

CANADA / JUDGMENT

Pippet et al v. Absolute Bailiffs Inc.

2006 BCSC 1416

COURT

Supreme Court of British Columbia

DECIDED

20 September 2006

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2006BCSC1416 Pippet et al v. Absolute Bailiffs Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pippet et al v. Absolute Bailiffs Inc. ,

2006 BCSC 1416

Date: 20060920

Docket: S87396

Registry: New Westminster

Between:

Estate of Marjorie Pippet and

Paul Frigstad

Plaintiffs

And

Absolute Bailiffs Inc.

Defendant

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Plaintiffs:

Jack A. Adelaar

Counsel for the Defendant:

P. Daniel Le Dressay

Date and Place of Trial/Hearing:

August 16 and 17, 2006

New Westminster, B.C.

- [1] Mr. Frigstad seeks damages from the defendant alleging wrongful seizure of his 1979 Lincoln Mark V motor vehicle (the Lincoln) by the defendant.
- [2] The defendant counterclaims alleging Mr. Frigstad granted them a security interest of \$764.93 in the Lincoln. As well they seek their costs incurred in enforcing the security agreement in the amount \$5,413.13.
- [3] While the Estate of Marjorie Pippet is named as a plaintiff, there is no personal representative or executor and in reality the estate had no part to play in the litigation.
- [4] Mr. Frigstad is a securities dealer.
- [5] Absolute Bailiffs Inc. operates a bailiff business.
- [6] The I.C.B.C. insurance document dated February, 2001, shows that after Mr. Frigstad's mother Ms. Pippet died, ownership of the Lincoln was put in the name of her estate and Mr. Frigstad became the principal operator. In November, 2001 as a result of a motor vehicle accident, I.C.B.C. agreed to pay \$1,530 for the repairs to the Lincoln.
- [7] Mr. Frigstad took the vehicle to a repair shop operating as "Route 66 Auto Body" on Stewart Crescent in Pitt Meadows. The repair shop was operated by Paul Domnich and Danny Pavelich. The repair shop did not have an I.C.B.C. approved vendor number so I.C.B.C. agreed that Mr. Frigstad would be responsible for making payments for the repairs and ensuring the work was completed, then I.C.B.C. would reimburse Mr. Frigstad upon seeing the completed repairs.
- [8] Mr. Frigstad gave Mr. Domnich some \$800 when he gave the vehicle to Mr. Domnich for repair.
- [9] However, Mr. Domnich failed to pay the garage rental, and the defendant company, acting for the owner under a document entitled Distress Warrant ("Rent Distress Act") took possession of the premises and the contents therein on November 15, 2001. Mr. Domnich informed the bailiff that the Lincoln was not owned by the repair shop, nor had the repair work been completed. Some work had been done. Mr. Domnich said there was nothing owing by Mr. Frigstad with respect to the work done.
- [10] In late November, 2001 Mr. Frigstad attended on the bailiff's offices' in New Westminster and signed a document which reads:

I Paul Frigstad agree to pay Absolute Bailiffs Inc. \$764.93 which is the amount of I.C.B.C. claim. Failing to pay by December 10, 2001 Absolute Bailiffs Inc. has the right to register a charge under the Personal Property Security Act against the said vehicle. 1979 Lincoln Mark V Conv VIN Number 9481S765991-I.C.B.C. Claim #K511202-0-R/O is Estate of Marjorie Pippet

