

Claim No: 294230

Date: 20081107

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Loskow v. AMJ Campbell Inc., 2008 NSSM 90

BETWEEN:

Name Gregory Loskow Claimant

Name AMJ Campbell Inc. Defendant

Revised Decision: The text of the original decision has been revised to remove addresses of the parties on July 3 2009

DECISION

BACKGROUND

- (1) This Claim and Counterclaim were heard on September 16, 2008.
- (2) The Claimant, Gregory Loskow (Loskow), claims the sum of \$2,820.75 from the Defendant for alleged breach of contract.
- (3) The Defendant, AMJ Campbell Inc. (AMJ), claims from the Claimant the sum of \$4,439.43 for outstanding moving charges.
- (4) Loskow retained AMJ to move his belongings from Mississauga, Ontario, to Dartmouth, Nova Scotia.
- (5) A Bill of Lading with signed by his girlfriend Tracy Collins, on his behalf, on October 11, 2007. The cost of the moving services were not determined in advance, however, an estimate was provided by the Defendant to the Claimant of \$4,515.72 based on estimated weight of the belongings of 4,500 pounds.
- (6) The ultimate cost was to be based primarily upon the actual weight of the goods.

- (7) Condition 18 of the back of the Bill of Lading provided in part as follows:

“18. Weights

It shall be the responsibility of the original contracting carrier or his agent to show the correct tare, gross and net weights on the bill of lading by use of a certified public scale, and attach the weight scale ticket to his copy of the bill of lading.”

- (8) The goods were delivered by the Defendant to the Claimant’s new home in Dartmouth, Nova Scotia, on October 22, 2007, however, Loskow claims that he has not received from AMJ proper documentation verifying the actual weight of the Goods according to a certified public scale.

ANALYSIS

- (9) The Claimant retained the Defendant for moving services.
- (10) Although an estimate was provided, the fee was to be calculated primarily on the basis of the actual weight of the goods.
- (11) I am satisfied from the evidence that the original Bill of Lading delivered to the Claimant did not show the gross tare and net weight of the belongings moved nor was a certified copy of the weight scale ticket attached to the Bill of Lading as required by clause 18 under “Conditions of Carriage”. The question is whether this breach has caused the Claimant to suffer any damages.
- (12) Fridman, Fourth Edition, The Law of Contract, at page 595 states as follows:

“Thus, the effect of a breach of contract was different according to the nature of the breach. To determine the legal consequences of a breach of contract it may be necessary to consider: (a) the character of the term that has been broken; (b) the practical effects of the breach; (c) the time when the breach occurred; and (d) the nature and effect of an exclusion, exemption or limitation clause upon both the duty to perform imposed by the contract on the party alleged to be in breach and the liability of such party under the contract.”

- (13) Loskow was understandably concerned that the actual weight had not been certified to him. He made further inquiries of AMJ and through a lengthy process over a number of months, he was provided with a signed Weight Master Certificate verifying the gross weight (full) of 53,280 pounds and (empty) of 48,780 pounds. This figure coincidentally matched to the pound the estimate that had been provided to him prior to the move which also understandably raised further concerns in his mind about the legitimacy of the documents and the information with which he was being provided.
- (14) I have carefully reviewed the documents and heard the evidence of the parties in this case, however, and I am unable to conclude that AMJ has done anything improper. I find that the documentary evidence ultimately provided to the Claimant proves the Defendant's contention that the actual gross weight of the goods in question was 4,500 pounds.
- (15) The breach of the contract terms by the Defendant is of a minor nature and, ultimately, the Claimant has not suffered any prejudice. In fact, the delay in the payment for the Defendant's services has benefitted the Claimant not the Defendant.
- (16) Based on the totality of evidence and on a balance of probabilities, I find that the weight of the goods was 4,500 pounds and that the Defendant is entitled to recover the amount of its invoice for the move totaling \$4,439.43.
- (17) In the end result, I will dismiss the Claimant's claim, however, award the Claimant \$100.00 general damages, which is the maximum allowable pursuant to the Small Claims Court Act of Nova Scotia.

SUMMARY

- (18) The Claimant shall pay to the Defendant the sum of \$4,339.43 less \$100.00 general damages, for a total of \$4,239.43.
- (19) I also award the Claimant his costs of \$377.26 as set out in Exhibit C5 which shall also be deducted from the amount owing to him by the Defendant.
- (20) The final net amount owing from the Claimant to the Defendant is \$3,862.17.

Dated at Dartmouth, Nova Scotia,
on November 7, 2008.

Patrick L. Casey, Q.C., Adjudicator

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

