

CITATION: *Lovejoy v Covington Removals Pty Ltd* [2005] NTMC 049

PARTIES: Peter Lovejoy
v
Covington Removals Pty Ltd

TITLE OF COURT: local Court

JURISDICTION: Local Court

FILE NO(s): 20418584

DELIVERED ON: 10 August 2005

DELIVERED AT: Darwin

HEARING DATE(s): 22 March and 15 June 2005

JUDGMENT OF: R J Wallace SM

CATCHWORDS:

CONTRACT – CARRIAGE OF GOODS – GOODS ALLEGEDLY DAMAGED AND MISSING – ASSESSMENT OF DAMAGES

REPRESENTATION:

Counsel:

Plaintiff: In person
Defendant: Anna Covington (a director of the defendant)

Solicitors:

Plaintiff: Nil
Defendant: Nil

Judgment category classification: B
Judgment ID number: [2005] NTMC 049
Number of paragraphs: 39

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20418584

BETWEEN:

PETER LOVEJOY
Plaintiff

AND:

COVINGTON REMOVALS PTY LTD
Defendant

REASONS FOR JUDGMENT

(Delivered 10 August 2005)

Mr Richard Wallace SM:

INTRODUCTION

1. The plaintiff, Peter John Lovejoy (“Mr Lovejoy”) claims damages from the defendant company, Covington Removals Pty Limited (“Covington”), arising out of Covington’s carriage of certain items of Mr Lovejoy’s property from Busselton WA to Darwin. The evidence establishes that these items (and a lot of other property of Mr Lovejoy’s) were picked up by Covington a few days before Christmas 2003 and delivered to Mr Lovejoy in Darwin on the 8th of January 2004. Mr Lovejoy’s claim can be divided into three heads of damage. First, he claims that some items were damaged in transit. Secondly, that other items were lost or stolen in transit. Thirdly, that Covington’s employees damaged his house in Darwin, knocking about the walls etc when they brought the furniture inside on 8 January 2004.

Damage to Items in Transit

2. Mr Lovejoy's evidence was that he used to live in Busselton and that he moved up to Darwin about a year ahead of his furniture. Before doing so he deposited the furniture etc in a large shed at the home of a friend of his, Frank Busby ("Mr Busby"). He did not see his property again until it was delivered to him in Darwin. Mr Lovejoy's evidence concerning all the damaged items was that, at the time he helped put them into storage, they were in good, unmarked condition – mostly as-new condition. As to their state upon delivery, he gave evidence of various damage, supported by photographs.
3. The hearing began on 22 March 2005 and had to be adjourned off for further evidence on 15 June. On that latter date I had recently returned from a month's holiday and had been reminded, not for the first time, how even a short separation from everyday items of property can sharpen one's awareness upon one's return of shabbiness, wear and tear, which might pass unremarked in a context of everyday familiarity. Mr Lovejoy's separation from his property had been of a year or so and it seems to me that I should treat his recollection of the flawless state of the items with some caution, particularly given that his claims that some of the items were virtually brand new were unsupported by any documentation as to their date of purchase. Time flies and human beings forget. Mr Lovejoy's evidence as to their state upon delivery, supported as it was, seemed to me to be reliable.
4. In relation then, to the pre-transportation state of the property, I look for some sort of corroboration of Mr Lovejoy's recollection, and Mr Lovejoy directs me to the evidence of Mr Busby.
5. Mr Busby's evidence was first put before me in the forms of an affidavit given by him on 3 March 2005 (Ex. 18). On the date of the first hearing I intimated to Mr Lovejoy (who conducted his own case) that I might have some trouble giving much weight to evidence in that form. On the day of

the June hearing, Mr Busby was able to give viva voce evidence by telephone from Busselton, in which he adopted his affidavit. Ms Anna Covington, a director of Covington who conducted its case, appeared that day by video link from Perth WA.

6. Ms Covington questioned Mr Busby about the close resemblance between the phraseology of his affidavit, on the one hand, and Mr Lovejoy's written claim and evidence, on the other. Mr Busby allowed that Mr Lovejoy had provided him with a list of the relevant items – hence the similarity of their description – but said that the words he used to describe the condition of the items were his own. My overall impression was that Mr Busby's affidavit was provided not only at the behest of Mr Lovejoy but also more or less at Mr Lovejoy's dictation. As independent support for Mr Lovejoy, Mr Busby was therefore unimpressive. I could not, at the end of his evidence, have any confidence that he had any useful recollection of the condition of the goods at the time they were stored i.e. a year or so before they were collected by Covington.
7. Mr John Douglas Miles gave evidence (via video link from Perth) on the June hearing date. Mr Miles had been one of the Covington employees who picked up the goods from Mr Busby's shed. Mr Miles had since left Covington's employ, and although he was still evidently on friendly terms with Ms Covington, therefore had no obvious partiality in this matter. His evidence as to what happened in Busselton on the date of the pick-up – evidence which I accept – contained some thought-provoking material. First, that the Covington crew found the shed wide-open at the time of their arrival. Probably Mr Busby had unlocked it in anticipation. Secondly, the shed was crammed, not only with Mr Lovejoy's property, but with a lot of other stuff. Covington's employees had to rely heavily on Mr Busby to identify Mr Lovejoy's property which was located here and there throughout the shed and the extracting of which required other, non-Lovejoy items, to be moved out and put back. All of this took some time. Thirdly, Mr Busby

