
CANADA / JUDGMENT

Holat v. Wettlaufer

2014 BCSC 425

COURT

Supreme Court of British Columbia

DECIDED

13 March 2014

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2014 BCSC 425 Holat v. Wettlaufer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Holat v. Wettlaufer,

2014 BCSC 425

Date: 20140313

Docket: 1240838

Registry: Prince George

Between:

Ranjit Kaur Holat and

Holat of Care Design & Decoration Corporation

Plaintiffs

And

Jimmie Dean Wettlaufer and

Stuart Raymond Robson

Defendants

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Plaintiffs:

M. Houg

Counsel for the Defendant Robson:

E. Heath

Place and Date of Trial:

Prince George, B.C.

February 17-20, 2014

Place and Date of Judgment:

Prince George, B.C.

March 13, 2014

I. introduction

- [1] In this case, the defendant Mr. Wettlaufer forged transfer documents to become the registered owner of a truck lawfully owned by the corporate plaintiff. He then advertised the truck for sale on a popular internet website. The defendant Mr. Robson, after seeing the advertisement, met with Mr. Wettlaufer and, after an inspection, bought the truck. Mr. Robson acted honestly and without knowledge of Mr. Wettlaufer's forgery.
- [2] As well as forging the transfer documents, Mr. Wettlaufer has failed to pay to the corporate plaintiff \$6,000 in lease payments and \$43,668.96 for fuel charged to the corporate plaintiff's account, and has not repaid a \$2,500 loan made to him by the plaintiff, Ms. Holat.
- [3] For the reasons below, the corporate plaintiff is entitled to have the truck returned to it by the defendant Mr. Robson, and to have ownership registered in the corporate plaintiff's name. The corporate plaintiff is the lawful owner.
- [4] Mr. Wettlaufer has not disputed the plaintiffs' respective claims against him. The plaintiffs will be entitled to the relief they seek against Mr. Wettlaufer.

II. Background

- [5] Ms. Holat is the sole shareholder and director of the corporate plaintiff, Holat of Care Design & Decoration Corporation ("Holat of Care"), a company incorporated and in good standing under the laws of our Province.
- [6] Ms. Holat met Mr. Wettlaufer in early 2010 when he and his then-girlfriend became tenants of a residential property owned by a corporation in which Ms. Holat was a significant shareholder.
- [7] By June 2011, Mr. Wettlaufer's relationship with his girlfriend had ended and he was in rental arrears and under an eviction notice. He had charge of his adolescent son.

- [8] Around this time Ms. Holat, who suffers from bipolar disorder, ceased taking one of her prescribed medications likely without notifying her physician. At trial there was no expert medical evidence to support a finding that the failure to take the prescribed medication caused Ms. Holat to become either vulnerable or more charitable. However, the subsequent events establish that she did not have her own financial self-interests in mind with her next actions.
- [9] First, Ms. Holat caused the eviction notice to be cancelled and a new tenancy agreement was arranged.
- [10] Second, Ms. Holat wrote a cheque to Mr. Wettlaufer in the amount of \$2,500.
- [11] Third, in August 2011, Mr. Wettlaufer asked Ms. Holat to co-sign a loan for the purchase of a commercial truck. She declined to do so but suggested that the corporate plaintiff could purchase a truck which Mr. Wettlaufer could then lease from the corporate plaintiff for \$1,000 per month.
- [12] On August 27, 2011, Ms. Holat and Mr. Wettlaufer found the truck which is the subject of this litigation at the Peterbilt dealership in Prince George. The corporate plaintiff purchased the truck for \$95,200 including tax. The corporate plaintiff also paid for the insurance for the truck.
- [13] The Owner's Certificate of Insurance and Vehicle Licence is dated August 29, 2011 and is signed by Ms. Holat on behalf of the corporate plaintiff. It records Holat of Care as the registered owner and Mr. Wettlaufer as the principal operator. On August 29, 2011 Mr. Wettlaufer took possession of the truck.
- [14] Ms. Holat and the corporate plaintiff had no prior trucking experience. Ms. Holat testified that her husband, prior to his retirement, had been a bus driver. She said when Holat of Care purchased the truck she thought her husband could, in future, drive the truck. At that time, her husband was in treatment for alcoholism. He died in May 2013.
- [15] In the early fall of 2011, Ms. Holat caused Holat of Care to purchase a Ford pick-up truck for Mr. Wettlaufer's use. She thought that this would facilitate Mr. Wettlaufer in selling his own pickup truck so that he could repay some of the debt owed to her or Holat of Care. Mr. Wettlaufer did not make any payments to her or Holat of Care. Some months after its purchase the Ford pick-up was stolen and the insurance proceeds were paid directly to Holat of Care as owner.
- [16] From August 29, 2011 until January 7, 2012, Mr. Wettlaufer operated the truck. Ms. Holat had arranged for Mr. Wettlaufer to purchase fuel using the fuel card of the corporate plaintiff, and in that time period Mr. Wettlaufer charged \$43,668.96 against that account.
- [17] On December 31, 2011 Mr. Wettlaufer attended at an Insurance Corporation of British Columbia ("ICBC") agency and under a transfer/tax form became the registered owner of the truck.

