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## Movers liable for losing couple's possessions

*Ensure you have enough insurance for the move*

Why do people move from one house to another?

According to comedian George Carlin, a house is just "a place to keep your stuff while you go out and get more stuff." Sometimes, he says, "you gotta get a bigger house. Why? No room for your stuff any more."

But it was anything but funny when a Toronto couple hired Kennedy Moving Systems to move their stuff to a bigger house in north Toronto in February, 1999.

When Gayle called the movers to arrange the details, she explained that she wanted the goods kept in secure storage for about two weeks while she and her husband Stuart renovated their new home.

Greg Peterson, the mover's sales representative, contracted with Gayle for the goods to be stored in a trailer for two weeks, and Peterson assured her of the firm's security in order to preserve her confidence. The agreement was that Kennedy Moving Systems would safeguard the belongings by parking the trailer in a parking lot, lowering the landing gear and locking the trailer. There were no fences, no cameras and no monitoring.

At the time of the move, Gayle signed a contract that limited Kennedy's liability to 60 cents a pound, or a total of about \$7,000. On the recommendation of their own insurance broker, Gayle and her husband Stuart obtained their own insurance for \$170,200.

On the night of Feb. 10, 1999, Kennedy Moving Systems relocated the trailer from their lot in Mississauga to the adjacent public roadway so the lot could be snowplowed. That night, the trailer and all its contents were stolen. The trailer was later recovered, but it was empty.

Gayle and Stuart were devastated with the loss of all their possessions. Over the next three weeks, they prepared a detailed 65-page list of contents and articles of particular value. They included pieces of art, wedding photographs, antique furniture, needlepoints, carvings, records, CDs and books. The final replacement value was estimated at \$750,000.

Gail and Stuart recovered \$170,000 from their own insurers and sued the movers for their losses. Kennedy defended saying their liability was limited to 60 cents a pound according to the contract the couple signed before the move.

In December, 2001, Justice Susan Himel awarded them their damages in an amount to be determined by a court official known as a Master. She acknowledged that trailer storage was a term of the contract, but it was also agreed that Kennedy was to safeguard the couple's belongings by parking the trailer in a parking lot, removing the landing gear and locking the trailer. The plaintiffs, the judge ruled, relied on that when they entered into the agreement.

It was never intended, however, that the trailer would be parked on a public street and that no surveillance would be provided. The judge ruled that this amounted to a breach of contract in the circumstances, and it would be unreasonable to limit the mover's liability to \$7,000, or 60 cents a pound.

The case went to the Court of Appeal in December. In a 2 to 1 split decision, published last month by the Law Society, the appeal court essentially upheld the decision of the trial court. (Stuart and Gayle were denied their business losses resulting from lost-time itemizing and replacing their possessions.)

Writing for the majority, Justice Jean-Marc Labrosse noted that the plaintiffs' goods were highly valuable, both in monetary and sentimental terms, and they took special care to choose a moving company to provide the security they felt was essential. They were never advised that their goods would be stored unattended on a public street and never agreed to that.

The appeal court agreed that the trial judge was correct in striking out the 60-cent limitation clause in the contract, but in a strong dissenting opinion, Justice James J. Carthy argued in favour of limiting damages to \$7,000.

In the end, Gayle and Stuart were awarded their damages, interest and court costs.

If you're due for a move soon, make sure you have enough insurance. Read the contract with the movers. Take your jewellery, sentimental goods, computer and photos with you, or keep your eye on them at all times. And make a detailed list of your possessions before they're stolen or destroyed, not after.

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