had some other matters to attend to that morning and was unable to be present throughout the uplift. When he returned most, if not all, of Mr Lovejoy's property was already on the truck.

8. This account, which was in no way contradicted by Mr Busby and in some aspects was corroborated by him – see for example the last paragraph of the affidavit on pp 2-3 – gives me reason to disbelieve one of Mr Busby's claims, that (Ex. 18 p2):

“From when the above items were packed and stored in my garage/shed the shed was padlocked by myself and no-one entered that garage/shed until “Covington Removals Pty Limited” came to relocate the afore-mentioned items on 22 December 2003”.

9. Such a claim seems very unlikely, given the amount of property in the shed and the way it was mixed up. I do not conclude that the shed was necessarily left unlocked often. I do not believe it is at all likely that Mr Busby, and perhaps other friends of his, did not go in there from time to time.
10. This is not the only statement in the affidavit which shows Mr Busby to have been careless as to the complete accuracy of what he was swearing to. At Item number 8 of the “afore-mentioned items” he lists:

“ROUND ART WORK CONTAINERS:- there was artwork inside these 4 x containers, they were sealed both ends with a plastic plug and then taped both ends with packing tape.

These containers were picked up by Covington Removals Pty Limited in this same condition on 22 December 2003 from my garage/shed.”

11. As will be seen below there is every reason to believe that there were only two such containers picked up on 22 December. I doubt whether Mr Busby ever saw their contents.
12. Lastly, the detail of Mr Busby's going off about his own business, leaving the shed and everything in it at the mercy of the removalists, then returning

to sign the inventory (which Mr Miles had made of all the goods he loaded) without checking what was on it, or what was in the truck, establishes, to my mind, that, at least in that respect, Mr Busby was not an ideal steward of Mr Lovejoy's goods, and suggests that it is at least possible that he may not have been an ideal steward in other respects too. For example, Mr Lovejoy's furniture may have got banged about when other items were being squeezed into the crowded shed.

13. Because I have so little confidence in Mr Busby's recollection, I make nothing much of his one recollection that might have been genuine and particular: that concerning Mr Lovejoy's lawnmower. Mr Busby, who claimed to have used the mower, guessed that it was about 8 years old. Mr Lovejoy said it was about 1 year old.
14. The other source of information as to the state of the goods when they were loaded is the inventory mentioned above, which not only lists the goods, but contains some comments on their condition – soiled, scratched rubbed, dented etc. A fairly legible copy of that inventory became Ex. 2. In my judgment, this inventory, as far as it goes, is far and away the best evidence as for the then condition of the goods. Unfortunately, it does not go very far. The formulaic comments are not very discriminating. "Soiled", for example, describes anything from a light coating of dust to seriously dirty marks. Mr Miles was frank and credible in confessing his inability personally to remember particular items. He has moved a lot of furniture in his time. The inventory is meant to be the record.
15. Covington's operations meant that a different crew took the load on to Darwin from Broome. So no-one who was present at the unloading had been present at the loading.
16. It is agreed that Mr Lovejoy made no comment on the condition of any of the goods on the day they were unloaded (nor on goods having gone missing, nor on the damage to his house). His explanation for this is that he

was rushed on that day, and unable to be present for some of the time and that the removalists were in a great hurry. I should say that the, as it were, symmetry between Mr Lovejoy's reasons for not superintending the unloading, with Mr Busbys' for not superintending the loading, do not raise any suspicions in my mind about Mr Lovejoy's account. It is admitted that the removalists were in a hurry – as to which detail there is also the affidavit of Mr Lovejoy's father, who lives in England and was visiting his son at the time (Ex. 19). It is undisputed that Mr Lovejoy was absent for a time. It seems he had failed to notice, on a quotation from Covington (Ex. 1) that payment had to be by cash or bank cheque, and he had to run around to various ATMs or banks to amass the cash to pay Covington's bill. Additionally, many of the items were covered in polythene packing of less than perfect transparency. Taken together, these factors, added to the ordinary stresses attendant upon such an occasion, adequately explain why Mr Lovejoy did not look closely enough at the goods until after the removalists were paid and gone.

