

Citation: *Antonic v. Robitaille*, 2023 YKSM 8

Date: 20231106
Docket: 22-S0071
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Phelps

JELENA ANTONIC

Plaintiff

v.

RENE ROBITAILLE

Defendant

Appearances:
Jelena Antonic
Rene Robitaille

Appearing on her own behalf
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] The Plaintiff, Jelena Antonic, is the executor of her late father's estate. She brought this action against Rene Robitaille, the Defendant, based on the tort of conversion in relation to an estate asset, being a 2003 GMC Sierra pickup truck (the "Truck"). Ms. Antonic's father, Milorad Antonic, passed on June 23, 2015.

[2] Mr. Robitaille's defence to the claim is that he purchased the Truck lawfully from the owner.

[3] Ms. Antonic testified on behalf of the Plaintiff. Mr. Robitaille testified in his defence, as did his friend, Eric Plourd, and his wife, Rebecca Hansen.

Evidence of Ms. Antonic

[4] As the executor of her father's estate, Ms. Antonic located registration documents for the Truck in her father's possessions. She took the registration documents to the Government of Yukon Motor Vehicles Branch ("MVB") but they could not provide her any information with respect to the vehicle, citing confidentiality concerns. She made some further efforts to locate the Truck but was not able to do so. Her concern at the time was that the estate would be liable for the Truck should it be involved in an accident.

[5] It was not until February 2022 that Ms. Antonic was contacted by Mr. Robitaille regarding the Truck. She learned that Mr. Robitaille was in possession of the Truck but that the bill of sale had been destroyed. He was asking Ms. Antonic to sign a bill of sale so that he could register the Truck in his name with the MVB.

[6] After the initial contact, and still in February 2022, Mr. Robitaille approached Ms. Antonic's brother and provided him with the paperwork required for the transfer of the Truck. The intention was for Ms. Antonic's brother to deliver the paperwork to her for signature.

[7] When Ms. Antonic asked for more details from Mr. Robitaille in March 2022, he advised her, through text messaging, that he purchased the Truck from her father for \$2,500 in 2020. This response shocked Ms. Antonic given that her father had passed in 2015. She then asked for proof that the Truck was purchased legitimately by Mr. Robitaille.

[8] The communications between Mr. Robitaille and Ms. Antonic ceased in April 2022 as a result of the unfortunate passing of Ms. Antonic's brother. This understandably took her attention away from dealing with the Truck. In August 2022, Ms. Antonic sent a message to Mr. Robitaille advising that if the circumstances regarding the Truck could not be resolved amicably, she would be taking legal steps.

[9] Mr. Robitaille responded by text message stating that contrary to his prior claims, he had actually purchased the Truck in 2016 from someone other than her father.

[10] In December 2022, Ms. Antonic learned that Mr. Robitaille, given the difficulty he had registering the Truck, sold it for parts.

Evidence of Mr. Robitaille

[11] Mr. Robitaille operates a business, Tire Guy, at a location in the Porter Creek industrial area of Whitehorse, Yukon.

[12] Mr. Robitaille testified that he purchased the Truck having learned through a friend that it was for sale after being in a serious accident. He was interested in purchasing a truck to participate in the local mud bog races and intended to fix it up for that purpose. He advised that he paid \$2,500 for the Truck which was located just outside the City of Whitehorse.

[13] Mr. Robitaille attended at the location of the Truck with his friend, Eric Plourd, who assisted him with writing a bill of sale. After executing the bill of sale, he transported the Truck to the Mendenhall subdivision and parked it. The plan to fix up the

Truck to participate in the mud bog races never happened. It was not until 2019 when he made efforts to retrieve and repair the Truck.

[14] When Mr. Robitaille parked the Truck in the Mendenhall subdivision, he left the paperwork in the glove box. By the time he retrieved the Truck in 2019, the bill of sale was destroyed, likely by rodents which could access the cab of the Truck through the missing side windows. He located an old registration document in the visor, learning that it had been owned by Ms. Antonic's father. He spoke with Ms. Antonic's brother, who had attended at his shop in Porter Creek, and they agreed to have the registration put into Mr. Robitaille's name in the circumstances.

[15] According to Mr. Robitaille, the MVB was guiding him with respect to how he could go about getting the registration for the Truck in his name. He testified that the officials at the MVB suggested that any date would be satisfactory for that purpose. This is where the purchase date in the year 2020 came from.

[16] Mr. Robitaille did not know the person he purchased the Truck from prior to the date of the purchase. Without the bill of sale, he is unable to determine the individual's identification. He did attempt to locate the individual by going back to the residence where he purchased the Truck but learned that the individual had left the Yukon.

[17] When he purchased the Truck, Mr. Robitaille understood that the seller was driving the Truck illegally without registration in his name when he was in the accident.

[18] Mr. Robitaille confirmed that when he purchased the Truck, he received the transferred registration document from Ms. Antonic's father to the individual selling the

Truck, along with a handwritten bill of sale from the seller to himself. Given that the Truck was parked at the Mendenhall subdivision and not repaired, he never tried to register it after the purchase.