- [18] The plaintiffs in their Amended Notice of Civil Claim pleaded that Mr. Wettlaufer had forged Ms. Holat's signature on the transfer/tax form without her permission or knowledge, that he presented the forged transfer/tax form to the ICBC agent, and that he fraudulently obtained an Owner's Certificate of Insurance and Vehicle Licence naming him as the registered owner.
- [19] Mr. Wettlaufer did not file a response to the plaintiffs' claim.
- [20] In the first week of January 2012, Mr. Robson saw the truck advertised on a popular internet website with Mr. Wettlaufer's phone number as the method of contact. Mr. Robson called the number and left a voice message. Within a day, Mr. Wettlaufer returned Mr. Robson's call.
- [21] Mr. Robson, in his response, pleaded that the following events then occurred:
5. On or about January 6, 2012, Robson searched title to the truck and discovered a lien on title in favour of Paccar Inc., the manufacturer of Peterbilt trucks.
 6. Upon discovering this lien, Robson telephoned Wettlaufer and advised him of same.
 7. Robson then contacted a representative of Peterbilt, who advised him that the lien was a remnant of a prior owner and, as of that date, did not secure any debt owing, and that the lien holder would discharge the lien.
 8. Satisfied with this explanation, Robson obtained a bank draft payable to Wettlaufer in the amount of \$65,000.
 9. On January 7, 2012, Robson flew from Vancouver to Prince George.
 10. Wettlaufer picked Robson up from the Prince George airport and drove him to Wettlaufer's residence where the truck was located.
 11. Robson inspected the truck and took it for a test drive, at the conclusion of which he was satisfied with the condition of the truck and agreed to purchase the truck from Wettlaufer.
 12. Robson and Wettlaufer returned to Wettlaufer's residence where the transfer of the truck was finalized.
- [22] The plaintiffs do not challenge the \$65,000 purchase price exclusive tax as a representative price. In other words, the price was not so low as to place Mr. Robson on notice of Mr. Wettlaufer's forgery or other irregularities.

III. Testimony of the Parties

A. Mr. Wettlaufer's Testimony

- [23] Mr. Wettlaufer was not a credible witness. In particular, his suggestion that the truck was a gift and that Ms. Holat had told him "God wanted [him] to have it" is not credible for a number of reasons.

