

Claim No: SCCH - 478992

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Ogban v. Adebayo*, 2018 NSSM 72

BETWEEN:

PRINCEWILL OGBAN

Claimant

- and -

ADEOLA ADEBAYO

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 2, 2018

Decision rendered on October 11, 2018

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant and Defendant are both residents of Halifax who have substantial connections to their native Nigeria.

[2] The Defendant works as a registered nurse but has a sideline business as a freight forwarder, carrying on business as a proprietorship under the name of Adadem Import and Export.

[3] The activities of a freight forwarder are described in Wikipedia as:

A freight forwarder, forwarder, or forwarding agent, also known as a non-vessel operating common carrier (NVOCC), is a person or company that organizes shipments for individuals or corporations to get goods from the manufacturer or producer to a market, customer or final point of distribution. Forwarders contract with a carrier or often multiple carriers to move the goods. A forwarder does not move the goods but acts as an expert in the logistics network. These carriers can use a variety of shipping modes, including ships, airplanes, trucks, and railroads, and often do utilize multiple modes for a single shipment. For example, the freight forwarder may arrange to have cargo moved from a plant to an airport by truck, flown to the destination city, then moved from the airport to a customer's building by another truck.

International freight forwarders typically handle international shipments. International freight forwarders have additional expertise in preparing and processing customs and other documentation and performing activities pertaining to international shipments.

[4] The most important role that the freight forwarder plays, in my opinion, would be that he has (or professes) expert and inside knowledge of the complex systems surrounding international trade. It is reasonable to observe that many ordinary people lack such knowledge and would be justified in delegating that responsibility to an expert. As expected, such help comes at a price.

[5] The transaction that gives rise to this claim dates back to January 2014. The Claimant bought a used vehicle (a 1999 Toyota Sienna minivan) to be shipped to Nigeria, which vehicle he filled with household goods including used computers, small appliances and used clothing. It is unclear to me whether the idea was to sell them in Nigeria, or merely give them to members of his family or friends. While I suspect he had a sale in mind for at least some of the goods, in the end this does not matter.

[6] The Claimant had used the services of the Defendant a couple of times previously for minor shipments to Nigeria. He told the Defendant that he was sending a vehicle to Nigeria and verbally contracted with the Defendant to make the necessary arrangements. The Claimant says that he paid the Defendant \$4,000.00 to cover the shipping and clearing charges, as well as the freight forwarder's fees.

[7] Unfortunately, there are no documents that show these payments or otherwise set out the terms of the transaction.

[8] The shipping method was initially planned as a "roll-on-roll-off" (RORO) where the vehicle would be driven into the hold of the vessel and (after being cleared) driven off at the final port. The Claimant drove the vehicle to the port at Halifax intending to drive it directly into the ship, but it was refused for RORO because the vehicle was visibly full of other items, which is not permitted for RORO. The Claimant was told he would have to ship the vehicle by container. He drove it home and contacted the Defendant.

[9] The Defendant agreed to include the Claimant's vehicle in a container along with three other vehicles that he was shipping for other customers. That container left Halifax in February 2014, on a ship bound for Lagos, Nigeria.

[10] What happened thereafter is shrouded in a certain amount of mystery, and the evidence of the Defendant is mostly based on hearsay. Nevertheless, in many respects it is the best evidence available and much of it seems probable.

[11] Goods being imported into Nigeria (like any country) must be accompanied by customs declarations setting out their value so that the appropriate import duties can be paid. In some cases, according to the Defendant (who should know), there are also bribes to be paid as some port workers and customs officials are corrupt. The container holding the four vehicles (including that of the Claimant) was held up at customs pending some payments (legal or otherwise) that may, or may not have been in relation to the Claimant's shipment.

[12] The evidence of the Defendant was that the Claimant had paid his portion of the necessary routine clearance fees, but he had some trouble getting the share owed by the owners of the other vehicles. He says that, in the end, he paid those fees himself, but that was still not sufficient to obtain the release of the goods. In the meantime, the container was just sitting at the port, probably incurring storage charges. The Defendant says that he travelled to Nigeria in March 2015 to attempt to secure the release of the container and its contents. By then, the Claimant was making a very public fuss about his vehicle and contents, having (among other things) gone to the media with a claim that the contents of the vehicle were worth \$100,000.00. In fact, it appears that the

Claimant started an action in the Supreme Court of Nova Scotia seeking damages of \$100,000.00.

[13] The Defendant says that the port authorities in Lagos became aware of the Claimant's complaint through reports on the internet, and took the position that the goods could not be cleared because their value had not properly been declared and the appropriate (and large) customs duties had not been paid.

[14] It is not clear whether, by then, the Defendant had any practical ability to secure the release of the container. In the end, it was seized by the port authorities and sold to pay outstanding storage and other fees.

