
CANADA / JUDGMENT

Yu v. ICBC

2006 BCSC 2028

COURT

Supreme Court of British Columbia

DECIDED

13 February 2006

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2006 BCSC 2028 Yu v. ICBC

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yu v. ICBC

2006 BCSC 2028

Date: 20060213

Docket: S052712

Registry: Vancouver

Between:

Daniel Yu and

656996 B.C. Ltd.

Plaintiffs

And:

Insurance Corporation of British Columbia,

and Her Majesty the Queen in Right of the

Province of British Columbia

Defendants

Before: The Honourable Mr. Justice Smith

Oral Reasons for Judgment

In Chambers

February 13, 2006

Counsel for Plaintiff

M.T.L. Blaxland

Counsel for Defendant

D.W. Pilley

Place of Hearing:

Vancouver, B.C.

- [1] In December 2004, the plaintiff company owned a car that was used primarily by the individual plaintiff, Mr. Yu. A person who had been asked to pick up the vehicle from a repair shop fraudulently purported to sell it. The transfer was registered by ICBC as were a number of subsequent transfers. The last of these transfers was to a Mr. Chawla, who purchased the car in good faith.
- [2] Mr. Yu was out of the country at the time. On his return in January 2005, he reported his car stolen. The vehicle was located by the police and seized from Mr. Chawla.
- [3] This application concerns Mr. Yu's effort to have registration of the vehicle restored to the name of his company which had to be done before he could insure and use it. The plaintiffs seek judgment under Rule 18A for damages arising from ICBC's failure to promptly transfer the registration back to the plaintiff company. ICBC seeks a dismissal of this claim also under Rule 18A.
- [4] On February 2, 2005, the ICBC adjuster wrote a letter to the plaintiff advising him that the vehicle had been released by the RCMP to a towing company. The letter asked Mr. Yu to contact the towing company to arrange for the vehicle to be towed from their lot and then stated:

In order to transfer the vehicle back into your name, please see your broker to advise the steps and documentation required to complete the transaction.

- [5] By that time, however, it appears from internal e-mails that others in ICBC had decided that it would be up to the court to determine proper ownership of the vehicle. There is an internal memo dated January 27, 2005 which appears to discuss matters subsequent to that date. It indicates that ICBC had discussed the matter with Mr. Yu and states:

I reiterated that he was to have some legal documentation to ensure we are supposed to do that (transfer the vehicle).

I told him to get a court order or talk to the police and get a letter explaining that charges were or were not being pressed and that the police want the vehicle transferred back into his name.

- [6] That same memo says that someone at ICBC had spoken to Mr. Chawla who indicated that he did not want the vehicle.
- [7] On March 15, Mr. Yu wrote to the RCMP and said he was told by ICBC that he needed to obtain a letter from the RCMP, to the effect that he was allowed to transfer registration to his name, advising whether or not charges were being laid, and confirming the vehicle identification number.
- [8] The RCMP wrote to ICBC on March 17 indicating that an investigation was still continuing. The letter also states that Mr. Chawla, whom the RCMP refer to as the innocent third party, had advised that he had received a new vehicle from the leasing company from whom he had purchased the plaintiff's vehicle.
- [9] On March 21, the representative of ICBC wrote to Mr. Yu confirming that they had received the letter from the RCMP and advising Mr. Yu that:

Until the investigation is completed by the RCMP, it is difficult to know if this will be a criminal or civil matter. Until that time ICBC is unable to process the transfer of ownership you requested.

- [10] On March 21, ICBC also wrote to the RCMP saying that if no charges were laid this would become a civil matter between the parties and ICBC would require a court order to transfer the vehicle out of the current registered party's name. In apparent response to that, the RCMP wrote to ICBC on April 1, stating:

It is hoped there will be a prompt resolution of this situation so all parties can have some sort of closure, particularly in the case of Mr. Chawla who is clearly an innocent victim in this matter. Cst. Rempel spoke to Mr. Chawla approximately one month ago and it was clear he wanted nothing to do with the 2004 Infinity, (the plaintiff's vehicle) and in fact had already purchased a new vehicle.

- [11] At that point the communication between ICBC and the RCMP was at cross purposes. ICBC was apparently seeking some confirmation of the RCMP's conclusion about whether the vehicle had, in fact, been stolen. The RCMP seemed more concerned with making clear that they no longer required physical possession of the vehicle. Both ICBC and the RCMP were interested in making clear that they would not be responsible for ongoing storage charges. The plaintiff apparently recovered physical possession of the vehicle on April 16, 2005, but was not able to use it because he could not get registration and ICBC continued to take the position that he required a court order.
- [12] In that regard, there is a letter from ICBC to plaintiffs' counsel dated April 28 indicating that ICBC understood that two other parties were claiming ownership of the vehicle. There was nothing in the documents before me to indicate what information it had about those claims or the basis on which those other parties were claiming ownership. Clearly by that time ICBC was aware that Mr. Chawla had indicated he did not want the car, although that information seems to have come to ICBC second hand.

