Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Towne International Forwarding, Inc.

File: B-260768

Date: December 28, 1995

DIGEST

A carrier failed to unroll and inspect a service member's carpet when it obtained it from a nontemporary storage (NTS) contractor; therefore, it missed the opportunity to issue a rider noting any dry rot, mildew, or insect damage that may have existed at that time. Without such a rider, the carrier does not meet its burden to prove that these damages occurred during storage, and not during transit, when the carrier's remaining evidence consists only of: an appraiser's opinion (stated several months after delivery) that the carpet had become wet during storage; the comparative amount of time that carrier had custody of the carpet (11 days) versus the amount of time that NTS contractor had custody of it (more than 3 years); and water damage to another box in the shipment as noted on the rider.

DECISION

Towne International Forwarding, Inc. requests our review of this Office's settlement in which we affirmed the Army's offset of amounts it owed to Towne to recover for transit damages to a service member's household goods.[1] Towne claims that the Army owes it $1,500 because it was not liable for damage to item 120, an oriental carpet, and it seeks an additional $27 because of an error in the calculation of a refund on an eight-piece sectional. We affirm our prior settlement with respect to item 120, but remand this matter to the United States Army Claims Service to resolve an ambiguity concerning the amount of the refund on the sectional.

In April 1987, a nontemporary storage (NTS) contractor packed and stored the service member's household goods. On August 10, 1990, Towne obtained the household goods from the NTS contractor in Indiana, and on August 21, 1990, it delivered them to the service member in Ohio. Towne's rider to the NTS contractor's inventory did not note any damage with respect to the carpet, but,

[1]This personal property shipment of Bruce A. Simpson was under government bill of lading GP-308,399.

following delivery, the service member reported dry rot damage. Several months after delivery, an appraiser found that the carpet was infested with live moths and active moth larva, and moth damage pervaded the entire carpet. The carpet also had extensive areas of mildew and dry rot, and in some areas the carpet had disintegrated from dry rot damage. It is undisputed that an undamaged carpet of this type was worth about $1,500.

Towne argues that there is no prima facie liability against it for any of this damage because the damage was an inherent vice. The company directs us to the Department of Defense (DOD) Personal Property Traffic Management Regulation, DOD Reg. 4500.34-R and cites specifically item 5 of the Domestic Personal Property Rate Solicitation D-1. Item 5,2,d(6) of the Domestic Personal Property Rate Solicitation D-1 stated that a carrier is not responsible for loss or damage caused by the "inherent vice of the article or infestations by mollusks, arachnids, crustaceans, parasites, or other types of pests; fumigations or decontamination when not the fault of the carrier." Finally, Towne directs our attention to the finding of the appraiser that the carpet became wet during storage and that it had noted on its rider that some boxes in the shipment had exhibited indications of having been wet.

The preliminary issue is whether the shipper established a prima facie case of carrier liability. To do so, the shipper must show tender of the goods to the carrier, delivery in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Moreover, when goods pass through the custody of more than one bailee, it is a presumption of the common law that the damage occurred in the hands of the last one. See Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991. The carrier then bears the burden of proving either that the damage did not occur while in its custody or that the damage can be attributed to one of five exceptions. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978). See also Item 5,2,d(7) of Domestic Personal Property Rate Solicitation D-1 which provided that the carrier has the burden of showing that the loss or damage was caused by the excepted conditions which relieve it of liability.

In our view, Towne did not meet this burden of proof. Towne did not unroll the carpet to examine it before assuming custody. Nothing prevented Towne from doing so. See Eastern Forwarding Co., B-248185, Sept. 2, 1992; Air Land Forwarders, B-247425, June 26, 1992. If it had unrolled the carpet, it is undisputed that it should have found the type of damage involved here. Having failed to inspect it, Towne asks us to find that the record contained clear evidence that the damage to the carpet occurred during storage, or was due to an inherent vice, and that nothing it did during the 11 days it had custody could have caused the damages involved.

Towne's factual evidence is the appraiser's belief that the carpet became wet during storage; the comparative amount of time that Towne had custody of the carpet (11 days) versus the amount of time that NTS contractor had custody of it (more than 3 years); and water damage to "some" other boxes in the shipment as noted on the rider. But a close look at the rider indicates that Towne expressly noted water marks on only one other item (item 125), even though the inventory indicates that the shipment consisted of approximately 125 items. Mildew, dry rot, and insect damage were not noted in other cloth-type articles (e.g., the eight-piece sectional). Also, there is no evidence, for example, on how the NTS contractor protected the carpet during storage compared with Towne's protection during transport. Towne did not present any expert evidence with regard to mildew, dry rot, or insect infestation which would have precluded the probability that these damages had occurred in transit in view of the amount of time in Towne's custody and the condition in which it was shipped. We have no factual basis to conclude that the damage involved here could not have occurred during the 11 days that Towne had custody over it. The appraiser stated that the carpet became wet during storage, and not otherwise, but the basis for this belief is not stated even though he made his appraisal several months after delivery. Finally, an inherent vice is something inherent in an item that leads to damage without any outside influence other than the laws of nature. See Aalmode Transportation Corp., B-237658, Feb. 12, 1990. There is no factual basis to conclude that the damages described above would have taken place in the absence of a breach of duty of care by someone.

It appears that the Army may have made a clerical mistake in the refund. The administrative report states that the carrier is due a refund of $1,374 with respect to the eight-piece sectional (items 2 through 7), but other documentation indicates that the amount actually refunded was only $1,347. This matter is remanded to the United States Army Claims Service to resolve this discrepancy. Otherwise, we affirm our prior settlement.

/s/Seymour Efros
for Robert P. Murphy
General Counsel