[15] The Defendant claims that he had no idea when he agreed to ship the vehicle that it would contain any more than a token amount of household goods designated as "gifts."

[16] In the end, as I will explain further, I cannot find either party to be totally in the right or in the wrong.

The nature of the transaction

[17] I believe it is fair to treat the transaction as a contract of "bailment" where the Claimant entrusted the goods to the custody of the Defendant, who in turn undertook to exercise reasonable care to account for those goods. This brings in legal concepts of negligence, including contributory negligence.

[18] I believe it was the responsibility of the Defendant - as the supposed expert - to handle all of the necessary paperwork, including getting a proper customs declaration to accompany the goods. If such a document had been prepared and signed by the Claimant, I would have expected a copy to survive. Had the Claimant falsely undervalued the goods in the customs declaration, and that falsity had been discovered, I believe that the Claimant might have been said to have authored his own misfortune. But there is no evidence here that suggests that the Claimant misstated the value of the goods in any document.

[19] I can also accept as likely that the Defendant did not know that the goods in the vehicle were as extensive as they were, but he obviously knew that the vehicle contained some quantity of goods as that was the reason that it was refused for RORO. It would have been his responsibility to make sure that the appropriate customs declarations accompanied the goods. I conclude that he did not ensure that the proper documentation was created, which contributed to the problem when the goods arrived in Lagos.

[20] I strongly suspect that the problems at the port were as much, or more, because of the other three vehicles. If documentation or funds were lacking, that was not the fault of the Claimant. However, as I will also consider further below, I find that the Claimant was not entirely forthcoming with the Defendant about the extent of the goods being stuffed into this vehicle.

The value of the goods

[21] In the Claim before this court, the Claimant has reduced his stated value of the goods to bring it within the \$25,000.00 jurisdiction of this court. If I am

going to award damages, I need to be satisfied that the value of the items have been established to a reasonable standard. I must say that the evidence of value is quite deficient.

[22] The Claimant submitted a number of handwritten (indeed scribbled) sheets as a partial list of items, in some cases with values beside the item. There are no totals created.

[23] I have tried to make sense of it. For example, one item lists an HP-C4280 printer/copier/scanner with the figure of "10,000" next to it. I believe that value would have to be in Nigerian nairas (NGN) which have an approximate value of 0.00357 per Canadian dollar (CAD), or expressed in reverse, one CAD is worth approximately 280 NGN. As such, an item worth 10,000 NGN corresponds to about \$35.68 CAD.

[24] Given that such a printer can be bought brand new for about \$300.00, I must conclude that the Claimant was buying items at low, used prices, which is not to say that they might not have been functional and had real value in Nigeria.

[25] The list includes a number of printers, some sewing machines, microwaves and toaster ovens, CD or DVD players, and a long list of clothing items. He testified that he had been accumulating these items over a period of five years.

[26] I find it difficult to believe that the Claimant's original estimate of \$100,000.00 - which corresponds to more than 35 million NGN - is anywhere close to the truth. Certainly no such number is reflected on the documents.

[27] The \$24,000.00 figure is more realistic, but is still “soft” based on the evidence before me.

[28] The cost of the vehicle itself is undisputed at \$1,111.25.

[29] The Claimant says that he paid \$4,000.00 for shipping. The Defendant disputes that it was this much, and there are no documents to reflect this amount. Even so, I find the Claimant to be credible on this point, at least.

Findings on liability and damages

[30] I am prepared to find that the Defendant is largely responsible for the Claimant’s losses. But the Claimant is not blameless. I believe that he undervalued the value of the goods he was loading into the vehicle, hoping (perhaps) that they could be treated as used goods having nominal value. I believe he took a risk and that this was at least part of the reason that the shipment was held up in Nigeria. I also believe that the Claimant overstated the value when he made his claim, first in the Supreme Court and then in this proceeding. This calls his credibility into question.

[31] I believe that the Defendant should bear a greater amount of the responsibility, as it was his job to know what he was shipping and I find that he did not do everything possible to solve the problem on the Nigerian side - which was his area of expertise and responsibility. I am prepared to divide liability 2/3 to the Defendant and 1/3 to the Claimant.

[32] I accept that the vehicle itself was worth \$1,111.25, and I am prepared to accept that the Claimant paid as much as \$4,000.00 to the Defendant for shipping and other charges.

[33] I am prepared to accept the figure of \$15,000.00 as the value of the goods in the vehicle. The Claimant's total losses are therefore \$20,111.25, and he is entitled to recover from the Defendant 2/3 of this amount, namely \$13,407.50.

[34] The Claimant is also entitled to his \$199.35 filing fee, for a total recovery of \$13,606.85.

Eric K. Slone, Adjudicator