

Citation: *Gumovsky v. Bee Jay's Services Inc.*,  
2021 YKSM 1

Date: 20210128  
Docket: 19-S0060  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before Her Honour Judge Ruddy

VICTOR GUMOVSKY

Plaintiff

v.

BEE JAY'S SERVICES INC.

Defendant

Appearances:

Victor Gumovsky  
Jennifer Anderson

Appearing on his own behalf  
Appearing on behalf of the Defendant

**REASONS FOR JUDGMENT**

[1] Victor Gumovsky, the plaintiff, has filed a small claims action against the defendant, Bee Jay's Services Inc. ("Bee Jay's"), seeking damages for what he describes as "unfair business practice and illegal towing".

**Overview of Facts**

[2] Mr. Gumovsky is a taxi driver. On December 25, 2017, he had a fare to transport passengers from Watson Lake to Whitehorse. Unfortunately, Mr. Gumovsky was in a single vehicle accident in the Rancheria area approximately 120 km from Watson Lake when his vehicle left the highway because of ice on the road. The vehicle rolled once and landed on its wheels some distance off the highway. It was not impeding traffic on the highway in any way.

[3] Mr. Gumovsky says that he began to look for a tow company on December 27, 2017. Budget Towing, the company used by Whitehorse Taxi, was not available due to Christmas holidays. A second towing company quoted Mr. Gumovsky \$2,000, a sum well beyond his ability to pay.

[4] Mr. Gumovsky then decided to look at having the vehicle towed to the much closer community of Watson Lake. He planned to have it fixed in Watson Lake or sell it for parts. Bee Jay's is a towing company based in Watson Lake, owned and operated by Jennifer and Bryan Anderson. Mr. Gumovsky contacted Bee Jay's for a quote.

[5] It should be noted that there is significant disagreement between the parties regarding their dealings. Indeed, the issue of whether or not there was a contractual agreement between Mr. Gumovsky and Bee Jay's for Bee Jay's to tow Mr. Gumovsky's vehicle to Watson Lake is the main point of contention in this case.

[6] It is not disputed that Bee Jay's did, in fact, tow Mr. Gumovsky's vehicle sometime in January 2018. There was no further communication between Mr. Gumovsky and Bee Jay's after January 2018. Mr. Gumovsky made no effort to retrieve his vehicle.

[7] Eight months later, on September 17, 2018, Bee Jay's reported the vehicle as abandoned to Motor Vehicles pursuant to s. 110(4) of the *Motor Vehicle Act*, RSY 2002, c. 153 (the "*Act*"). Robb Andison of Motor Vehicles sent a letter to Mr. Gumovsky dated October 15, 2018, advising that he had 30 days to retrieve the vehicle. As the letter referenced impoundment, Mr. Gumovsky believed it to be null and void.

[8] Mr. Gumovsky says he spoke to Mr. Andison about his vehicle being towed without his consent, but was ignored.

[9] Sixty-four days after reporting the vehicle as abandoned, Bee Jay's received direction from Motor Vehicles to dispose of the vehicle and invoice the department. The battery and tires were removed and fluids drained as required and the vehicle was donated to the Watson Lake Fire Department to use for training purposes.

[10] Mr. Gumovsky received an invoice from Motor Vehicles for the vehicle disposal. Mr. Gumovsky has not paid the invoice.

[11] At some point, Mr. Gumovsky also asked Mr. Andison for further documentation. In his evidence, Mr. Gumovsky suggested it took five months to receive a response. Mr. Andison's reply is dated February 12, 2019, approximately four months after the original notice letter sent to Mr. Gumovsky. Enclosed with Mr. Andison's letter was the Short Term Impoundment/Abandoned Motor Vehicle Form (the "Abandoned Vehicle Form") completed by Bee Jay's to report the vehicle as abandoned.

