

Correa v. [REDACTED] Moving
2004 NY Slip Op [REDACTED] (U)
Decided on July 1, 2004
Appellate Term, First Department
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 1, 2004

APPELLATE TERM OF THE SUPREME COURT, FIRST DEPARTMENT

PRESENT:

HON. WILLIAM P. McCOOE, J.P.

HON. WILLIAM J. DAVIS

HON. MARTIN SCHOENFELD, Justices.

570693/03

MARIA CORREA, Claimant-Respondent,

against

[REDACTED] MOVING, Defendant-Appellant.

Redacted to Protect Client's Privacy

Defendant appeals from a judgment of the Small Claims Part of the Civil Court, Bronx County, entered on or about January 13, 2003 after trial (Raul Cruz, J.) in favor of plaintiff and awarding her damages in the principal sum of \$3,000

PER CURIAM:

Judgment entered on or about January 13, 2003 (Raul Cruz, J.) modified by vacating the damage award and directing a new trial on the issue of damages only; as modified judgment affirmed without costs.

The trial court achieved "substantial justice" consistent with substantive law principles (*see* CCA 1804) in resolving the liability aspect of this small claims action in plaintiff's favor, since the evidence permits a finding that the defendant moving company negligently damaged or lost plaintiff's personal property during the underlying eviction process. The damage award is not sustainable, however, since plaintiff presented no competent proof of the value, at the time of the occurrence, of the property involved (*see Henderson v Holley*, 112 AD2d 190 [1985]). While most of the household items were not marketable and had no market value, it was nonetheless incumbent upon the plaintiff to demonstrate the value of the goods to [*2]her "based on her actual money loss" (*Lake v Dye*, 232 NY 209, 214 [1921]), as reflected by such factors as the original cost of the items, their age and condition at the time of conversion, and their replacement value (*see* 36 NY Jur 2d, Damages § 86), elements conspicuously absent from plaintiff's initial trial presentation. The ends of "substantial justice" (CCA 1807) will best be served by affording plaintiff a final opportunity to establish her claim (*cf. Roundtree v Singh*, 143 AD2d 995 [1988]).

This constitutes the decision and order of the court.