- [13] An action was started, and on August 29, 2005, Mr. Justice Silverman ordered that the vehicle be registered in the plaintiff's company's name.
- [14] Throughout this matter ICBC acted under a policy which is set out as a policy for reversing fraudulent transfer. This was apparently a document that was sent to insurance agents. The policy required the owner of the vehicle to fill out a statutory declaration setting out the details of the theft and fraudulent transfer as well as certain other information. The policy also required that the statutory declaration be supported, either by a court order stating the vehicle is to be transferred back to the previous owner, or by a letter from the investigating police officer or Crown counsel stating either that the Crown intends to proceed with charges or that they will not be proceeding, but believe they have enough evidence for forgery or theft charges.
- [15] This policy purports to be pursuant to s. 17(2) of the Motor Vehicle Act, R.S.B.C. c. 1996, c. 318. That section reads:

If there is a transfer by operation of law of the title or interest of an owner of a motor vehicle or trailer registered under section 3 by way of inheritance, bequest, order in bankruptcy, execution sale, repossession on default in performance of a lease or conditional sales contract, or other means than the voluntary act of the person whose interest is transferred,

- (b) the person signing must transmit to the Insurance Corporation of British Columbia evidence satisfactory, to the Corporation of all facts entitling that person to sign the notice of transfer.
- [16] In my view, s. 17(2) does not address the situation that we are concerned with here.
- [17] It was clearly meant to address a situation where the owner is deprived of ownership by legal process. This did not happen in this case. This vehicle was stolen and that is not a circumstance which s. 17(2) covers.

- [18] Section 17(1) deals with voluntary transfer of a vehicle. It says:

If the title or interest of a person in a motor vehicle or trailer registered under section 3 is transferred whether by gift, exchange, barter or sale, the transferor and the transferee of the title or interest must immediately sign a notice of the transfer in the form required by the Insurance Corporation of British Columbia, and the transferee must within 10 days from the day of transfer deliver the notice to the corporation .

- [19] That section sets out a process for registration of a transfer but the precondition for such registration is that there be a transfer. The opening lines refer to the title or interest of a person in a motor vehicle being transferred. Again, there was no transfer of the interest by the owner of the vehicle in this case. The car was stolen and there was a purported registration of a transfer by the apparent thief.

- [20] The Act appears to be silent on the process for restoring registration of a stolen vehicle to its rightful owner. Section 17 does not address that situation and particularly, does not place on the owner of a stolen vehicle the obligation to prove his ownership before ICBC will correct the registration. I therefore must fall back on common law principles in the absence of any statutory provision. The first of these is the basic rule *nemo dat quod non habet* [a person cannot sell or give away what he or she does not own].
- [21] In this case, ICBC was informed that it had transferred the ownership of a vehicle in circumstances where the person who purported to transfer ownership had no right to do so. Absent any specific statutory provisions, ICBC's duty to the plaintiff was to satisfy itself of the necessary facts and restore registration to the rightful owner in the absence of any evidence that supported a competing claim.
- [22] It was not enough, in my view, for ICBC to simply delegate the matter to the RCMP to decide whether the vehicle had been stolen or not, or to place an onus on the rightful owner of the vehicle to seek a court order. It is clear that by no later than the beginning of April, ICBC knew that the RCMP was treating the matter as a theft and that Mr. Chawla no longer wanted the vehicle. If at that point ICBC had any doubt of the plaintiffs' right to registration of the vehicle, its duty was to satisfy itself of the situation. If there were competing claims for ownership actually being advanced, ICBC may have at that point, been forced to seek a court ruling as to what it should do.
- [23] In my opinion, ICBC was negligent in persisting in a policy placing the onus on the plaintiff when that policy was not appropriate in the circumstances and had no application. It would be open to the legislature to set out a procedure where ICBC could require the owner of a stolen vehicle to prove by some means his or her ownership, but in the absence of that statutory policy, it was required to return registration of the vehicle to the plaintiff in the absence of any other competing claim being pressed and to investigate the matter if it felt it had to do so.
- [24] The plaintiffs advance a claim for various types of wrongdoing on the part of ICBC. There is no basis for those claims. ICBC's breach of duty here was, in my view, only in negligence.
- [25] The plaintiffs claim damages for the cost of being without his car and the efforts to get it back. This includes things like storage, taxi fees, and some of the value of the time that Mr. Yu had to spend dealing with this matter. There is no issue about these amounts. There is also a claim for legal fees. Those claims appropriately flow from ICBC's failure to restore registration up to and including the date of Mr. Justice Silverman's order. Any claim for legal fees after that date relates to the action for damages and are not a matter of damages, but are a matter of party and party costs.

[26] Mr. Pilley claims costs for claims of theft or wrongful action or intentional action that I have rejected. If any particular cost can be identified as flowing from those claims as opposed to the negligence claim that I have allowed, ICBC will be entitled to those costs on a party and party basis as well.

[27] MR. PILLEY: My Lord, presumably if the damages include the component of legal fees up until Mr. Justice Silverman's order, party and party costs would not arise for that period of time?

[28] THE COURT: That's correct.

[29] MR. PILLEY: It would be party and party costs only after the day of that order?

[30] THE COURT: Yes.

(Submissions).

THE COURT: What I am saying is this account of August 29 plus any disbursements that relate to those same periods and accounts before that, and then anything after that -- but counsel, you can work out the actual number in the order and if there is a problem in putting the number on the order you can speak to it or send me a letter and we can deal with it that way.

The Honourable Mr. Justice Smith

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