

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Marshall v. Air Canada, 2017 NSSM 52

BETWEEN:

LESGAR MARSHALL

Claimant

- and -

AIR CANADA

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 14, 2017

Decision rendered on September 22, 2017

APPEARANCES

For the Claimant self-represented

For the Defendant Michael Blades
Counsel

BY THE COURT:

Introduction

[1] The Claimant is suing Air Canada for \$25,000.00 to compensate him for items that he claims were lost or stolen from his checked luggage on a flight between Toronto and Halifax on March 28, 2016.

Standard of Proof

[2] I believe it is important to observe at the outset that the amount claimed here is the maximum claim one can make in Small Claims Court in Nova Scotia. The Small Claims Court takes pride in being a people's court, where the adjudicators are forgiving of people's unfamiliarity with law and procedure, and where the rules of evidence are relaxed to a degree from what might apply in other courts or administrative tribunals. That relaxed standard makes sense in a truly small claim, such as a consumer claim involving hundreds rather than thousands of dollars.

[3] But when a claim of this magnitude - \$25,000.00 - is made, the court holds the parties to a higher standard of proof and evidence than might otherwise apply. The higher courts have taken pains to remind us of this duty to apply a rigorous standard where the amount of money at stake is so significant.

[4] It is against that standard that I consider the claim made here, and find it to be seriously deficient.

The Facts

[5] The Claimant resides in Nova Scotia. In March 2016, he was returning from a month spent in Toronto and Jamaica. He was booked on a late afternoon or early evening return flight from Pearson Airport in Toronto to Halifax. He testified that he was staying at a Toronto airport area hotel and checked in to his flight on his mobile device while riding to the airport on the shuttle. He planned to check one suitcase and carry on board his shoulder bag.

[6] Unfortunately, the shuttle ran late and by the time he got to the check in area at Pearson, it was less than 45 minutes before the flight was scheduled to board. That is the cut-off time for printing out baggage tags at the self-service kiosks. After discovering that he could not print a baggage tag, he asked for help from an airport or Air Canada employee (it could have been either) and was directed to try to get his bag checked at the counter. After waiting in line and speaking to the agent at the counter, he was directed to a special services area. After another wait, he was apparently told that they could not help him.

[7] By then, he was almost out of time and was told to speak to Air Canada on the phone to try and re-book on a later flight. In the end, he was told that he could re-book on a flight three hours later, but would have to pay for the full price of the ticket. Reluctantly, he did that, planning to speak to Air Canada later and try to get financial relief.

[8] At that point, he had several hours to kill in the airport. He decided to check not only his suitcase but also his shoulder bag, because he did not want to lug it around the airport for these extra hours.

[9] The shoulder bag was described as having a side pocket or pockets with zippers. There were no locks on the bag. The Claimant says that in his state of frustration from the events at the airport, he gave no thought to the security of whatever was in his shoulder bag.

[10] He says that when he picked up his luggage in Halifax, he noticed that the zipper pocket was open. He felt inside and discovered items missing. He immediately reported this to the security department at the airport, and was told to deal with Air Canada by email.

[11] The evidence was a bit sketchy as to what he did to advance his claim with Air Canada in the days that followed the event, but approximately a month later he prepared an email setting out the items that he said were missing, with values also stated. The April 29, 2016 email to Air Canada stated that the following items with the associated values were missing:

Gold bracelet	\$1,500.00
diamond ring	\$528.00
Diamond studs earring	\$6,000.00
Apple iphone charger and earbuds	\$110.00
Various cd's	\$58.00

[12] The total value listed in this claim was \$8,196.00.

[13] Air Canada was not very responsive to the claim. They cited to the Claimant the several limitations of liability that are contained in the tariffs that are implied into every ticket. I will consider those limitations further below.

[14] They suggested that he might have better luck with a claim through his home insurance. They might have (though I am not sure they did) also asked the Claimant to supply some documentary proof of his losses, something that he has never done, even at the hearing before the Small Claims Court. The Claimant either did not have home insurance or his home insurance was not responsive to the claim.

[15] The Claimant first launched a claim in Small Claims Court in September of 2016. In that claim he named as Defendants not only Air Canada but also its Chairman and CEO Calin Rovinescu. It is a mystery to me how he could have hoped to hold that individual personally responsible for his lost luggage claim, but the case never got that far because he was not able to serve Mr. Rovinescu properly, and the hearing did not proceed on the appointed day in November 2016. He was forced to re-file the claim and was encouraged only to name Air Canada as the Defendant.

[16] In the 2016 claim he sought \$20,000.00. The amount was not broken down. As such we cannot see exactly how a claim of \$8,196.00 had grown to \$20,000.00.

[17] About seven months later - on July 11, 2017 - the claim now before me was filed. After several short adjournments it came on for a hearing on September 14, 2017.

[18] As noted, the amount claimed has now risen to \$25,000.00. In fact, the actual losses listed on a schedule to the claim peg the losses even higher than that, though the claim is reduced to stay within the jurisdictional limits.

[19] The claimed losses now are:

Diamond earrings	\$13,659.00
Diamond ring	\$1,699.99
Diamond ring	\$1,399.99
15 Anniversary ring	\$299.00 to \$4,000.00
Gold bracelet	\$3,699.99
Original CDs	\$5,000.00 to \$15,000.00
iphone charger	\$55.00
Court cost	\$820.00
Rebooking cost	\$237.30
Food	\$22.60

[20] The range in total values is between about \$26,000.00 and \$40,000.00.