- [24] First, if the truck had been a gift, it would have been expected that Mr. Wettlaufer would have filed a response to the plaintiffs' claim, especially having regard to the plaintiffs' pleadings that he had committed forgery.
- [25] Second, if Ms. Holat had intended a gift, she would have caused the truck to be registered in Mr. Wettlaufer's name at the time the truck was purchased in late August 2011.
- [26] Third, a gift is inconsistent with Ms. Holat advancing \$2,500 to Mr. Wettlaufer and the use of the corporate plaintiff's fuel card with the agreement, as Mr. Wettlaufer acknowledged, that any funds would be repaid.
- [27] Fourth, Mr. Wettlaufer changed his story as he became aware of further facts. He initially told the police he had seen Ms. Holat sign the transfer/tax form which purportedly transferred the truck to him. After becoming aware that a handwriting expert had prepared a report providing his opinion that the signature was not Ms. Holat's signature, he changed his story to say that he did not see Ms. Holat sign the form.
- [28] Fifth, Ms. Holat testified, and I accept, that she did not sign the transfer/tax form.
- [29] Mr. Wettlaufer was also unreliable generally with respect to times, dates, and chronology.
- [30] I also note that Mr. Wettlaufer admitted that when he took the transfer/tax form to ICBC in order to show himself as registered owner, he told the ICBC agent that the truck was being "traded for a 2006 Kenworth" with a \$65,000 value, so that he would not have to pay taxes related to the transfer. In short, he was willing to lie to serve his financial self-interests.
- [31] Mr. Wettlaufer also testified that Ms. Holat made sexual advances to him over a period of time which, he contends, distressed him. The testimony was apparently in support of his assertion that Ms. Holat was providing him with gifts because she wanted a sexual relationship with him.
- [32] Even if one were to accept that Ms. Holat made advances, when pressed by Mr. Houg, plaintiffs' counsel, he could not explain why he did not repel any such advances after the first several occurrences. Nor could he satisfactorily explain why, when he had a chance to report such sexual advances (which he had categorized as sexual harassment) to the police upon his being interviewed by the police with respect to the purported transfer of the truck into his name, he did not do so. The police recording of the interview was played in Court. During the interview Mr. Wettlaufer reported only one instance of alleged harassment. His tone of voice reflected no emotional distress or vulnerability.
- [33] Sexual harassment is a serious allegation. Mr. Wettlaufer has not established that Ms. Holat sexually harassed him or made the advances he described. In short, I reject Mr. Wettlaufer's testimony except to the extent that it is consistent with independent documentation, or with Ms. Holat's or Mr. Robson's testimony.

B. Ms. Holat's Testimony

- [34] Mr. Heath, counsel to Mr. Robson, challenged Ms. Holat's testimony. He noted Ms. Holat's bipolar condition, including her related hospitalization in January 2012. (She had also had two prior hospitalizations, one in late 2007 and the other in the fall of 2010.)
- [35] In written argument, Mr. Heath asserted that Ms. Holat's testimony "was vague or uncertain regarding details". He stated that she was not exact on matters such as when she was first diagnosed with bipolar disorder, the treatment periods for her husband, and details as to her visit to the Peterbilt dealership.
- [36] I found Ms. Holat to be clear and unequivocal with respect to the signal relevant matters, including that she did not give the truck to Mr. Wettlaufer. Her testimony is consistent with her general pattern of dealing with Mr. Wettlaufer.
- [37] Mr. Heath put to Ms. Holat that there was an agreement between her and Mr. Wettlaufer under which Mr. Wettlaufer would buy the truck from Holat of Care. Ms. Holat's testimony, which I accept, establishes there were only some brief discussions. If Mr. Wettlaufer had come into funds which would have enabled him to purchase the truck, Ms. Holat may have caused Holat of Care to sell the truck to him, but there was no agreement to this effect.

C. Mr. Robson's Testimony

- [38] Mr. Robson's testimony was not controversial and generally confirmed his pleadings as set forth above.
- [39] The key exception arising from cross-examination was that Mr. Robson stated he obtained a lien search from his bank. He received no information as to the registered or lawful owner of the truck from the search. As to lawful ownership, he relied on the Owner's Certificate shown to him by Mr. Wettlaufer. In other words, there was no evidence to support that any search involved the confirmation of a valid chain of title.
- [40] In cross-examination Mr. Robson conceded that internet websites may be used by unscrupulous people, although that "was not in the front of his mind".

