with a breach of contract claim, where the Claimant is put into the position he anticipated being in, which would include any potential for profit.

[18] I find that the appropriate measure of damages is \$140.00, the cost that the Claimant incurred when he purchased the card, and which is his out of pocket loss. He is also entitled to his costs of \$99.70, for a total award of \$239.70.

Eric K. Slone, Adjudicator