



No. ABB-S-S-02704
Abbotsford Registry

In the Supreme Court of British Columbia

Between

STEVEN HEIMBURGER

Plaintiff

and

BIGSTEELBOX CORPORATION

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: BIGSTEELBOX CORPORATION (the “Defendant”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in paragraphs 2 and 3 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1 and 5 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant’s Version of Facts

1. The Defendant denies each and every allegation of fact contained in the Plaintiff’s Notice of Civil Claim except as expressly admitted herein.
2. In addition to any definitions set out herein, the Defendant adopts the definitions set out in the Notice of Civil Claim for the purpose of this Response to Civil Claim.
3. In answer to the whole of the Plaintiff’s Notice of Civil Claim, the Defendant denies that the Plaintiff has suffered loss, damage or expense as alleged and puts the Plaintiff to the strict proof thereof.

4. The Defendant, BigSteelBox Corporation ("BigSteelBox") leases a property located at a municipal address described as 37400 North Parallel Road, Abbotsford, BC, V3G 2K1 (the "Abbotsford Property").
5. BigSteelBox carries on the business of renting shipping containers (the "Containers" or a "Container") to customers, where Containers are stored on customer property or at one of thirty-five BigSteelBox locations across Canada.

The Heimbürger Agreement

6. During the relevant time period, BigSteelBox regularly entered into agreements with customers in relation to the storage of customers' goods within Containers and which were located on the Abbotsford site.
7. BigSteelBox and the Plaintiff entered into an agreement in writing, entitled "Residential Master Agreement", dated June 28, 2021 (the "Heimbürger Agreement").
8. The Heimbürger Agreement contained a number of clauses, and contained four representations made by the Plaintiff to BigSteelBox. The four representations made by the Plaintiff to BigSteelBox were:
 - I acknowledge and agree that I will only place property solely owned by me within the Equipment and I will not allow property of third parties to be stored within the Equipment.
 - I understand that BSB does not insure contents, is not responsible for loss or damage to Customer Contents, and that I am responsible to acquire contents insurance for the duration of all rentals.
 - We are not storing flammable or combustible contents, and have emptied the fuel tanks of stored items.
 - I agree to limit the liability of BSB, and its employees, officers/directors, and agents, for any claim of loss, damage or expense pursuant to the *Warehouse Receipt Act*, RSBC 1996, c 481, or equivalent legislation in the Province in which the Equipment is located, to the value of monies paid by Customer pursuant to this Agreement up to a maximum of \$1,000.00 CAD.

(collectively, the "Heimbürger Representations")

9. The Heimbürger Agreement was signed by the Plaintiff on the last page of the Heimbürger Agreement, and the Plaintiff wrote his initials under each of the four Heimbürger Representations described in paragraph 8, above.
10. BigSteelBox pleads and relies on all terms of the Heimbürger Agreement.
11. BigSteelBox pleads and relies on the Heimbürger Representations.
12. Without limiting the generality of the foregoing, BigSteelBox pleads and relies on the following terms of the Heimbürger Agreement.

8. INSURANCE:

[. . .]

c. Customer acknowledges and understands that BSB does not insure nor guarantee against loss of Customer's property, and BSB has no liability whatsoever as to claims for loss or damage to such property. Customer hereby waives, releases and indemnifies BSB from and against any and all claims whatsoever against BSB for loss of and damage to any and all property howsoever arising.

12. LIMITATION OF WARRANTIES:

a. Equipment is provided on an "as is, where is" basis. As long as Customer is not in default of this Agreement, Customer will have quiet possession of the Equipment. BSB gives no warranties of any kind whatsoever with respect to the Equipment, its condition or performance, its merchantability or its fitness for any particular purpose.

b. Customer agrees that use of Equipment shall be at Customer's own risk, and Customer unconditionally and voluntarily assumes the entire risk of any and all accidents, incidents or personal injury, including death, which Customer or any third party may suffer, however caused.

c. BSB is not liable to the Customer or any third party, in contract tort or otherwise, for any damage, including direct, indirect, special, consequential, or incidental loss or damage arising from the breach or non-performance of any obligations under this Agreement, or from the supply, use or condition of the Equipment, or for loss or damage to Customer's property.

d. Customer is solely responsible for determining the specific location(s) on the Site where Equipment will be placed. BSB makes no representation or warranty as to the suitability of Equipment for stacking or supporting loads of any kind. Customer is solely responsible for, and assumes all risks arising from, placing any containers, structures, materials or any other objects on top of Equipment.