- [11] The document is dated November 27, 2001. It is signed by Mr. Frigstad; an illegible hand writing denotes a witness.
- [12] In Mr. Frigstad's pleadings he alleged he signed the document because if he failed to do so the bailiffs said they would sell the Lincoln to pay for the repair shop's rent arrears. He said he did not see the Lincoln prior to signing the document, which his pleadings describe as a "promissory note".
- [13] Mr. Frigstad regained possession of the Lincoln on November 27, 2001. He found there was still a good deal of work to be done. He said the bailiff had told him the Lincoln had been completely repaired and was ready for painting, but in fact the chrome trim and back bumper were not on the vehicle, the vehicle was not primed or painted, the tail lights were not installed, and the vehicle was dusty. Mr. Frigstad says he was later told by Mr. Domnich that parts from a different model year had been installed in the Lincoln.
- [14] Mr. Templeton was Absolute Bailiffs employee in charge of the file. He said on 27 November, 2001 he and the I.C.B.C. adjuster in charge of the Lincoln repair file, had a discussion regarding the I.C.B.C. claim. The adjuster then sent a fax transmission from I.C.B.C. to Absolute Bailiffs on November 27, 2001. The letter refers to the claim number. The adjuster said she would pay the amount of the claim in the sum of \$764.93 once the work on the Lincoln had been done and they saw the completed work.
- [15] As can be seen, the amount that would become payable by I.C.B.C. once the repairs were completed on the Lincoln is the amount stated in the document prepared by the defendant and signed by Mr Frigstad.
- [16] Mr. Frigstad in testimony alleged there was a second page stapled to the signed document which set out terms on the promise to pay, namely:
- (a) If the repair shop paid the outstanding rent, then the promissory note would be cancelled.
 - (b) If the repairs and painting of the vehicle turned out not to have been completed, then the promissory note would be cancelled.
 - (c) If a lien was registered by Absolute Bailiff's against the vehicle that registration would not occur before December 10, 2001.
- [17] There was no evidence to substantiate items (a) and (b) of his evidence, nor was it pleaded.

[18] In spite of the wording of the document which indicates the defendant would not register a charge against the Lincoln before December 10, 2001, Absolute Bailiffs on November 30, 2001 registered a lien against the title of the Lincoln, naming both the Estate of Marjorie Pippet and Mr. Frigstad as debtors.

[19] The repair work was completed on the Lincoln (though not by Route 66) and I.C.B.C. paid out the balance of the claim directly to Mr. Frigstad. Annotations on the document reflect later discussions Mr. Templeton had with I.C.B.C. regarding the payouts on the Lincoln's repairs, namely:

October 1, 2001 \$ 400

December 5, 2001 \$ 200

December 10, 2001 \$ 600

December 10, 2001 \$ 640

TOTAL: \$1,840

[20] Mr. Templeton telephoned Mr. Frigstad in or about mid-December 2001 asking where the balance of payment was. Mr. Frigstad told them at that time he would not pay any amount to Absolute Bailiffs as he did not owe them anything. Mr. Templeton said the conversation ended with Mr. Frigstad saying that they would never find his vehicle.

[21] Over the next two and half years, Absolute Bailiffs expended a good deal of time and energy looking for the Lincoln. Although Mr. Frigstad's telephone number and address were in such public places as the telephone directory, Absolute Bailiffs was not able to find the Lincoln until the night of June 22, 2004. The Lincoln was parked under an open shelter in the driveway of Mr. Frigstad's residence in Burnaby. Absolute Bailiffs towed it away.

[22] Letters were exchanged by the respective solicitors, the vehicle was returned with monies being placed in trust, and the law suit commenced and eventually came to trial.

[23] Amongst other claims, Mr. Frigstad sought:

...

4. General damages in the amount of \$4,000.00 for extrajudicial execution.

5. General damages in the amount of \$2,000.00 for trespass.

6. General damages in the amount \$2,000.00 for negligent misrepresentation.

7. Exemplary damages in the amount of \$10,000.00.

8. Post judgement interest from date of judgment pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79 and amendments thereto.

9. The costs of this Action on a solicitor and client basis.

[24] At the close of the plaintiff's case, the defendant moved for dismissal on the basis the tort of conversion of the Lincoln was not pleaded, although that might be deduced from the original retention of the vehicle in November, 2001 and the subsequent seizure in June, 2004. As the other issues were still live, the motion was dismissed. However I note that par. 33 of the Statement of Claim reads:

The plaintiffs claim that the ongoing possession of the vehicle by Absolute in June and July, 2004 constitutes wrongful conversion.