[12] Ten months later, on December 9, 2019, Mr. Gumovsky filed his Statement of Claim (the "Claim") seeking damages for the invoice received from Motor Vehicles on the basis Bee Jay's towed his vehicle without his consent and therefore should be responsible for any expenses. He seeks an additional \$1,000 which he believes to be the value of his vehicle had he been able to sell it for parts. His total claim is for \$1,978.38.

## **Issues**

[13] As plaintiff, Mr. Gumovsky bears the burden of proving his Claim. The standard of proof is on a balance of probabilities. Mr. Gumovsky's Claim raises several issues to be addressed in determining whether he has met this burden:

1. Did Bee Jay's tow Mr. Gumovsky's vehicle without his agreement or consent?
2. Was the vehicle disposal in compliance with the requirements of the *Act*?
3. If the Court finds in Mr. Gumovsky's favour, what are the appropriate damages? and
4. If Mr. Gumovsky is entitled to monetary damages, was he required to mitigate his damages, and, if so, did he fail to mitigate?

## **The Vehicle Tow**

[14] As noted, the parties provide very different versions of what happened between them regarding the vehicle tow.

[15] Mr. Gumovsky says that he spoke to Bryan Anderson and was quoted a fee of \$200 for the tow. Mr. Gumovsky was agreeable to that amount. Mr. Gumovsky contacted Bee Jay's again on December 28, 2017, to ask them to hold off on the tow as he had rented a vehicle and planned to drive to the accident site to retrieve his personal belongings from the taxi. Mr. Gumovsky says he spoke to Jennifer Anderson and asked

to confirm the amount for the tow service. He says she told him it would be \$200 per hour at four hours for a total of \$800. Mr. Gumovsky told her this was not affordable and asked her not to tow his taxi to Watson Lake. It is Mr. Gumovsky's belief that any contractual agreement was cancelled during this conversation.

[16] Mr. Gumovsky says that Jennifer Anderson called him two more times, but that he does not remember the conversations, as he believed the calls were unreasonable as the verbal contract had already been cancelled.

[17] On January 24, 2018, Mr. Gumovsky arranged for Budget Towing to tow the vehicle to Whitehorse. He says he contacted Bryan Anderson who assured him that the vehicle was still in place. Mr. Gumovsky paid \$750 to Joe Suska of Budget Towing. Mr. Suska returned the money to him later that same day advising him that he had spoken to Mr. Anderson who told him Bee Jay's had already towed the vehicle. Mr. Gumovsky believes this means Bee Jay's towed the vehicle that same day after being advised that Budget Towing would be retrieving the vehicle.

[18] Bee Jay's offers a very different version of events. Ms. Anderson says that her husband, Bryan, took a call from Mr. Gumovsky over Christmas regarding a tow. Mr. Anderson quoted a price of \$200 per hour. She agrees that Mr. Gumovsky called a second time and spoke to Bryan asking him to hold off on the tow to allow him to remove his personal belongings.

[19] Ms. Anderson says that she called Mr. Gumovsky on January 2, 2018, to see if he still required the tow and if he had removed his belongings. She left a message.

She received a call back confirming that the belongings were removed and to go ahead with the tow. The vehicle was towed the following day, January 3, 2018.

[20] Ms. Anderson says that she called Mr. Gumovsky on January 12, 2018 about payment for the tow. Mr. Gumovsky disagreed with the cost of the tow and claimed that there was a misunderstanding. After some debate, Ms. Anderson offered to settle for half of the quoted amount. She also told Mr. Gumovsky that he would need to pick up the vehicle or there would be additional charges for disposal. Mr. Gumovsky did not agree on the amount to be charged but said he would call back.

[21] Ms. Anderson says that Joe Suska of Budget Towing contacted Bee Jay's and spoke to Bryan Anderson to tell him that he had been hired to retrieve Mr. Gumovsky's vehicle. Mr. Anderson advised Mr. Suska that there were outstanding charges that would need to be settled.

[22] Ms. Anderson says that she never heard back from Mr. Gumovsky. As no agreement had been reached on amount for the tow, she opted not to charge Mr. Gumovsky's credit card.