13. WAIVER, RELEASE FROM CLAIMS:

a. The Customer hereby waives, releases and forever discharges BSB, inclusive of its employees, contractors, agents or others for whom it is responsible at law) from and against any and all actions or claims which the Customer or his heirs or successors or assignees may now have or at any time in the future have against BSB for any loss, damage, expense or injury, including death, that the Customer may suffer as a result of the services provided by BSB and/or the use, storage of property in, or transport of Equipment and property contained therein or anything related thereto, including, without limitation, property damage, theft, delay, damage to goods, negligence, gross negligence, willful misconduct, breach of this Agreement or any other contract, non-compliance with licensing, or breach of any statutory or other duty of care on the part of BSB and/or the Customer and specifically:

i. waive, release and discharge BSB from any duty of care it may have pursuant to the Occupiers Liability Act, RSBC 1996, c 337 or equivalent legislation in the Province in which the Equipment is located and any claim for loss or damage the Lessee may have thereunder; and

ii. limit the liability of BSB for any claim of the Customer for loss, damage or expense pursuant to the Warehouse Receipt Act, RSBC 1996, c 481, or equivalent legislation in the Province in which the Equipment is located, to the value of monies paid by Customer pursuant to this Agreement up to a maximum of \$1,000.00 CAD.

14. INDEMNITY:

[. . .]

b. Customer hereby agrees to hold harmless, indemnify and reimburse BSB against all liabilities, claims, demands, actions, causes of action, damages, losses, costs, expenses, property damage, bodily injury or death, suffered or incurred by Customer and/or any third party as a result of the services provided

by BSB or its agents, and/or the use, storage of property in or transport of Equipment by the Customer and/or BSB including, all fines, forfeitures, seizures, penalties and liabilities that may arise from any infringement or violation of any law or regulation and for any damage to Equipment, whether caused by BSB, a third party, or due to vandalism, collision, fire, lightning, theft, explosion, flood, windstorm, Act of God or any other intervening factor.

13. Before entering into the Heimbürger Agreement, the Plaintiff had the opportunity to seek legal advice.
14. The terms of the Heimbürger Agreement were negotiable.
15. The terms of the Heimbürger Agreement, including the Exclusion Clauses, were specifically brought to the attention of the Plaintiff. Notably, the Plaintiff specifically represented to BigSteelBox, as part of the Heimbürger Representations, that he (the Plaintiff) understood that BigSteelBox does not insure contents within a Container, BigSteelBox is not responsible for loss or damage to contents within a Container, and that he (the Plaintiff) was responsible to acquire contents insurance for the duration of all rentals.

Representations Made by BigSteelBox

16. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to gaskets on the Containers, wrote: "Located on both sides of the door. Creates a tight seal on the doors. No leaking, even with heavy rain or melting snow."
17. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to the Containers, wrote: ". . .are actually shipping containers, so they're made from 8-gauge corten steel and built to stand up to the harshest elements. They are wind, water and rodent-proof, so your things will stay safe and dry inside all year round."
18. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to the Containers, wrote: "Our containers are wind, water and rodent-proof. They're made of 8-gauge steel, so they won't bend or shift from the weight of your contents."
19. The representations described above (collectively referred to as the "Container Representations") were accurate and not misleading.

20. Alternatively, if the Container Representations were inaccurate or misleading, the Container Representations were made in accordance with applicable standard of care.
21. Alternatively, if the Container Representations were inaccurate or misleading, the Plaintiff did not rely on the Container Representations.
22. Alternatively, if the Plaintiff relied on the Container Representations, then such reliance was not reasonable.

The 2021 BC Floods

23. Between November 14, 2021, and December 17, 2021, heavy rainfall resulted in flooding of the Abbotsford Site.
24. Depending on their location at the Abbotsford Site, certain Containers were submerged under water, while other Containers were not submerged.
25. Entire areas adjacent to the Abbotsford Site, for kilometres in distance, were also submerged.
26. The flooding of the Abbotsford Site was an “act of god” (as that term is understood in the legal sense) and was an unforeseeable event.
27. The Abbotsford Site was not situated on a known flood plain.