17. Such then, is the evidence. In relation to the individual items, these are my conclusions on the balance of probabilities:

- i) White chest of drawers.**

18. This item is described on the inventory as soiled, scratched and rubbed at the time of the up-lift. Soiled may mean no more than dusty. Scratched and rubbed indicate some visible damage from use (or abuse). Three photographs (Ex. 10) show the item after arrival. Two or three drawers are missing – Mr Lovejoy says they were smashed – and a couple of visible chunks of the chipboard, which the item is made, knocked off at carpet level. The larger wound left by one of these missing chunks seems fresh, as far as I can judge. The other, less so.
 19. Mr Miles allowed that chipboard does not travel well. It seems to me more likely than not that the damage to the drawers and, at least, the fresh looking

wound, were caused by Covington and I am not of the opinion that damage of that order would be comprehended under the rubric of the sort of wear and tear that reasonable care could not avoid.

20. Mr Lovejoy quotes a replacement cost of \$799.00 for such an item new. Accepting that (there is no evidence to the contrary but the price seems steep to me), it remains the case that the item lost was not a new one – it had been purchased about a year before it went into Mr Busby’s shed and it sat there – or was perhaps pushed around there – for another year. There is no evidence before me as to a reasonable second-hand price for a 2-year old, at least slightly foxed chipboard chest of drawers but I cannot believe it would be more than half the price of a new one. I allow \$400.00.

ii) Double bed-base

21. This item was said by Mr Lovejoy to be in as-new condition when he stored it. The damage he found when he unwrapped it is shown in Ex. 6. It is described in Ex. 2, the inventory as “soiled”, ie. dusty.
22. I am not all that confident that the small amount of damage visible in Ex. 6 would have been remembered – or even noticed – by Mr Lovejoy had it happened while he was using the item in Busselton, nor is it so blatant that its non-appearance on the inventory powerfully suggests that the damage was not then visible. In short I am not satisfied, on the balance of probabilities, that anything apart from unavoidable wear and tear was occasioned to this item by Covington.

iii) Queen-sized bed-base

23. This item was said by Mr Lovejoy to be in as-new condition when he stored it. The damage complained of is illustrated in Ex. 7, two photos. It too is described in Ex 2 as “Soiled”.

24. In this instance it seems to me more likely than not that the damage did occur in transit and that, had it been evident as the time of loading, Mr Miles would have noted it. That probability was conceded by Mr Miles, who said that the plastic corner protectors often shatter en route. The damage may be fair wear and tear but even if it is not, Mr Lovejoy has not persuaded me that the damage has reduced the ability or usable life of this item, and I see no basis for a claim to replace the bed base with a new one. (As far as I can tell the items are still in use – Mr Lovejoy gave evidence that he had not replaced them.) Repair is apparently possible – see Ex. 5. I allow \$240.00.

iv) Three-piece sofa

25. This item, described as “3-seater” on the inventory Ex. 2, is detailed as “Soiled”. Mr Lovejoy has it that it was in as-new condition when it went into storage. Its condition after delivery is shown in two photos, Ex. 4. There is a tear in the fabric, at the back of the sofa, that looks to be about 10 or 15 cm long. It seems very likely that this tear was caused in transit and it does not seem to me to come under the rubric of wear and tear. Mr Lovejoy claimed \$2000, less than the price quoted to re-upholster the suite – see Ex. 5 – but the same quote, from Trumans Upholstery, quotes \$180 “To repair the rip...”. That seems the appropriate sum to me.

v) Lawnmower

26. There are no photographs of the mower which is detailed in the inventory as “soiled, scratched, rubbed” – as Mr Miles said: ‘Any used mower would be’. The one thing Mr Lovejoy was able to describe by way of damage to it was that the accelerator had broken off the handlebars. Ex. 15, a report from Flossie Gentle of The Big Mower, gave the opinion that “The only way to get this machine running properly was to give it a complete rebuild, assessing the age of the machine, this would not be economical”.

27. Even if I accepted that Covington was negligently responsible for detaching the accelerator, it does not seem that that damage has materially diminished the value of the mower, which was probably at the end of its useful life anyway.

vi) Coffee Table

28. This item is described in the inventory as “Soiled, scratched, rubbed, chipped and dented”. The item, as it was delivered, is depicted in two photos, Ex. 11. The largest injury to the table looks fairly fresh but, having said that, it is not a very large injury and might have been forgotten by Mr Lovejoy. There is obviously a good chance that Covington caused that damage just as, in my opinion, the damage could easily have been occasioned during the time the table was in Mr Busby’s uncertain stevedorship I cannot be satisfied that it is more likely than not that Covington caused any of the damage.