[23] It is for the Court now to determine which of these two versions is to be believed. As noted, the standard of proof in a civil matter is on a balance of probabilities, meaning the Court is assessing which of the two versions is more likely true than not, and should, therefore be preferred over the other.

[24] Mr. Gumovsky's version of events is central to his Claim. Indeed, in his written materials he references repeatedly that Bee Jay's towing his vehicle without his consent

is “the crucial moment in this story”. It is Mr. Gumovsky’s firm belief that Bee Jay’s acted dishonestly by deliberately towing his vehicle against his express instructions to, in his words, double their profit, and it is this belief that underlies the majority of the arguments he makes in support of his Claim.

[25] However, in my view, the evidence simply does not support Mr. Gumovsky’s belief. Firstly, the assertion that Bee Jay’s essentially stole Mr. Gumovsky’s vehicle to double their profit makes absolutely no sense when the evidence clearly establishes that Bee Jay’s actually suffered a loss on this transaction.

[26] The Yukon Government invoice, dated June 6, 2019, sent to Mr. Gumovsky is for \$973 plus various service charges for a total of \$981.63. Bee Jay’s invoice to Motor Vehicles, in the amount of \$973, breaks down the services for which Mr. Gumovsky has, ultimately, been billed. The charges include the tow required to transport the vehicle for disposal, labour for preparing the vehicle for disposal including draining fluids and removing tires, and storage fees for 64 days. According to Jennifer Anderson, the 64 days covers the period between reporting the vehicle as abandoned on September 17, 2018, and the date of disposal.

[27] What is interesting about Bee Jay’s invoice is what is not included. There is no charge for the original tow, nor is there a charge for the more than eight months Bee Jay’s stored the vehicle before reporting it as abandoned. The evidence indicates Bee Jay’s would have charged roughly \$800 for the original tow. The additional storage time of 257 days at \$7 per day would amount to \$1,799. Hence, Bee Jay’s could have charged the \$973 plus \$800 plus \$1,799 for a total of \$3,572. They chose not to bill for

the full amount, to Motor Vehicles and/or Mr. Gumovsky, and they have made no effort to pursue Mr. Gumovsky for any payment, even though they had Mr. Gumovsky's credit card information.

[28] If Bee Jay's did indeed have the nefarious motive Mr. Gumovsky would have me believe, it makes absolutely no sense that, having gone to such lengths, they would be content to recover just over one quarter of what they could have legitimately billed.

[29] The second reason I find the defendant's version of events more believable is that it is supported by documentary evidence. Ms. Anderson was able to provide a copy of Bee Jay's Northwestel phone bill confirming calls to Mr. Gumovsky on January 2 and January 12, 2018. Mr. Gumovsky did not deny that the calls, numbers 16 and 49 on the phone bill, were to his phone number. Furthermore, Mr. Gumovsky provided the Court with a cell phone service agreement to show that he had changed his cell phone to a new number on February 10, 2018. The same cell phone number that is seen in the defendant's Northwestel bill is handwritten on the top of the service agreement for Mr. Gumovsky. This is sufficient to confirm for me, on a balance of probabilities, that that the handwritten number was Mr. Gumovsky's previous cell phone number.

[30] In addition, Ms. Anderson has provided handwritten notes excerpted from her daily record book regarding the calls on January 2, 2018. Her notes confirm her evidence, and read as follows:

- Called Viktor 335-2273, to be towed tomorrow.
- Viktor has removed belongings. Go ahead and tow.



[31] Lastly, Ms. Anderson has provided the January Contractor Time Sheet for the driver who towed the vehicle. The time sheet confirms that a taxi was towed on January 3, 2018.

[32] The consistent documentation provided by the defendant is very persuasive in confirming Ms. Anderson's recollection of events.