[21] The Claimant is now including items that were not part of his original claim to Air Canada, and some of the items have values attributed to them that are significantly higher than originally shown:

- a. The Gold bracelet value had grown from \$1,500.00 to \$3,699.99
- b. The diamond ring value had grown from \$528.00 to "\$299.00 to \$4,000.00"

- c. The Diamond studs earring value had grown from \$6,000.00 to \$13,659.00
- d. The Various CD's value had grown from \$58.00 to "\$5,000.00 to \$15,000.00"
- e. Two additional rings were added with values of \$1,699.99 and \$1,399.99

[22] As noted above, the Claimant did not have any documentation to support any of these claims. While it may be understandable that original receipts for jewelry items may be lost over the years, no effort was made to source similar items and provide comparable prices. The Claimant could not say when he acquired these items, nor where specifically he acquired them. The only item that he gave any detail about was one of the rings, which had been given to him as a gift to mark a 15-year milestone in his career. Even in that case, he could not explain how he arrived at the value associated with it, given that it had been a gift.

[23] The story surrounding the CD's is this. The Claimant says that he met someone in Jamaica who produced mix tapes as a DJ. The Claimant says he paid him \$5,000.00 (in cash) for these CD's which he hoped he might be able to exploit in Toronto. He was more than a bit vague on how he proposed to do this. He has no experience in the music industry, and no apparent understanding of the copyright world. Although he says he paid \$5,000.00, he thought they might be worth as much as \$15,000.00 because of the profits he might potentially have made by selling them.

[24] When I asked him why he could not ask the artist to make him new copies of these CD's, he said that the artist would only do so for an additional \$5,000.00.

[25] On this item alone, the Claimant's evidence is so lacking in credibility that I have difficulty accepting anything he says. The Claimant presents as a successful, mature individual. However, the story he weaves about the CD's could only be true if he were hopelessly naive and foolhardy. That picture does not fit. There is probably a larger story there, but I was not told anything approaching the full version. As an adjudicator, I am very suspicious when a witness appears to be telling me only part of the story.

[26] Also, I cannot accept that a claim of \$58.00 in April 2017 grew to one seeking \$5,000.00 or more in 2017. The only explanation that the Claimant could give was that in the early days after the events, he was just trying to recover part of his losses. He was trying to be "reasonable" with Air Canada.

[27] As counsel for Air Canada pointed out, that is not how reasonable compromises are made. People typically document their full claims and perhaps settle for less. But they do not ask for \$58.00 and, when that is declined, turn around and claim \$5,000.00.

[28] There is similarly no good explanation for why the jewelry claims grew so much or why he added new items a year after the flight. Surely in April 2016 his memory would have been at its best in recalling what had been in his bag.

[29] In short, before even considering the legal defences that Air Canada has to refuse these claims, I find that the Claimant has not credibly proved any of his

losses. I believe his evidence was a combination of truth, half-truths and outright fabrications or fantasies. Because I cannot tell what is true from what is fanciful, I cannot accept any of his testimony. The evidence falls far short of meeting the standard required in a claim of this magnitude.

Conditions of Carriage

[30] The Airline business is highly regulated by the federal government. There are government Tariffs that are deemed to apply to every ticket. There are also conditions written into the tickets themselves, which become part of the contract between the airline and passenger. I do not propose to list all of the tariffs that apply, but suffice it to say that there are tariffs that explicitly warn passengers that the airline is not responsible for jewelry of any kind. There is an explicit limit of liability of \$1,500.00 for lost items, and passengers are notified that they can declare in advance a greater value and pay for additional coverage. Other provisions require strict documentary proof of losses.

[31] All of these conditions would apply to limit the claim. Most of what is claimed is for jewelry, which is explicitly disallowed. The claim for the lost CD's and iPhone charger might or might not qualify, given a limitation for electronic items, but proof is utterly lacking. There is also a limitation for inadequately packed items, which might apply given that the Claimant says he placed thousands of dollars of items behind a simple zipper.

[32] Rule 205AC is another rule that the Claimant invokes. It provides:

“Passengers who arrive at the airport of departure for check-in within 10 minutes of scheduled departure or who are travelling on a standby basis and are accepted for carriage will be advised that it may not be possible to

load their checked baggage on the flight on which he/she has been accepted for carriage.”

[33] It essentially goes on to provide that the bags will be placed on a later flight and the passenger must sign a release in favour of the airline.

[34] The Claimant argues that he was not told that he had the option to fly on his original flight, with his suitcase (there was only one at the time) placed on a later flight. He says that if he had known this, he would have chosen that option, and he would never have ended up checking his shoulder bag and accordingly would never have incurred a loss.

[35] On the evidence, it is possible though hardly proved that Air Canada failed in any duty to advise the Claimant of his options. On the face of it, he was not a standby passenger and he was not within ten minutes of departure when he spoke to Air Canada on the phone. Even if Air Canada might have failed to give him this advice, I do not consider this as a basis to hold Air Canada liable for lost baggage. The claim as filed seeks damage for lost baggage, not for negligent advice.

[36] In the end, however, I find that the Claimant made his own choice to check the shoulder bag and it was not foreseeable that failing to give the option of putting his luggage on a later flight would lead to losses beyond the value of the second ticket. As I have stated, that loss (\$237.30) cannot be claimed in a claim that is explicitly for lost luggage items.

[37] In the end, the claim must be dismissed.

Eric K. Slone, Adjudicator