Division 3 – Additional Facts

1. There are no additional facts.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in none of the paragraphs of Part 2 of the Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in all paragraphs of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The law of contract, including the law of insurance.
2. The law of tort.

3. The law of equity, including unjust enrichment, restitution, disgorgement.
4. The legislation cited within the Notice of Civil Claim.
5. The law of damages and recovery.
6. The inherent and general jurisdictions of this Honourable Court.
7. Such further other legal bases as counsel may advise and this court may permit.
8. With respect to the specific legal bases included within the Notice of Civil Claim (where the term, "Rental Agreement", is meant to refer to the Heimbürger Agreement"):
 - a. The Rental Agreement and/or Exclusion Clauses were not unconscionable bargains and were not contrary to public policy;
 - b. The Rental Agreement was not unreasonable;
 - c. The Plaintiff was capable of protecting his interests at the time of contractual formation, and, alternatively, if the Plaintiff was unable to protect his interests, BigSteelBox did not gain any undue advantage or benefit that was secured as a result;
 - d. The Rental Agreement was not an improvident bargain;
 - e. The Plaintiff understood and appreciated the meaning and significance of the Exclusion Clauses;
 - f. The terms of the Rental Agreement were fair;
 - g. As result of the Exclusion Clauses, the Heimbürger Agreement, and the Heimbürger Representations, the Plaintiff is foreclosed from claiming for loss or damage as against BigSteelBox pursuant to section 36 of the *Competition Act* or section 171 of the *BPCPA*, and such foreclosure is not prevented by the either the *Competition Act* or the *BPCPA*;
 - h. The Exclusion Clauses, the Heimbürger Agreement, and the Heimbürger Representations are not affected by the *BPCPA*;
 - i. It was not an implied term of the Heimbürger Agreement that the Containers were waterproof, watertight, and capable of withstanding heavy rainfall without leakage;

- j. It was not an implied term of the Heimbürger Agreement that the Containers be stored in a location that did not pose undue risk of property damage;
- k. BigSteelBox performed its primary obligations under the Heimbürger Agreement;
- l. BigSteelBox did not fundamentally breach the Heimbürger Agreement;
- m. Representations made by BigSteelBox did not form collateral contracts or warranties;
- n. BigSteelBox was not in a proximate and special relationship with the Plaintiff;
- o. BigSteelBox did not owe a duty of care to the Plaintiff, or, alternatively, did not breach a duty of care;
- p. BigSteelBox made accurate representations in relation to the Containers;
- q. The Abbotsford Site was not situated on a known flood plain, or alternatively, BigSteelBox did not know that the Abbotsford Site was located on a known flood plain, and ought not to have known such information;
- r. BigSteelBox took adequate steps to ensure the accuracy of representations which it made with respect to the Containers;
- s. BigSteelBox's representations with respect to the Containers were not material to the Plaintiff's decision to enter into the Heimbürger Agreement, and there was no reliance by the Plaintiff upon same;
- t. BigSteelBox was not negligent in any manner and satisfied any applicable standard of care;
- u. BigSteelBox denies that it engaged in any tortious behavior, and, alternatively, if it is found that BigSteelBox engaged in any tortious behavior, disgorgement of any benefit received by BigSteelBox is inappropriate;
- v. BigSteelBox denies that it was unjustly enriched;
- w. BigSteelBox denies that the Exclusion Clauses were representations and, alternatively, that such representations constituted a deceptive act or practice;

- x. BigSteelBox denies that it committed any behavior which would be considered a deceptive act or practice, pursuant to the *BPCPA*;
- y. BigSteelBox denies that it committed any behaviour which would be considered an unconscionable act or practice under the *BPCPA*;
- z. BigSteelBox has not breached any provisions of the *BPCPA*;
- aa. BigSteelBox has not breached any section of the *Competition Act*;
- bb. BigSteelBox's conduct has never been high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and in contumelious disregard of the Plaintiff's rights; and
- cc. BigSteelBox is not liable to pay aggravated or punitive damages.

Defendant's address for service:

Nixon Wenger LLP

Barristers and Solicitors

301, 2706 - 30th Avenue

Vernon, British Columbia, V1T 2B6

Fax number address for service: (250) 542-7273

Email address for service: N/A

DATED this 23rd day of November, 2022.



CHRISTOPHER T. HART

Lawyer for the Defendant

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.