[33] Conversely, in reviewing the evidence, I find that I have some concerns about the reliability of Mr. Gumovsky's recollection, as there are discrepancies between some of his evidence and materials provided to the Court. One example, relates to the already referenced records of the defendant confirming calls to Mr. Gumovsky on January 2 and January 12, 2018. Mr. Gumovsky's initial Claim indicates that the last call with Ms. Anderson was on December 28, 2017, when he cancelled the tow contract. It was only after Ms. Anderson filed her amended Reply with the phone records that Mr. Gumovsky says he now recalls two other calls in January 2018, but says that he does not remember the substance of the calls, which he called "unreasonable" as he had already cancelled the contract.

[34] His lack of memory of these two phone calls in and of itself raises some questions about the extent of his recollection, but more importantly, if the contract had been clearly repudiated as Mr. Gumovsky suggests, there would be absolutely no need for the two further calls in January.

[35] Similarly, Mr. Gumovsky's initial Claim referenced him contracting Budget Towing to collect his vehicle at the end of February 2018. The Budget Towing invoice, dated

January 24, 2018, and Mr. Gumovsky's evidence at trial indicate that he was mistaken about the date when preparing his Claim.

[36] Mr. Gumovsky's evidence that he received the invoice from Motor Vehicles in January 2019, is likewise in error. The invoice is dated June 30, 2019.

[37] Next, Mr. Gumovsky indicates that he requested supporting documents from Mr. Andison following the letter of October 15, 2018, but that he did not get a reply for five months, a delay, which he says prevented him from taking measures to prove his innocence and protecting his property before it was disposed of. Mr. Gumovsky's belief that this "delay" was deliberate is a contributing factor to his belief that Motor Vehicles was actively assisting Bee Jay's in depriving him of his vehicle and profiting from this deprivation.

[38] The evidence does indicate that Mr. Gumovsky received a reply to his request for information from Mr. Andison on February 12, 2019; however, that letter indicates that it is in reply to a letter from Mr. Gumovsky dated January 30. This indicates that Mr. Gumovsky did not, in fact, make a request for further information until well after the disposal of the vehicle, and that Mr. Andison replied to that request in a timely fashion.

[39] While it is not unusual for witnesses to have issues with timing, in this case, Mr. Gumovsky's erroneous recollection about the timing of some of the events has distorted his perception of those events. This, in turn, causes me concern about the reliability of his evidence.

[40] In the result, where the evidence of the parties conflicts, I prefer the evidence of the defendant over that of the plaintiff. Accordingly, I am satisfied, on a balance of probabilities, that Bee Jay's towed the vehicle at Mr. Gumovsky's request and with his full knowledge and consent.

### **The Vehicle Disposal**

[41] Mr. Gumovsky takes issue with the process which led to the disposal of his vehicle. Part of his argument is premised on his belief that the defendant illegally towed his vehicle, a contention that I have expressly rejected; however, that finding does not definitively address his argument with respect to the legitimacy of the process leading to the disposal of his vehicle.

[42] The relevant facts are that Bee Jay's completed the Abandoned Vehicle Form as required to make their application to the Registrar of Motor Vehicles ("Registrar") to deal with Mr. Gumovsky's vehicle as abandoned under s. 110(4) of the *Act* which reads:

110(4) If a vehicle stored pursuant to this section

- (a) Is not registered in the Yukon; or
- (b) Is not, within 30 days of its removal, claimed by the registered owner or someone on the registered owner's behalf in return for full payment of the removal and storage costs actually paid,

the vehicle may, on the approval of the registrar, be disposed of by public auction or otherwise as the registrar shall direct, after the registrar has made all reasonable efforts to determine the wishes or intentions of the registered owner as to the disposition of the vehicle.

[43] Mr. Gumovsky argues that the process leading to the disposal of his vehicle was null and void as it was not in compliance with the *Act*. His argument is two-fold: he

committed no offence justifying impoundment of his vehicle and the Abandoned Vehicle Form completed by Bee Jay's is not a form authorized by law and contains false information.

