



Civil Resolution Tribunal

Date Issued: June 28, 2019

File: SC-2019-002304

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *STEEN V. WHEATON CHEVROLET BUICK CADILLAC GMC LTD.*, 2019
BCCRT 782

B E T W E E N :

MURRAY STEEN

APPLICANT

A N D :

WHEATON CHEVROLET BUICK CADILLAC GMC LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about liability for theft of tools from the applicant's truck.

2. The applicant, MURRAY STEEN claims that his tools were stolen from his truck when it was parked at the lot of the respondent, WHEATON CHEVROLET BUICK CADILLAC GMC LTD.
3. The applicant claims \$1,991.44 for the cost of the stolen tools, \$400 to compensate his time to replace the tools, and \$500 to compensate the cost of 5 trips to try to resolve the dispute with the respondent.
4. The respondent denies the claims. It says it is not responsible for the claimed loss because the applicant signed a waiver stating that the respondent would not be liable for theft of articles left in the vehicle.
5. The applicant is self-represented. The respondent is represented by Ryan Budynski, an employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submission, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are whether the applicant's tools were stolen while his truck was in the respondent's possession and if so, whether the waiver of liability applies.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The parties agree that on January 15, 2019, the applicant left his truck with the respondent for a service. The applicant says he had tools locked in the truck's lock box that could only be accessed with the key fob or the door switches inside the truck. He claims that on January 17, 2019 when he retrieved his truck from the respondent, his tools and a new extension cord were missing. He claims they were stolen while the truck was in the respondent's possession, parked on its lot.
13. There is no evidence the applicant's truck was vandalized. For this reason, the applicant speculates that the respondent might have left the doors open to allow the theft, or alternatively, that one of its employees stole the tools.
14. The applicant provided a crime map of the area that he says shows the respondent's dealership was in a high crime area. The map shows a large Victoria

area that includes major cross streets near the respondent dealership but is not specific to the respondent's address. Based on the map, I cannot determine whether the location of the respondent dealership was in fact, in a high crime area. In any event, I find that a propensity for crime in the area does not prove that a specific theft occurred, or how it occurred.

15. When the applicant left his truck with the respondent on January 15, 2019 he had signed a waiver of liability that was part of the work order authorizing the respondent to service the truck. The relevant portion of the waiver, which is in evidence, says:

I hereby authorize the repair work set forth to be done along with the necessary material and agree that to the extent permitted by law, you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft, or any other cause beyond your control...

16. The applicant argues that based on the B.C. Court of Appeal decision in *Harry v. Kreutzinger* (1978) 9 B.C.L.R. 166, the waiver should be rescinded. He argues that the community standards of commercial morality require that the respondent take basic care of his truck while it was in its possession and should have ensured it was locked. Further, that the respondent's failure to lock the truck while parked outside on their premises was an act of gross negligence that should eliminate the enforceability of the waiver.
17. First, the applicant has not established that the respondent left the truck unlocked. Second, and more importantly, the applicant has not established that the tools were stolen while in the respondent's possession or at all.
18. The respondent says it had neither seen nor had knowledge of articles left in the applicant's truck. As mentioned, the applicant says his tools were locked in the truck's lock box, in which case, it is likely the tools would have remained unseen even if they were there. However, the applicant provided no witness statements,

police report or other evidence to corroborate his claim that he had tools in his lock box and that his tools were stolen.

19. The law of bailment is about obligations on a person to safeguard goods or possessions that a person has given them to hold and store. Here the respondent was what the law calls a voluntary bailee for reward. It agreed to receive the applicant's possessions a part of a transaction where it got paid. A bailee for reward must exercise the care and diligence in regards to the possessions that a careful and diligent owner would exercise in similar circumstances (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).
20. However, I find the applicant has not proven on a balance of probabilities that his tools were stolen or lost while on the respondent's lot. Therefore, I find the respondent is not liable for the applicant's claimed losses as a bailee for reward or otherwise.
21. Even had I found the tools were stolen, I would have not allowed the applicant's claims. For the reasons that follow, I find the applicant waived any claim against the respondent for losses arising from theft of any articles left in his truck.
22. I agree with the applicant that the Court of Appeal decision in *Harry* applies to the enforceability of contractual waivers. However, I find the applicant misapplied the law. The issue is not whether the respondent was negligent in caring for the truck. The issue is whether the transaction itself was contrary to community standards of commercial morality. The transaction here was the service agreement the parties had entered into when the applicant signed the work order and waived liability. To set the waiver aside, the applicant would need to establish that the transaction was unconscionable, unfair, grossly inadequate, or a grievously impaired bargain requiring me to cancel the contractual waiver of liability. I find the applicant has not met this evidentiary burden.
23. The applicant says the respondent failed to make it clear that it would not be responsible for articles left in his truck. He says the waiver was buried in fine print

and the respondent should have warned him to remove his personal articles. In other words, he claims the respondent failed to provide reasonable notice of the waiver

24. In *Apps v. Grouse Mountain Resorts Ltd.*, 2019 BCSC 855, the court listed factors when considering the reasonableness of a notice of waiver. They include the circumstances of the person signing it, the form, location and architecture of the notice, and whether the exclusion clause is onerous. The more onerous the exclusion clause the more explicit the notice must be.
25. I find nothing unusual about the applicant's circumstances and nothing misleading about the notice itself. I find the notice of waiver was in smaller print than the writing on the first page of the work order, but otherwise it was clearly written and there to be seen. It is found in the same sentence as the work authorization and on the same page and section as the signature line. Based on the form of the work order, I find a person bringing their vehicle in for a service would have reasonably known they were signing an authorization to the preceding words and those words would have meaning.
26. The fact that the applicant chose not to read the waiver does not render it invalid or inapplicable to him. It is reasonable to assume a person signing the work order would have agreed to waive the risk, which was not onerous. The waiver simply meant that the applicant needed to either remove his personal belongings or leave them at his own risk. I find the notice of waiver was reasonable and that the signed waiver applied to the parties' transaction, relieving the respondent of any liability for theft.
27. The applicant has the burden of proving his claim, and I found he has not done so here. Under tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Since the applicant is the unsuccessful party, he is not entitled to his tribunal fees or dispute-related expenses.

ORDER

28. I dismiss the applicant's claims and this dispute.

Trisha Apland, Tribunal Member