



Civil Resolution Tribunal

Date Issued: August 27, 2021

File: SC-2021-002819

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barnes Wheaton Chevrolet Buick GMC Ltd. v. JPP Transport Ltd.*,
2021 BCCRT 942

B E T W E E N :

BARNES WHEATON CHEVROLET BUICK GMC LTD.

APPLICANT

A N D :

JPP TRANSPORT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about the costs associated with removing a lien from a trailer. The applicant, Barnes Wheaton Chevrolet Buick GMC Ltd. (Barnes Wheaton), leased a trailer to a third party. After the lease was terminated, Barnes Wheaton discovered

that the respondent, JPP Transport Ltd. (JPP), had placed a lien on the trailer. Barnes Wheaton says that JPP refused to remove the lien and it incurred costs in having it discharged. Barnes Wheaton asks for an order that JPP pay it \$1,856.20 as reimbursement for these costs. JPP denies that it is responsible for Barnes Wheaton's claims.

2. The parties are represented by employees.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
5. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

7. Section 11(1)(e) of the CRTA allows the CRT to refuse to resolve a claim if it is satisfied that it has been established that the claim or dispute is beyond the CRT's jurisdiction.

ISSUE

8. The issue in this dispute is whether JPP is responsible for Barnes Wheaton's claimed reimbursement of \$1,856.20.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.
10. Barnes Wheaton was the registered owner of a trailer that it leased to a corporate lessee, VT, on May 5, 2017. An individual, SR, co-signed the lease with VT. The evidence before me contains only the first page of the lease, but it is apparent that there was a second page with additional terms and conditions that governed VT's use of the trailer.
11. At some point, Barnes Wheaton terminated the lease with VT due to a lack of payment. When it attempted to repossess the trailer in June of 2019, Barnes Wheaton discovered that JPP was holding the trailer at its property because VT owed JPP money. The evidence before me does not indicate how or when Barnes Wheaton retrieved the trailer from JPP, but it is apparent that this occurred.
12. After Barnes Wheaton regained possession of the trailer, it made arrangements to sell it. At this point, Barnes Wheaton learned that JPP had filed a lien against the trailer in the Personal Property Registry (Registry) as provided under the *Personal Property Security Act (PPSA)*. The lien identified both VT and SR as debtors.
13. After a telephone call between a Barnes Wheaton employee and JPP failed to resolve the matter, Barnes Wheaton's lawyer contacted JPP by telephone and email in

November 2020. The details of these conversations and messages are not in evidence. The lawyer sent a November 25, 2020 demand letter to JPP asking that JPP discharge the lien or sign an authorization permitting Barnes Wheaton to deal with the lien discharge itself. The letter advised that Barnes Wheaton considered that JPP did not have a valid security interest in the trailer and would pursue JPP for “any damages sustained” as a result of it.

14. As JPP did not take steps to discharge the lien, Barnes Wheaton’s lawyer did so. On February 26, 2021, the Registry’s Registrar confirmed that the lien had been discharged under section 50 of the PPSA.
15. According to Barnes Wheaton, JPP’s lien was “improper” and interfered with its ability to sell the trailer it owned. As noted, it claims reimbursement of the \$1,856.20 in legal fees it incurred in having the lien discharged.
16. JPP says that it is a common business practice to put liens on equipment. JPP says it had a form of power of attorney to allow it to insure the trailer under its fleet policy and it informed Barnes Wheaton that if it paid “any kind of expense” for the trailer, no further notice would be given before it filed a lien. I note that JPP did not provide any evidence of the power of attorney or exchanges with Barnes Wheaton about the lien.
17. JPP provided copies of 6 invoices for vehicle repair and maintenance expenses in 2018 and early 2019. However, based on the information on the invoices, it is not clear how many of these invoices represent work done on the trailer in question.
18. Barnes Wheaton says that JPP used a “fraudulent” letter of authorization to insure the trailer under its fleet policy and never informed it that a lien may be placed on its property. Barnes Wheaton submits that repairs, maintenance and insurance costs are not valid security interests.
19. Based on the very limited information before me, I am unable to determine whether JPP may have committed the tort of conversion, meaning a wrongful act involving Barnes Wheaton’s goods, consisting of handling, disposing of or destroying the goods, with the effect or intention of interfering with or denying Barnes Wheaton’s

right or title to the trailer (see the elements of the tort set out in *Li v. Li*, 2017 BCSC 1312). Therefore, I will consider only whether Barnes Wheaton is entitled to the reimbursement of its legal costs under the PPSA.

20. As noted, the demand to remove the lien from the trailer was made under section 50 of the PPSA, which addresses the amendment or discharge of registrations, including those on the Registry. Section 50(8) gives power to the court to order that registrations be maintained, discharged or amended. The PPSA defines the “court” as the British Columbia Supreme Court (BCSC).
21. The BCSC has held that, even if the damages are below the jurisdictional limit for small claims in the British Columbia Provincial Court, actions under the PPSA must be brought in Supreme Court (see *Accent Leasing & Sales Ltd. v. Babic*, 2008 BCSC 58 at paragraph 1). I find that this reasoning also applies to the CRT.
22. Responsibility for costs associated with discharging registered security interests is not addressed specifically in section 50 of the PPSA. This is similar to the *Builders Lien Act* (BLA). Other tribunal members have held that costs associated with the removal of a lien under the BLA are part of the BCSC’s exclusive jurisdiction (see, for example, *RMC Ready-Mix Ltd. v. Lalli*, 2019 BCCRT 920 and *Greater Vancouver Gutters Inc. v. Tiwana*, 2021 BCCRT 408).
23. I find that the circumstances in the PPSA are analogous to those in the BLA. I find that a claim for costs associated with the removal of a registered security interest is part of the BCSC process and amounts to a claim under the PPSA. Therefore, the BCSC is the appropriate forum for Barnes Wheaton’s claim.
24. As noted above, section 11(1)(e) allows the CRT to refuse to resolve a claim if it is satisfied that the claim is beyond the CRT’s jurisdiction. As I have found that Barnes Wheaton’s claim is under the exclusive jurisdiction of the BCSC, I find the CRT does not have jurisdiction to resolve it. So, I refuse to resolve this dispute under section 11(1)(e) of the CRTA.

ORDER

25. I refuse to resolve this dispute under section 11(1)(e) of the CRTA.

Lynn Scrivener, Tribunal Member