[44] The first of Mr. Gumovsky's arguments stems from the wording of the letter from Mr. Andison of Motor Vehicles dated October 15, 2018. The "Re" line of the letter references an "Abandoned Vehicle"; however, the first paragraph of the letter states:

Our records indicate that vehicle in reference has been impounded under sections 113 of *The Motor Vehicle Act* at BeeJay's Towing in Watson Lake, Yukon. (emphasis added)

[45] Section 113 of the *Act* allows a peace officer to impound a vehicle where the officer has reasonable grounds to believe that an offence, enumerated in s. 112, has been committed. Mr. Gumovsky went on to say that he believed the letter to be null and void as s. 113 did not apply.

[46] Mr. Gumovsky is quite right; there is absolutely no evidence that Mr. Gumovsky committed an offence enumerated in s. 112 leading to an impoundment under s. 113. However, there is also no indication that Bee Jay's ever suggested to Motor Vehicles that s. 113 applied to Mr. Gumovsky's vehicle.

[47] The reference to s. 113 in Mr. Andison's letter is clearly an error, an error that understandably caused confusion for Mr. Gumovsky and no doubt offended him in suggesting that he had committed an offence when he had not. However, the error in the letter is Mr. Andison's not Bee Jay's. I fail to see how the defendant can be held liable for an error made by someone else.

[48] Mr. Gumovsky's next argument is that the Abandoned Vehicle Form is not authorized by law, as it has not been approved by the Commissioner or Administrator of Yukon, unlike the prescribed Notice of Impoundment Form. He argues Bee Jay's used the Abandoned Vehicle Form as a way of getting money from Motor Vehicles by using it to transfer the status of his vehicle from towed by mistake to impounded/abandoned. Finally, he argues that the information contained in the Abandoned Vehicle Form was false.

[49] Mr. Gumovsky is quite right that the Abandoned Vehicle Form is not a form that has been approved by the Commissioner or Administrator of Yukon. However, there is no requirement in the *Act* that it be so approved, as it is not a prescribed form. While a statute may prescribe particular forms to be used in particular circumstances, failure to do so in other circumstances governed by the statute does not preclude the development of forms for administrative purposes to facilitate any business governed by the statute. Indeed, comparatively few forms used by government departments or other entities are prescribed forms. Most of the forms we deal with in our daily lives are administrative rather than legally prescribed. This does not mean that such forms are "void from a legal point of view" for failure to comply with the *Act* as suggested by Mr. Gumovsky. Furthermore, the contents of the Abandoned Vehicle Form are by and large consistent with the provisions of the *Act* to which it applies. Accordingly, there is nothing suggesting that administrative use of the form is illegal or inappropriate.

[50] Likewise, I see no merit to the argument that Bee Jay's has somehow used the Abandoned Vehicle Form to alter the status of his vehicle to an impounded vehicle as a

means of doing something that the *Act* would not otherwise allow them to do. It is just an administrative form; it simply does not have that power.

[51] With respect to the contents of the Abandoned Vehicle Form and the validity of the information contained therein, most of the concerns Mr. Gumovsky raises relate to how the form itself is written rather than false information that Bee Jay's has put into the form. For example, the form references "Location of offence" and "Date of offence". Clearly neither apply here as there was no offence. However, Bee Jay's has simply made their application in the form provided by Motor Vehicles. The fact that the drafters presupposed that every case would involve an offence is certainly not Bee Jay's fault.

[52] The real question is whether Bee Jay's put false information in the Abandoned Vehicle Form which would have misled the Registrar as to the circumstances upon which the Registrar would base their decision under s. 110(4).

[53] The only item in the Abandoned Vehicle Form completed by Bee Jay's that is somewhat questionable, in my view, is the fact the defendant chose to tick s. 109 as the applicable section. I suspect they viewed it as the closest to the circumstances as s. 113 clearly did not apply. However, as Mr. Gumovsky's vehicle was not removed at the direction of a peace officer because it was on or obstructing private property, s. 109 is not applicable in the circumstances either. That being said, under "Other", Bee Jay's provided a clearer explanation of the particular circumstances as follows: "Originally towed by Bee Jay's Towing from ditch in winter & owner never picked up vehicle". I am satisfied that this is an accurate description of the circumstances, and even though s.