[25] Absolute Bailiffs defend, relying on the provisions of the Rent Distress Act, R.S.B.C. c. 403. Section 3(6) sets out a procedure for a person who owns goods on a distrained premises to retrieve those goods and requires the owner to provide a statutory declaration to the bailiff. They say Mr. Frigstad never delivered such a declaration.

[26] That may or may not govern the initial distraint. Mr. Frigstad was never asked for such a declaration because the discussion never got to that stage. On the evidence the bailiffs knew that the estate was the ostensible owner and they dealt with Mr Frigstad. They released the Lincoln on Mr Frigstad signing the document on the 27th November, 2001.

[27] The basis for the distress warrant is the unpaid rent, a debt of the repair shop to the landlord.

[28] Absolute Bailiffs argue that the call to I.C.B.C. established that the amount of \$764.93 was owed. The I.C.B.C. letter does not confirm the amount as being owing, but simply monies that might become owing should the balance of the work be done. And if Route 66 did the work, Mr. Frigstad would owe Route 66, not the landlord. No assignment of debt was given by Mr. Domnich or Route 66.

[29] It is not clear why Mr. Frigstad agreed to pay the monies set out in the agreement written up on November 27, 2001, save that he wanted his vehicle returned to him, the bailiffs were telling him the work was complete, and he accepted their word. If what they said was true, he would then owe the repair shop the cost of the repairs, he would need to pay the repair shop, and he would be entitled to reimbursement from I.C.B.C. on showing them the completed repairs and proof he had paid for same.

[30] Mr. Frigstad did not owe Absolute Bailiffs any monies. If anyone, he would owe the repair shop, if they completed the work.

[31] Further, the document dated November 27, 2001 says that if Mr. Frigstad did not pay by December 10, 2001 Absolute Bailiffs had the right to register a charge. In fact they did that on November 30, 2001.

[32] It is difficult to see any legal basis for the document signed by Mr. Frigstad. There is no consideration for the promise to pay since Mr. Frigstad was entitled to delivery of the Lincoln.

- [33] The evidence before me is that part of the work had been done and prepaid. No debt was owed by Mr. Frigstad. There was no consideration for the agreement. It follows there is no basis for the bailiffs claim for a security interest in the Lincoln, or the bailiff's alleged expenditure of \$5,413.13 in bailiff's time and expenses looking for the Lincoln for two and a half years.
- [34] The defendant also submitted that the plaintiffs' claims for damages and trespass to goods would be governed by a two year limitation. That may well be, but that does not cover the later seizure in mid 2004, which was unlawful.
- [35] Absolute Bailiffs argues that no conversion took place in June, 2004 because by then Absolute Bailiffs had a registered security interest and there is no pleading that the security interest was not valid. That does not make a bad security agreement good.
- [36] Further, they say they are entitled to their claims for costs for locating and seizing the collateral pursuant 59(2)(a) of the Personal Property Security Act, R.S.B.C., c. 359.
- [37] I cannot sensibly justify expenses of over \$5,000 incurred while pursuing a debt of \$764 even if properly founded, which I find it is not.
- [38] The defendant argued some relevant points, namely, the plaintiff's failure to create and name the estate in a proper form, the lack of reality in Mr. Frigstad's evidence regarding the second page of the 27 November document, and the flimsy claim for damage to his reputation.
- [39] In my view, this is much a tempest in a teapot, badly pleaded and only of interest to the immediate parties whose indignation outweighed any sense of proportion to the matters in issue.
- [40] While I find the Lincoln was wrongly detained in the first place, the Limitation Act, R.S.B.C., c. 266 would bar a claim on that aspect. As to the subsequent unlawful taking of the vehicle in mid 2004 it was very quickly solved by the solicitors on both sides. I find there was a conversion of the Lincoln which sounds in nominal damages of \$500.00, and an entitlement to reimbursement of Mr. Frigstad's cost incurred in June 2004 for a rental car in the amount of \$2,000.
- [41] I dismiss the remainder of the claims. Mr. Frigstad is entitled to his costs in accordance with Rule 57(10).

"R. Crawford, J."

The Honourable Mr. Justice R. Crawford

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