

CANADA / JUDGMENT

Yu v. ICBC

2007 BCCA 89

COURT

British Columbia Court of Appeal

DECIDED

2 February 2007

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2007 BCCA 89 Yu v. ICBC COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Yu v. ICBC, 2007 BCCA 89 Date: 20070202 Docket: CA033829 Between: Daniel Yu and 656996 B.C. Ltd. Respondents (Plaintiffs) And Insurance Corporation of British Columbia Appellant (Defendant) Before: The Honourable Chief Justice Finch The Honourable Mr. Justice Mackenzie The Honourable Madam Justice Kirkpatrick Oral Reasons for Judgment T.L. Robertson, Q.C. D.W. Pilley Counsel for the Appellant M.T.L. Blaxland Counsel for the Respondent Place and Date: Vancouver, British Columbia 2 February 2007

- [1] FINCH, C.J.B.C.: ICBC appeals from the judgment of the B.C. Supreme Court pronounced 13 February 2006 holding it liable in negligence for damages suffered by the plaintiffs after the plaintiffs' vehicle was stolen. The vehicle was insured by ICBC. The vehicle was recovered by the RCMP. The plaintiffs alleged losses caused by ICBC's handling of their claim, and in particular ICBC's delay in recognizing the corporate plaintiff's entitlement to registration of the vehicle in its name.
- [2] It is not disputed that the plaintiff's vehicle was stolen in December 2004 or January 2005 while the plaintiff Mr. Yu was out of the country. A person known to him purported to sell the vehicle. Without lawful authority and fraudulently that person signed the transfer as vendor and a purchaser was registered as owner. There were two subsequent transfers of title. The last was to a Mr. Chawla who purchased the vehicle for value and in good faith.
- [3] There is no suggestion that the plaintiffs were complicit in any way in the original theft.
- [4] When Mr. Yu returned to British Columbia he reported his vehicle as stolen both to the police and ICBC. The police found the vehicle and seized it from Mr. Chawla.
- [5] On 27 January 2005 RCMP Constable Rempel contacted the responsible official at ICBC, Mr. Jim Carkener, and told him the vehicle was at the RCMP compound and available for ICBC at any time. Mr. Carkener advised the RCMP to have the vehicle towed to an ICBC claim centre. A towing company took the vehicle to the designated claim centre. The RCMP advised ICBC that they had no further interest in the vehicle and would not be responsible for any storage charges.

- [6] It appears that Mr. Chawla eventually abandoned a claim to entitlement to this vehicle in priority to Mr. Yu.
- [7] One would have thought that at that point the vehicle would simply have been returned to the plaintiffs, and that ICBC would have been responsible for any losses suffered by the plaintiffs for which insurance was provided under the theft coverage of the plaintiff's ICBC policy.
- [8] That did not happen. The vehicle was returned to the plaintiff. However, ICBC took the position that because the theft was achieved by an allegedly fraudulent transfer, the plaintiff could only have the vehicle registered back into his or his company's name if he provided "evidence satisfactory to ICBC" that he was entitled to register that vehicle. ICBC said such evidence would have to be either:
1. A court order stating that the vehicle in question is to be transferred back into the name of the previous owner; or
 2. A letter from an investigating police officer or Crown counsel stating that the Crown intends to proceed with the case; or
 3. A letter from an investigating officer stating that the police have enough evidence to lay forgery or theft charges, but cannot lay those charges for reasons unrelated to the merits of the case.
- [9] In support of this position, ICBC relied upon s. 17 of the Motor Vehicle Act which provides in part: 17(2) 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 sale contract, or other means than the voluntary act of the person whose title or 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.
- [10] After ICBC took this position, there followed what appears to me to be a confusing exchange of correspondence and communications between the plaintiffs' solicitor and ICBC about who should bear the costs associated with the process ICBC said had to be followed.
- [11] The learned summary trial judge held that s. 17 of the Motor Vehicle Act did not apply. He wrote:
- [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.
- [12] The judge held ICBC liable for the losses attributable to its negligence, and judgment was eventually entered for the sum of \$13,144.88. The amount of the plaintiffs' loss is not in dispute on this appeal.
- [13] After the judge gave his reasons holding ICBC liable, and before judgment was entered, counsel for the Corporation wrote to the Court asking that the judge's attention be drawn to s. 3(7) of the Motor Vehicle Act. The judge considered the section, but held that it had no effect on his earlier decision.
- [14] Section 3 of the Motor Vehicle Act reads in part: 3 (1) Except as otherwise provided in this Act, the owner of a motor vehicle or trailer must, before it is used or operated on a highway,

- (a) register the motor vehicle or trailer with the Insurance Corporation of British Columbia,
 - (b) obtain a licence for its operation under this section, and
 - (c) obtain for it a certificate of insurance under the Insurance (Motor Vehicle) Act. . . .
- (7) On receiving the application in the form required by the Insurance Corporation of British Columbia, and on being satisfied of the truth of the facts stated in the application, and that the prescribed fees and insurance premium have been paid, the corporation must cause the name and address of the owner and a description of the motor vehicle or trailer to be registered in a file or index to be kept for that purpose, and must cause the following to be issued to the owner:
- (a) a numbered licence in the form established by the corporation, showing registration of the motor vehicle or trailer and authorizing its use and operation in accordance with this Act;
 - (b) one distinctive number plate in the case of a motorcycle or trailer, and 2 distinctive number plates in the case of a motor vehicle other than a motorcycle;
 - (c) a certificate of insurance and motor vehicle liability insurance card.
- [15] Assuming that s. 3(7) applies to a "re-registration" of a vehicle, in addition to a registration of a vehicle, the question is what was necessary, in addition to an application in proper form, reasonably to satisfy ICBC of the truth of the facts stated in the application.
- [16] The provisions of the Motor Vehicle Act relied upon by ICBC govern its responsibilities as the government agency for registration of vehicles. It contends that as registrar it had no duty to clarify any uncertainties as to who was the true owner and who was therefore entitled to be registered.
- [17] But ICBC also had obligations to Mr. Yu and the numbered company as the insurer of the vehicle against theft. The vehicle was insured for replacement value by ICBC against theft and vandalism. When the RCMP delivered the vehicle to ICBC, and disclaimed any further interest in, or responsibility for, the vehicle, ICBC as insurer had a choice. It could return the vehicle to the plaintiff as the rightful owner. Or it could pay the plaintiff under the theft coverage of its insurance policy for the vehicle's replacement value. It was as much an ICBC's interests to return the vehicle to the lawful owner, as it was for the owner to have the vehicle re-registered in his name.
- [18] In these circumstances, it was not reasonable for ICBC to insist on compliance with the policy it developed under s. 17(2) of the Motor Vehicle Act as necessary to meet the requirements of s. 3(7), because that position overlooked ICBC's obligations as insurer.
- [19] In my view the trial judge did not err in deciding that his original judgment should remain unvaried.
- [20] I would dismiss the appeal.

[21] MACKENZIE, J.A.: I agree.

[22] KIRKPATRICK, J.A.: I agree.

[23] FINCH, C.J.B.C.: The appeal is dismissed. "The Honourable Chief Justice Finch"

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