[19] A picture of the Truck showing significant damage to the cab, due to the accident, was entered into evidence at trial. According to Mr. Robitaille, the picture accurately depicts the Truck condition when he purchased it.

[20] Mr. Robitaille admits to getting frustrated with the inability to register the vehicle which led him to selling the vehicle to a miner in Dawson City. He was unable to provide details as to who he sold the Truck to but did acknowledge that he sold it for \$3,500.

Evidence of Eric Plourd

[21] Mr. Plourd testified that he attended with Mr. Robitaille to pick up the Truck and that he wrote the bill of sale. He received the registration document transferring the Truck from Ms. Antonic's father to the individual selling the Truck, and from that document he wrote a bill of sale between the seller and Mr. Robitaille. The transaction was approximately seven years ago, and he does not recall the name of the seller. He confirmed that the purchase price for the Truck was \$2,500.

[22] Mr. Plourd confirmed that the Truck had significant damage due to being in a rollover accident.

[23] According to Mr. Plourd, the seller had the motor vehicle registration document indicating that the Truck had been signed over to him by Ms. Antonic's father. That is, showing that the seller was the owner of the Truck.

Evidence of Rebecca Hansen

[24] Ms. Hansen testified that she learned that her husband was looking for Ms. Antonic's father as he had the name from the documents located in the Truck. Ms. Hansen recognized the name as she had worked with Ms. Antonic for approximately 10 years and was aware that her father was deceased. It was Ms. Hansen that sent the message to Ms. Antonic regarding the purchase of the Truck from her father. She advised that she made a mistake as she mixed up the date on the bill of sale with the date of the purchase.

[25] Ms. Hansen was writing the text on behalf of Mr. Robitaille because Mr. Robitaille has limited literacy.

[26] Ms. Hansen advises that her husband buys and sells things regularly. The reason that he was trying to register the Truck was due to their son's truck breaking down on his drive home from Ontario to the Yukon. The intention was to fix up the Truck for their son.

Law on the Tort of Conversion

[27] In this case, the onus is on Ms. Antonic to prove liability and damages, and the standard of proof is the balance of probabilities (*Snell v. Farrell*, [1990] 2 S.C.R. 311).

[28] The Ontario Superior Court of Justice addressed the tort of conversion in *Alphera Financial Services Canada, a Division of BMW Canada Inc. v. Mirzai*, 2018 ONSC 180, at paras. 17 to 21:

17 The tort of conversion involves the *wrongful* interference with the goods of another, such as taking, using or destroying those goods in a manner *inconsistent* with the owner's right of possession: *DaimlerChrysler Canada Inc. v. Associated Bailiffs & Co. Ltd.*, 2005 CanLII 24234 (ON SC).

18 The crux of the tort of conversion is the defendant committing a wrongful act with respect to the property. Evidence must show or permit an inference to be drawn that the defendant acted in such a way as to deny the Plaintiffs title or possessory right. (*Simpson v. Gowers* (1981), 1981 CanLII 1884 (ON CA), 32 OR (2d) 385 (C.A.) at 387, per MacKinnon A.C.J.O.).

19 The tort is one of strict liability, and accordingly, it is no defence that the *wrongful act* was committed in all innocence. The defendant cannot claim contributory negligence or some fault on the part of the plaintiff: *Boma Manufacturing Ltd. V. Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at para. 31. Diplock L.J. asserted this principle in *Marfani & Co. v. Midland Bank, Ltd.*, [1968] 2 All E.R. 573, at pp. 577-78:

...the moral concept of fault in the sense of either knowledge by the doer of an act that is likely to cause injury, loss or damage to another, or lack of reasonable care to avoid causing injury, loss or damage to another, plays no part.

20 In *Westboro Flooring and Decor Inc. v. Bank of Nova Scotia*, 2004 CanLII 59980 (ON CA), [2004] O.J. No. 2464, the Court of Appeal confirmed that all that is required re intent is the defendant acts in a manner that is inconsistent with the owner's title or possessory right, and any blameworthy conduct beyond that is not essential (at para. 14 - 16, per Simmons, J.A.). The philosophy behind strict liability is that a defendant cannot use or convey anything which is no title to use or convey.

21 There are four essential elements for the tort of conversion.

- i. The defendant commits a *wrongful act*;
- ii. Involving the Plaintiff's chattel;
- iii. By handling or disposing of the chattel;
- iv. With the intention of denying or negating the Plaintiff's title or other possessory interest.

[29] The “wrongful act” required in the tort of conversion was addressed in detail in

AVS Transport Inc. v. Van Ravenswaay, 2016 ONSC 3568, at paras. 18 to 21:

18 The crux of the tort of conversion is the Defendant committing a wrongful act with respect to the property. Evidence must show or permit an inference to be drawn that the Defendant acted in such a way as to deny the Plaintiffs title or possessory right. ...

19 The "intent" to deny the Plaintiff's title or possessory interest has been given broad meaning. The most compelling at evidence by which a Defendant may deny Plaintiff's title or possessory right is by selling it without having any personal right to do so...

