

Citation: *Hara v. Fountain Tire (Whitehorse) Ltd.*,
2024 YKSM 7

Date: 20241209
Docket: 24-S0070
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Cairns

KOTOMI HARA

Plaintiff

v.

FOUNTAIN TIRE (WHITEHORSE) LTD.

Defendant

Appearances:
Kotomi Hara
Raymond Bergsma

Appearing on her own behalf
Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

[1] Kotomi Hara has brought a small claims action against Fountain Tire (Whitehorse) Ltd. ("Fountain Tire"). Ms. Hara claims that Fountain Tire was negligent when it changed over her winter tires for summer tires on April 2, 2024. This negligence, she alleges, resulted in a single-car accident that occurred when the rear passenger-side wheel fell off her car while she was commuting to work on April 3, 2024. The accident left her car beyond repair and caused her both physical and emotional injuries. Ms. Hara's claim is for \$20,000 from Fountain Tire.

[2] The trial proceeded on November 7, 2024. Ms. Hara testified through a Japanese interpreter. Fountain Tire was represented by Raymond Bergsma.

[3] The issue before me is whether Ms. Hara has established on the balance of probabilities that Fountain Tire was negligent in performing the work on her car and, further, whether that alleged negligence caused Ms. Hara's accident. In simple terms, negligence is when someone fails to take proper care or do what they should to prevent harm to others. It happens when a person does not act with the care that a reasonable person would in a similar situation, leading to accidents or damage. Here, if Fountain Tire did not take the care owed to Ms. Hara in changing over her tires, and that failure caused or contributed to the accident, Fountain Tire will be responsible for Ms. Hara's loss.

[4] The relevant facts are these: Ms. Hara took her 2005 Pontiac Wave to Fountain Tire to change her winter tires for summer tires on April 2, 2024. She wanted to have the tires switched because her winter tires were brand new, and she did not want to use them during the summer. Instead, she wanted to use her older winter tires. Both her new winter tires and her older winter tires were on rims. Later the same day, she picked up her car from Fountain Tire and drove approximately 6.4 kilometres to her home without incident. The next morning, she left for work around 7:10 a.m. She testified that, as she drove along Hamilton Boulevard, the wheel began wobbling and she lost control of her car, hit a pole, crossed the median, and came to a stop on the far side of the road. Her rear passenger-side wheel had come off and the back windshield shattered. Her car was towed from the accident scene and, as she was later advised it was beyond repair, she had it scrapped. She described various injuries, both emotional and physical, that she experienced as well as inconveniences arising from the accident

and loss of her car. Ms. Hara seeks compensation from Fountain Tire of \$20,000 plus interest.

[5] Photographs taken right after the accident were tendered showing the state of Ms. Hara's car and the rear passenger-side wheel following the accident. Additionally, several medical documents were filed in support of Ms. Hara's claim that she was injured because of the accident.

[6] During cross-examination, Ms. Hara agreed that nothing had been wrong with her car the day she drove home from Fountain Tire and that the wheel did not begin to wobble until just before the accident. In response to Mr. Bergsma's testimony that her speed of travel or icy conditions may have led to the accident, she testified she was not driving fast and that it was not icy that morning. She reiterated that it was the wobbling of the wheel that caused the accident.

[7] Ms. Jinyan Tan is Ms. Hara's landlord. She testified to her observations of some of the impacts of the accident on Ms. Hara. However, as none of her evidence assists me in deciding the relevant issues, her evidence will not be discussed further.

[8] Mr. Bergsma gave evidence on behalf of Fountain Tire. He is currently employed with Fountain Tire as the store manager. Previously, he was an auto-motive tire technician for Fountain Tire. In that position, he conducted the kind of work that was done for Ms. Hara, namely, changing tires. He confirmed that he is not a mechanic.

