

Citation: *Jer-Cal Holding Ltd. v.
The Grocery People Ltd.*, 2003 YKSM 1

Date: 20031118
Docket: 03-WL002
Registry: Whitehorse
Heard: Watson Lake

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Faulkner

JER-CAL HOLDING LTD.

Plaintiff

v.

THE GROCERY PEOPLE LTD.

Defendant

Appearances:
Anais Durante
and Mark Durante
No one

Appearing on their own behalf
Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): In this case, Jer-Cal Holding Ltd. is suing The Grocery People Ltd. for damages said to have been caused to property owned by the plaintiff.

[2] The plaintiff company operates a Petro-Can service station/convenience store and carwash here in Watson Lake.

[3] The defendant company is a grocery wholesaler, who, at the time, were

suppliers to Jer-Cal Holdings.

[4] The plaintiffs allege that damage to their car wash was caused by one of the defendant's vehicles when the defendants were making a delivery to the plaintiff's premises on about December 7, 2002.

[5] In order to unload groceries into the convenience store, access to the back of the store is gained through a door located adjacent to the car wash. This door is not a large loading dock sort of door but rather a fairly large man-door.

[6] Apparently, truckers making deliveries were in the habit of backing their trailer through the car wash, which would then bring the rear of the trailer of the truck to a point in close proximity to the door from whence the goods could be unloaded from the trailer and taken through the door into the store.

[7] Such a delivery was made by one the defendant's trucks and drivers on December 7, 2002. On the following day, the plaintiffs noticed that there was damage to the car wash. It appears as if some vehicle or object had run into the frame of one of the doors leading through the car wash. This particular door would be at the rear of the car wash, adjacent to the door into the grocery store.

[8] The damage itself is actually such that it appears it was caused by an object which was proceeding through the car wash and coming out the back of the car wash, which would be consistent with the sort of operation that these truckers were carrying out in backing through the car wash.

[9] As well, it should be noted that the damage is quite high up on the door, that

is, the impact point on the door frame is quite a few feet off the ground, certainly well above the height of a normal vehicle and I find more consistent with the height of a tractor-trailer unit.

[10] Now the defendant company did not, in fact, appear at trial; rather, they filed affidavits from two drivers who had been involved in deliveries at the store at the relevant time, both denying that they caused the damage. As well, an affidavit was filed from a gentleman who was involved with maintenance of the defendant's trucks indicating that he did not note any damage to any of the trucks that had been involved in the deliveries. As well, there was a written submission filed by Mr. Macdonald, the solicitor for the defendants.

[11] As I have indicated, the affidavits, which are admissible in these proceedings, constitute a denial of the damage being caused. However, the weight of those affidavits is, of course, diminished by the fact that they are merely affidavits and that the affiants are not subject to cross-examination.

[12] The physical evidence from the scene I find quite persuasive. It does not appear to me to be likely that it was caused by any other unknown party, given the proximity in time, given the way in which the damage was caused, and so on.

[13] I should have mentioned, as well that, in fact, the car wash was not even open at the time for business, so that there would be very little reason for anyone else to be driving through there other than someone making deliveries.

[14] It might be of significance if, as the defendant's mechanics claim, they did not notice any damage to the vehicle, to the truck or truck-trailer, but if one looks at the

photographs produced by the plaintiffs, the damage consists of some object running into the jam of the door and pushing the galvanized metal and stud framing that the building is constructed of, approximately two to three inches out of line. That sort of damage could have been produced by the truck running into it at a very low speed and, I find, without producing remarkable or notable damage to the tractor-trailer unit itself.

[15] So on the evidence available to me, on balance, I find it more likely than not that the damage was caused by the defendant's truck running into the jam of the door of the plaintiff's car wash. Accordingly, I find for the plaintiff.

[16] I must, however, say, that in looking at the damage to the building, it is somewhat difficult for me to accept that it would cost \$5,000 to fix it, but the evidence that I have is that there was one estimate of a total of \$4,387 including GST. Their other estimate, which I have not seen, was even higher.

[17] So on the evidence I have, I am prepared to grant judgment in favour of the plaintiffs in the amount of that estimate, \$4,387. The plaintiffs, of course, will be entitled to their costs.

FAULKNER T.C.J.