vii) Three-piece sofa cushions

29. The cushions associated with item iv) above were said by Mr Lovejoy to be dirty and ripped. The tear was apparently a trivial one, easily overlooked, the degree of soiling impossible for me to grasp from the evidence. The cushions are not separately described on the inventory (wherein, it will be remembered, the “3-seater” was described as “Soiled”).
30. Nor is there a separate quote for whatever action Mr Lovejoy had in mind for these cushions. Mr Lovejoy (unless the \$90 quote Ex. 13 applies just to them – I do not believe it does).
31. In short Mr Lovejoy has not satisfied me on the balance of probabilities that Covington caused any damage or soiling to the cushions and, even if he had, he has provided me with no evidence as to what that damage or soiling might cost him.

viii) Foam Box

32. This item is described in the inventory as “Packed by owner, contents unknown”. That is, no damage is described. The item is depicted in two photos, Ex. 14. It is a large polystyrene foam box without any handles that was designed, I would guess, to transport something that needed to be kept cool. It can be seen in the second photo, of the box opened, that the walls of the box are quite thin and its edges are not in any way reinforced. It is a flimsy box and it is no surprise to see a split or tear in one wall. Had the tear appeared at Busselton, as it does in Ex. 14, I would have expected Mr Miles to make a note of it on the inventory. He did not. That leaves these possibilities:
- a) That the tear was already in place but not so visible by reason of the box being sealed up into shape.
 - b) That Covington caused the tear.
 - a) That the tear happened as the box was being unsealed.
33. Mr Lovejoy’s evidence impliedly denies c). The other two theories seem equally likely to me. Even if the tear occurred in transit, it seems the sort of thing that would be difficult to avoid, given such a flimsy box. Even if it were not fair wear and tear, there is no evidence of the value of the second-hand box, and my guess would be next to nothing.

Missing Items

- i) Mr Lovejoy was convinced that some of the contents of the box had gone missing and he blames Covington for this loss. He did not provide me with any evidence of contents to which a money value could be ascribed. For this reason alone this head of his claim must fail.

ii) Mr Lovejoy claimed that there were, among his property in Mr Busby's shed, four cylindrical post-packs containing some art works of Egyptian origin. Judging from Ex. 17, these were paintings on papyrus reproducing various images from Egypt's ancient past. They cost him very little in Egypt in 1985 – perhaps about \$25 for eight pieces. His evidence is that only two post-packs arrived and that neither of them contained any of these works of art. He claims the sum of \$1500, basing the current international value of such items. Upon a search of the internet he has found items, advertised for sale, which sound as though they may be (or may not be) similar in size and quality to his lost souvenirs, for sale at various prices: the internet pages form Ex. 17. It goes without saying that he attributes their disappearance to Covington.

The inventory refers to only two post-packs “Packed by owner, contents unknown”. I have no reason to believe that count mistaken. If Mr Lovejoy is correct in believing that he and Mr Busby stored four, then something had gone seriously wrong with their secure storage before Covington came into the picture. I suppose it is possible that someone from Covington pinched these items – although in that respect I refer to the evidence from Mr Ricky Covington and Mr Miles as to the company's reputation and to the lack of complaints against it – and I suppose it is possible that Covington was so negligent as to permit a third party to steal the works at some point in the journey but neither of those possibilities seems more than fanciful to me. It is far more likely that the trouble was at the Busby end of the business.

Damage to Mr Lovejoy's House

34. According to Mr Lovejoy – and I accept his evidence – he had only very recently obtained settlement on the property at 358 Trower Road to which

property Covington delivered his effects. Indeed, his evidence was that he had finally got the keys on the very day the removalists came.

35. He says that Covington employees caused a certain amount of damage when bringing in his property and the damage – none of it large scale – is illustrated in Ex. 8, 5 photographs. Ex. 20 is an affidavit from the vendor of the property, Matthew Paul Pitt to the effect that he painted and completely renovated the property prior to the sale, and that there was no damage at all to that paintwork when he vacated. Given what I accept about the haste of Covington’s employees at the time of delivery, I am satisfied, on the balance of probability, that it was they who caused the damage described and that it was negligently caused. Ex. 9 is a credible quote for \$567 to repair that damage. It seems to me that Mr Lovejoy should recover it.

SUMMARY

36. I find for the plaintiff as follows:

1)	In respect of damaged goods:	
	(a) Chest of Drawers	\$ 400
	(b) Queen-size bed-base	\$ 240
	(c) Three-piece sofa	\$ 180
2)	In respect to damage to the house	\$ 567

	Total	\$ 1387
		=====

37. In other respects, the various heads of claim fail.

38. Judgment for the plaintiff in the sum of \$1387. I also allow recovery of the filing fee etc claimed, a total of \$100.25.

39. The defendant is to pay the plaintiff \$1487.25.

Dated this 10th day of August 2005.

R J WALLACE
STIPENDIARY MAGISTRATE