

JOHN SMITH (CA) - EXAMPLE CONTACT
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TORONTO, ON M5J 2N8

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Richard T Avis, Attorney & Associates, LLC

Richard T Avis

Barry Serota (1948-2009)

P.O. Box 31579
Chicago, IL 60631

Phone: (847) 259-4700
Fax: (847) 259-9434

rewrew

erw

File No. ewrert

Creditor: ter

Debtor: tq

Pro No. tt

Amount Due: ewtwtr

This is to advise you that our office represents ter ("erwyw") with respect to unpaid freight charges. erwyw, the Carrier, was not paid by ewrwyrw, the original bill-to party, for the ewtwtr of transportation services rendered, which are memorialized by the documents attached hereto and made a part hereof.

Based on the controlling legal precedent described on the reverse, since ewrwyrw did not pay the freight bill, erwyw must look to their contract, the bill of lading, to ascertain the next party responsible for payment. Per the applicable bill of lading, the Consignee, ewrwyrw, is responsible.

Please pay the ewtwtr of unpaid freight charges by rewreywr in any of the following methods:

1. Mail – draft a check payable to ter with file number ewrert on the memo line and mail the check to our office at the address below
2. Online* – pay with check or credit card with our processor: <https://www.afm-usa.com/payment>
3. Phone* – pay with check or credit card by contacting our office at **(847) 259-4700**.

*A convenience fee will be assessed for both check or credit card payments made online or by phone.

If we do not receive payment by rewreywr, then erwyw will consider taking further action to recover the amount due. Please note that all communications and payments must now be directed to our office. erwyw hopes for a prompt resolution of this matter.

Thank you,

reywyrw

reywyrw

ryewyrw reywry

P.O. Box 31579, Chicago, IL 60631

P: (847) 259-4700 | F: (847) 259-9434

rterttw

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose.

This transmittal may contain confidential information belonging to the sender which is legally privileged and/or exempt from disclosure. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents is strictly prohibited. If you received this transmittal in error, please call the sender immediately to arrange for the return of this letter.

Legal Precedent

The Canadian Bills of Lading Act, R.S.C. 1985, c. B-5, provides as follows: 2. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes on or by reason of the consignment or endorsement, has and is vested with all rights of action and is subject to all liabilities in respect of those goods as if the contract contained in the bill of lading had been made with himself ("s. 2 of the Bills of Lading Act").

In *Cassidy's Transfer & Storage Limited v. 1443736 Ontario Inc. o/a Canada One Sourcing and The Attorney General of Canada*, [2011] ONSC 2871 (Can. LII), the judge ruled there is a presumption created by s. 2 of the Bills of Lading Act that consignee is responsible for payment of freight charges. To avoid liability, consignee must rebut this presumption by providing the existence of further arrangement by carrier that shipper alone would be responsible for freight charges and the carrier had waived the protection of s. 2 of the Bills of Lading Act. The carrier's waiver in this regard may be express or implied, but may not be presumed from the silence of the parties nor, in and of itself, from the use of the phrase 'freight prepaid' on the bills of lading in question. Accordingly, consignee can rebut the presumption of liability but it will have to prove both existence of some arrangement by carrier whereby shipper alone would be responsible for the charges and the carrier had waived the protection of s. 2 of the Bills of Lading Act.

Further, the designation of a shipment moving as 'freight prepaid' is not intended to be a statement the freight has been paid in advance, nor does it disentitle a carrier from looking to a consignee for payment where the conditions in s. 2 of the Bills of Lading Act are met. Rather, it indicates some credit arrangement between the carrier and the shipper, with the carrier not intending to waive its right to look to the consignee for payment if the shipper defaults.

In *S.G.T. 2000 Inc. v. Molson Breweries of Canada*, 2007 Q.C.C.A. 1364 (Can. LII), the Court of Appeal ruled the "prepaid" reference was not enough by itself to deprive the carrier of the protection of s. 2 of the Bills of Lading Act. Rather, this only manifested the standard carrier intent to initially look to the shipper for freight payments, which would not, by itself, equate to a carrier choosing not to avail itself to this statutory 'fall back' provision of being able to look to the consignee for payment if necessary. The 'primary' and 'secondary' exposures co-exist. They are mutually exclusive and do not eliminate liability. s. 2 of the Bill of Lading Act does not contain a requirement that a carrier first exhaust its remedies against the shipper before it pursues avenues of recovery against a consignee. Where a consignee purchases goods from another party and instructs them to act as its "shipping agent" in engaging a carrier with the goods being delivered on a "collect" basis, the consignee then becomes liable for payment of freight charges.

Lastly, under Canadian law, where a debtor chooses to pay a third party instead of paying his creditor, he/she does so at his peril. A consignee cannot invoke a defense that the carrier assumed the risk such that it should be forced to bear the burden. The Bills of Lading Act does not have any 'saving' provision relating to case where it can be said that the shipper actually paid the money [to the intermediary] with the carrier not being paid.

Thus, according to Canadian Law, Consignee, erwwyrw, is responsible for the unpaid freight charges in this matter.