IV. Analysis

A. Holat of Care's Claim against Mr. Robson

- [41] The corporate plaintiff, Holat of Care, seeks the return of the truck and registered ownership as a result of Mr. Wettlaufer's conversion through forgery of the truck into his own name.
- [42] Mr. Robson opposed Holat of Care's claim based on three separate provisions of the Sale of Goods Act, RSBC 1996, c. 410:

26. (1) Subject to this Act, if goods are sold by a person who is not the owner of them, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner's conduct precludes the owner from denying the seller's authority to sell.
28. When the seller of goods has a voidable title to them, but the seller's title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if they are bought in good faith and without notice of the seller's defect of title.
30. (3) If a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for that person, of the goods or documents of title under any sale, pledge or other disposition of them, or under any agreement for the sale, pledge or other disposition of them, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- [43] Section 2 of the Sale of Goods Act defines "good faith": "A thing is done in good faith within the meaning of this Act when it is in fact done honestly, whether done negligently or not."
- [44] I will first address the s. 30(3) argument. In the case at bar, s. 30(3) would only operate if Mr. Wettlaufer had bought or had agreed to buy the truck from Holat of Care. As the Court has found, while there may have been discussions about a possible purchase, there was never a purchase or agreement to purchase between Mr. Wettlaufer and Holat of Care. Accordingly, s. 30(3) cannot serve as a defence for Mr. Robson to Holat of Care's claim.
- [45] In order to defend successfully under s. 26(1), Mr. Robson must show that the conduct of Holat of Care or Ms. Holat as its directing mind "precludes [Holat of Care] from denying [Mr. Wettlaufer's] authority to sell".
- [46] Benjamin's Sale of Goods (M.G. Bridge, ed., 8th ed. (London: Sweet Maxwell, 2010) at 349, in considering the similar provision of the Sale of Goods Act 1979 (UK), c. 54 (as amended) observes:

The cases in which this provision has been canvassed indicate that it was intended to give statutory effect to a particular estoppel in English law, and that the terminology used may have been intended to render this principle intelligible in Scots law where the specific term "estoppel" is unknown.

- [47] G.H.L. Fridman, in *Sale of Goods in Canada* (6th ed.), (Toronto: Carswell 2013) at 109, summarizes the law with respect to the comparable provision in the Sale of Goods Act, R.S.O. 1990, c. S.1:

The Sale of Goods Act expressly provides that the doctrine *nemo dat quod non habet* shall not apply if "the owner of goods is by his conduct precluded from denying the seller's authority to sell". This would seem to mean that the owner will be estopped from raising his ownership where the seller has been given the appearance of acting as the owner's agent. However, it would seem clear from the cases that the principle of estoppel is not confined to instances of apparent or ostensible agency but may extend to cases of apparent or ostensible ownership on the part of the seller of the goods, where such appearance results from the conduct of the true owner.

Whether the seller is alleged to have the appearance of an agent or an owner, the cases show that something more than mere possession of the goods in question is required before estoppel can be pleaded. It is necessary for the seller to be armed "with some indicia which made it appear that he was either the owner or had the right to sell." The mere handing over of a chattel to another does not create an estoppel. There will be no estoppel unless the doctrine of ostensible ownership applies, for example, when the owner gives the recipient a document of title, or, invests him with the indicia of ownership. If the owner of a car gives possession of it to another person, who is not a mercantile agent or a purchaser, in respect of whom, as will be seen later, special, and different, considerations are applicable, he does not hold out or represent that other person as being entitled to sell.

[footnotes omitted]

[48] Fridman refers to *Bremmer v. Johnson*, [1946] 3 W.W.R. 39 (B.C. Co. Ct.) as a supporting example. In *Bremmer*, the plaintiff owner of a car loaned his car to a friend who then forged the owner's name to the requisite transfer documents. The car was subsequently sold to the defendant, a bona fide purchaser for value and without notice of the forgery. The Court held for the plaintiff owner.

[49] On the facts at bar, neither plaintiff provided indicia which would have made it appear to a bona fide purchaser that Mr. Wettlaufer was the owner of the truck. He was only given possession under an oral lease. His apparent ownership was based on a forgery, of which the plaintiffs had no knowledge. Accordingly, Mr. Robson's defence based on s. 26(1) of the Sale of Goods Act (B.C.) must fail.

[50] Mr. Robson's remaining argument is based on s. 28 of the Sale of Goods Act (B.C.), which for convenience I will repeat:

28. When the seller of goods has a voidable title to them, but the seller's title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if they are bought in good faith and without notice of the seller's defect of title.