109 is not applicable, I am satisfied that the Registrar would not have been misled as to the circumstances.

[54] It must be remembered, however, that the issue is not how well or how poorly the administrative form is drafted, or how accurately it might have been filled out, but rather, whether the *Act* authorized Bee Jay's to apply to the Registrar to deal with Mr. Gumovsky's vehicle as abandoned. In my view, it does.

[55] Section 204 of the *Act*, the section I believe Bee Jay's should have ticked on the Abandoned Vehicle Form, reads as follows:

205(1) No person shall abandon a vehicle on the highway.

(2) No person shall abandon a vehicle on public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(3) A vehicle left standing, at a location referred to in subsection (1) or (2), for more than 72 consecutive hours shall be deemed to have been abandoned at that location for the purposes of section 110 of this Act.

[56] I am satisfied that s. 205(2) applies in this case. Mr. Gumovsky knew that Bee Jay's had towed his vehicle on January 3, 2018, yet he took absolutely no steps to recover his vehicle, nor did he seek Bee Jay's consent to leave the vehicle on their property. Such consent is not in any way implied on the facts of this case. The evidence is clear, both factually and legally, that Mr. Gumovsky abandoned his vehicle, and, by operation of s. 205 and s. 110, Bee Jay's was entitled to seek direction from the Registrar with respect to disposal of the vehicle. The Registrar made the decision with respect to disposal of the vehicle based on sufficiently clear information about the circumstances, and Bee Jay's did no more than follow the direction of the Registrar.

[57] If Mr. Gumovsky disagrees with the decision made by the Registrar and the direction the Registrar gave to Bee Jay's regarding disposal, he could have, and perhaps should have, explored his potential remedies in relation to challenging the Registrar's decision. Such a challenge, however, is beyond the scope of the Claim.

[58] At the end of the day, the evidence simply does not satisfy me that Bee Jay's is in any way liable to Mr. Gumovsky for either the disposal costs or any lost value in his vehicle. I conclude that Mr. Gumovsky has failed to meet his onus in proving his Claim, and his Claim is hereby dismissed. Having so decided, the remaining two issues with respect to damages and mitigation need not be addressed in this decision.

[59] That being said, however, I did want to say a word about mitigation. Mitigation is the legal obligation on a plaintiff to take all reasonable steps to minimize their losses. A plaintiff is not entitled to simply sit back and allow their losses to accumulate. Failure to mitigate may result in the Court limiting damages to the amount a plaintiff would have suffered if they had acted reasonably and no more.

[60] In this case, Mr. Gumovsky had been advised by Bee Jay's that there would be additional costs for storage and disposal if he did not retrieve his vehicle.

Mr. Gumovsky was advised in Mr. Andison's letter of October 15, 2018, that failure to retrieve his vehicle would "result in forfeiture of the vehicle and possible sanctions". Mr. Gumovsky took absolutely no steps to retrieve his vehicle. When asked why he had not, he replied that he did not know what steps to take. It should be noted that Mr. Gumovsky, notwithstanding a language barrier, managed to do significant research and craft complex and articulate arguments in preparation for this trial. I am satisfied that he



was similarly capable of taking steps to explore his options for retrieving his vehicle had he ever had any intention of doing so. He did not.

[61] I am satisfied that Mr. Gumovsky, in choosing to do nothing, failed to take reasonable steps to minimize his losses. Accordingly, had I found in his favour with respect to liability, I would nonetheless have found that he was not entitled to damages as a result of his failure to mitigate.

[62] As the successful party, the defendant is entitled to recover their costs, including filing and service fees, from the plaintiff in an amount to be assessed by the Clerk of the Small Claims Court.

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RUDDY T.C.J.