20 Any time someone receives or disposes of a chattel without satisfying himself of its title, they acquire or dispose of the chattel at his/her own risk...

21 Some cases have held that intent must be proved and if the defendant had no intention of depriving plaintiff of the benefit of the property or if no such inference can be drawn from the evidence, no conversion occurs... . Fridman points out that in one case it has been held that the absence of fraud on the part of the defendant might excuse him...

[30] The question to be decided is whether or not Ms. Antonic has established on a balance of probabilities that Mr. Robitaille intended to deny her, on behalf of the estate of her father, the Truck.

Credibility and Reliability of Witnesses

[31] The British Columbia Supreme Court addressed the assessment of witness credibility and reliability in the decision of *R. v. Dionne*, 2022 BCSC 959, at paras. 37 to 39:

37 Reliability has to do with the accuracy of a witness's evidence, such as whether they have a good memory, if they are able to recount the details of the event, and whether the witness is an accurate historian: *R. v. Nyznik*, 2017 ONSC 4392 at para. 15.

38 Credibility relates to the witness's veracity. A witness who is not telling the truth is not providing reliable evidence. However, the reverse is not the case. Sometimes, an honest witness will be trying their best to tell the truth and will believe the truth of what they are relating, but nevertheless

be proven to be mistaken in their recollection. Although honest, their evidence is not reliable: *Nyznik* at para. 15.

39 Determining the credibility of a witness requires the court to consider a number of factors. These include the internal and external consistency of the witness's evidence, motive to fabricate, the inherent plausibility of the evidence in the context of the case as a whole, and demeanour: *R. v. Swain*, 2019 BCSC 1300 at para. 48.

[32] I found the evidence of Ms. Antonic to be both credible and reliable. She backed up the evidence that she was providing with copies of written communications, either by e-mail or text message, exchanged with Mr. Robitaille. I accept her account of the events and the communications with Mr. Robitaille.

[33] Mr. Robitaille presented as a credible witness, but there were concerns with his reliability. He had little to offer by way of documents regarding the transaction with the Truck, accurate dates of the events, or names of individuals involved. This is not just with respect to the passage of time, as he could not provide the name of the miner from Dawson City who he ultimately sold the Truck to after having the conversations with Ms. Antonic. I have significant concerns with relying on the evidence of Mr. Robitaille where it is not corroborated by other evidence.

[34] Mr. Plourd testified in a straightforward and honest manner. He did not exaggerate or present in a manner that was other than matter of fact. When asked clarifying questions in cross examination, he was able to do so. I accept the evidence of Mr. Plourd.

[35] Ms. Hansen also testified in a straightforward and honest manner. She explained her previous work relationship with Ms. Antonic and her knowledge that Ms. Antonic's

father was deceased. She also explained her role in sending the text message to Ms. Antonic referencing the purchase of the Truck from her father. She acknowledged that she misunderstood the intent of the message and the mistake was hers regarding the date of purchase. I accept the evidence of Ms. Hansen.

Application of the Law to the Facts

[36] Ms. Antonic is the executor of her father's estate and was doing her due diligence in relation to the vehicle registration for the Truck which she located after his death. Unfortunately, the MVB was unable to assist her in determining the ownership or location of the Truck at the time.

[37] When contacted by Mr. Robitaille, Ms. Antonic again was doing her due diligence by seeking clarification regarding the ownership of the Truck. It is not surprising that she was concerned when told by Mr. Robitaille that the Truck was purchased from her father several years after he had passed away. It appears that, flowing from this concerning communication, the parties were not able to discuss the sequence of events in a manner that would allow them to resolve the ownership issues.

[38] The onus is on Ms. Antonic to satisfy the Court that Mr. Robitaille committed an unlawful act that deprived Ms. Antonic, or the estate of her father, ownership over the Truck. Her evidence clearly establishes that Mr. Robitaille was in possession of the Truck. However, his possession of the Truck does not establish an unlawful act in and of itself.

[39] It was Mr. Robitaille that contacted Ms. Antonic, as well as her brother, in order to address the registration of the Truck. His explanation for the original purchase of the Truck to use in the local mud bog races explains why he never attempted to have the Truck registered. He provided a picture of the Truck which was accepted into evidence showing that the Truck had been in a serious accident and had significant damage at the time of purchase. The fact the Truck was damaged when purchased was supported by the evidence of Mr. Plourd who was present and assisted Mr. Robitaille during the purchase of the Truck.

[40] The message to Ms. Antonic regarding the date of purchase and that the purchase was from her father, was explained by the evidence of Ms. Hanson as being a mistake on her part. This communication, which is not in dispute, does not establish a wrongful act on the part of Mr. Robitaille. I accept that Mr. Robitaille was in lawful possession of the Truck from its purchase in 2016 until he sold it prior to this matter proceeding to trial.

[41] The manner of communication by Mr. Robitaille to Ms. Antonic in this matter was quite unfortunate. It led to confusion between the parties and ultimately to the matter proceeding through Court. However, the tort of conversion has not been established and Ms. Antonic's claim is dismissed.

PHELPS T.C.J.