[51] As noted above, "good faith" is defined to mean something "done honestly, whether negligently or not". There is no question that Mr. Robson acted honestly and accordingly the definition of "good faith" is satisfied.

[52] The question is whether Mr. Wettlaufer had a "voidable title" to the truck. In distinguishing between voidable and void, Benjamin's states (at p. 358):

An innocent buyer will only acquire a good title to goods under s. 23 [s. 28 of the B.C. legislation] if the title of the seller is voidable, but not if the seller has no title at all. The title of the seller may be voidable at the option of the true owner, for example, on the ground of fraud at common law or in equity, misrepresentation, non-disclosure, duress or undue influence. In these instances, the true owner is normally entitled to rescind the contract between himself and the seller, but the contract is not void ab initio. If, however, it is completely void, for example, on the ground of mistake as to identity or because of a lack of coincidence between the terms of the offer and of the acceptance, then no property in the goods will pass to the seller, and the buyer will not acquire a good title under this section even if he purchases the goods in good faith and without notice of the seller's defect of title. For the same reason, the buyer will not acquire a good title under this section as against the true owner of the goods from whom they have been stolen whether by the seller or some other person.

[footnotes omitted]

[53] A forged document is a pure nullity: *Ruben v. Great Fingall Consolidated*, [1906] A.C. 439 (H.L.). As in *Bremmer*, I find that title to the truck did not pass to Mr. Wettlaufer.

[54] Unlike the Land Title Act, R.S.B.C. 1996, c. 250, registered ownership under the Motor Vehicle Act, R.S.B.C. 1996, c. 318, does not constitute indefeasible title. In considering the relevant provisions of the Motor Vehicle Act, Justice Drost, in *Sturgeon v. Liu*, [1988] B.C.J. No. 2379 stated:

In my opinion, this section clearly demonstrates that the intention of the legislature was to create a system of registration that would be of assistance to law enforcement agencies in the enforcement of traffic laws and to ensure that all vehicles on the highway have at least a minimum amount of insurance coverage. There is nothing in the Act to indicate an intention to provide to the general public the protection of a title registration system similar to that contained in the Land Title Act under which a certificate of indefeasible title" ... shall be conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title is indefeasibly entitled to an estate in fee simple .. ." (s. 23(1)) and that a registered owner of a charge "... shall be deemed to be entitled to the estate or interest in respect of which he is registered ..." (s. 26).

[55] In the result, s. 28 does not apply to afford Mr. Robson a defence.

[56] In sum, none of the Sale of Goods Act provisions assist Mr. Robson and he will need to return the truck to Holat of Care and Holat of Care remains the lawful owner.

B. Plaintiffs' Claims against Mr. Wettlaufer

- [57] The plaintiffs obtained default judgment against Mr. Wettlaufer on June 1, 2012. At that time, the damages were not quantified. At trial, the damages were proven.
- [58] Ms. Holat will have judgment against Mr. Wettlaufer for \$2,500. The \$2,500 represents the \$2,500 loan which remains unpaid.
- [59] Holat of Care is entitled to judgment against Mr. Wettlaufer for \$49,668.96, which represents the fuel charges (\$43,668.96) and the lease payments (6 months x \$1,000 = \$6,000).
- [60] The Court will also award \$10,000 in punitive damages.
- [61] Plaintiffs' counsel also sought lump sum special costs of \$2,500. The Court will award special costs in this amount.

V. Conclusion

- [62] The Court orders the defendant to return the truck to Holat of Care and that the defendant take such steps as are necessary to record registered ownership to the truck in Holat of Care's name. Holat of Care is the lawful owner.
- [63] The plaintiffs are entitled to judgment against Mr. Wettlaufer as described above.
- [64] Counsel for the plaintiffs and Mr. Robson reserved the right to speak to costs. If they cannot otherwise agree, I ask that a 9:00 a.m. one-hour hearing be scheduled through Trial Scheduling within 90 days of the release of these Reasons.
- [65] If there are other matters that may require directions, the plaintiffs and Mr. Robson have liberty to apply.

____ "Funt J." ____

Funt J.

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