[9] Mr. Bergsma noted that Ms. Hara's vehicle had been scrapped without allowing Fountain Tire any opportunity to inspect it. In reviewing the photograph exhibits,

Mr. Bergsma testified that these showed that the wheel was still connected properly to the hub. Mr. Bergsma pointed out the lug nuts were still fastened tight where they should be. The four bolts that had been taken off for the tire change were intact and still attached. He stated that if the lug nuts had been loose, they would have come off. He also highlighted a significant dent showing in a photograph of the hubcap, expressing the view that this likely meant the wheel was still on the car when it made contact with the curb or pole.

[10] During cross-examination, Mr. Bergsma explained that, in doing a tire changeover, every tire installed would be inspected for age, tread depth, and any deficiencies. He explained that every tire gets balanced and fastened to manufacturer's specifications. In Ms. Hara's case, neither the tire nor the rim had issues but as noted in the Fountain Tire invoice, the tread depth on the old winter tires installed on Ms. Hara's vehicle was low and had only one summer season left on them.

Analysis

[11] In submissions, Ms. Hara argued that there was no issue with her car until the wheels were switched at Fountain Tire. She denies that either speed or icy conditions led to the accident. She argues that Fountain Tire should be held liable.

[12] Ms. Hara filed a decision of *Kosy v. Peyre Chrysler Ltd.*, 2007 ABQB 766, in support of her claim. I have reviewed that decision and do not find it to be of assistance given the facts of this case. In the *Kosy* case, the left rear wheel of a vehicle fell off while the vehicle was travelling at highway speeds and was observed by the driver rolling past the vehicle. The plaintiff had taken her vehicle to a mechanic prior to the

accident and had the tires rotated. The tire and rim were tendered as evidence in the trial. Only one and one-half of the five studs normally present on the axle hub were still attached to the wheel assembly. Expert opinion evidence was provided that the accident was the result of improper torquing of the lug nuts.

[13] In contrast, the photographic evidence in Ms. Hara's case shows that the lug nuts and bolts were all still fully attached to the wheel hub. While not required, Ms. Hara did not provide expert opinion evidence to explain why the wheel fell off. There was also no evidence of where the wheel ended up on the roadside or when exactly it fell off in relation to the accident as had been provided in the *Kosy* case. The best evidence in Ms. Hara's case – the vehicle and the wheel – were not available for the defendant or the Court to examine as evidence as Ms. Hara's vehicle had been scrapped.

[14] On behalf of Fountain Tire, Mr. Bergsma argued that Fountain Tire should not be held liable. He points out that the lug nuts had been torqued and were still tight. He further says that Fountain Tire was unable to inspect the vehicle as it was destroyed shortly after the accident. Pointing to a significant dent in the hubcap of the rear passenger-side wheel in one of the photographs, he argued that this suggested that the wheel likely came off as a result of the accident, rather than being the cause of the accident. Mr. Bergsma argued that the dent likely occurred when Ms. Hara hit the curb or pole, the impact denting the hubcap and causing the wheel to fall off. He further drew the Court's attention to one of the medical records that identified icy conditions on the day in question, arguing that these conditions and speed may have caused the accident.

[15] Both Ms. Hara and Mr. Bergsma testified fairly and credibly. I accept that Ms. Hara strongly believes that the accident was caused by faulty installation of her tires by Fountain Tire. Mr. Bergsma fairly testified that he could not explain the wobble that Ms. Hara testified to. However, in the end, the photographic evidence coupled with Mr. Bergsma's testimony does not support Ms. Hara's position. Through examining the photographic exhibits, Mr. Bergsma identified that the lug nuts and bolts were still fully attached to the wheel hub. In other words, the parts of the wheel that Fountain Tire had worked on were intact. Mr. Bergsma also drew the Court's attention to a significant dent in the hubcap, arguing that this likely means that the wheel was still attached to the vehicle when it struck the curb or pole. Although Ms. Hara denies that icy conditions or speed contributed to the accident, it is clear from the photographs that the road was covered in a layer of frost or snow which may have been a contributing factor.

[16] On the evidence before me, I am not satisfied that Ms. Hara has met the burden of establishing that Fountain Tire negligently installed her tires. Her claim is dismissed.

CAIRNS T.C.J.