

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Doiron v. Rideout*, 2022 NSSM 62

Date: 20221231

Docket: SCBW - 515804

Registry: Bridgewater

Between:

James Robert Doiron

Claimant

v.

Julia Lee Rideout c.o.b. as Rideout Motors Sales & Service

Defendant

Reasons for Decision and Order

Adjudicator: Eric K. Slone

Heard: December 20, 2022, via zoom in Halifax, Nova Scotia

Appearance: For the Claimant, self-represented
For the Defendant, self-represented

BY THE COURT:

[1] This file involves a claim and counterclaim arising out of mechanical service performed on the Claimant's vehicle by the Defendant's shop.

[2] The Claimant lives in Bridgewater, Nova Scotia, and is the owner of a 2005 Ford F-250 pick-up truck that he purchased from an individual ("PB") for \$3,500.00 in about August 2021. The vehicle needed a lot of work, much of which he had done at a cost he estimates at \$7,000.00. The last item that needed attention, before it could pass a motor vehicle inspection, concerned a fluid leak coming from somewhere near one of the axles.

[3] In October 2021 the Claimant took the vehicle into the garage owned by the Defendant, Julia Lee Rideout, to have this problem attended to. A friend or acquaintance of the Claimant is (or was) a mechanic at that shop.

[4] The Claimant says he was given a verbal estimate of \$900.00 for the work. The Defendant says that no estimate was given because it was not known what needed to be done. While I suspect there was a figure of \$900.00 mentioned in passing, I do not believe it would have been binding on the Defendant. In the end, it does not matter whether there was mention of \$900.00 as the evidence does not support there being a binding estimate. The detailed invoice shows the work that was purportedly done, which far exceeded \$900.00 for parts and labour.

[5] When the Claimant returned a few days later to pick up his truck, he was presented with a bill for \$2,373.35. He was obviously taken by surprise at the size of the bill, but he paid \$1,300.00 toward it and promised the rest later.

[6] He was allowed to take the truck away, on the strength of his promise.

[7] A week later he came in with another \$500.00, leaving a balance of \$573.35 which he promised to pay.

[8] Apparently, at some point around this time the fluid leak returned, and he took it to a friend (also a mechanic) who fixed the leak.

[9] Because he believed that the Defendant had not completed the job and owed him a credit for the cost of fixing or completing their work, the Claimant did not return to pay the balance owing.

[10] For reasons that were not explained, the Defendant took no steps to collect the balance of the bill until June 2022, some eight months after the bill had become due. This started with a text message asking the Claimant to come in and settle up his bill. There followed some testy and escalating correspondence between the parties, with various threats, accusations and badmouthing going both ways.

[11] This is where matters went totally off the rails, in my opinion. The easiest thing would have been for the Defendant to sue the Claimant in Small Claims Court for this relatively small balance of \$573.35. Instead, apparently with legal advice, the Defendant went to Service Nova Scotia and filled out paperwork to have the ownership of the vehicle registered in her name, on the stated basis that she was a lienholder to whom title had passed by operation of law pursuant to article 23(6) of the *Motor Vehicle Act*. On the basis of her sworn affidavit, attesting that she had a valid claim to be registered as the owner, she was given a certificate of registration showing herself as the owner of the vehicle.

[12] Once she had title, the Defendant planned to seize the vehicle. She also presented the Claimant with an updated invoice claiming \$1,685.74, having added various charges to the original debt of \$573.35. Those charges included small amounts for interest, towing fees of \$150.00, a \$100.00 “lawyer fee” and a \$750.00 charge for a “tax fee.”

[13] Those charges are of highly dubious legitimacy, in my opinion, as they mostly flow from a misconceived effort to enforce a lien on the vehicle. In the case of the tax fee, the Defendant has not actually paid anything but believes that she will be liable for a tax bill at the end of the year. I fail to see how that is something for which the Claimant could be held responsible.

[14] The section of the *Motor Vehicle Act* upon which the Defendant’s application was based, reads as follows:

23 (6) In the event of the transfer by the operation of law of the title or

interest of an owner in and to a vehicle by reason of the bankruptcy of the owner, execution sale, repossession upon default in performing the terms of a conditional sale agreement or otherwise, the registration thereof shall expire and the vehicle shall not be operated upon the highways until and unless the persons entitled thereto shall apply for and obtain the registration thereof, excepting that trustee or other representative of the owner or a sheriff or other officer repossessing the vehicle under the terms of a conditional sale contract, lease, chattel mortgage or other security or the assignee or other representative of such person may operate or cause to be operated the vehicle upon the highways from the place of repossession or place where formerly kept by the owner to a garage, warehouse or other place of keeping or storage while displaying upon the vehicle the number plates issued to the former owner.

[15] The immediate consequence of having title in the Defendant's name is that she made several attempts to seize the vehicle. The Claimant did not allow the vehicle to be seized. The police became involved but ultimately concluded that it was a civil matter.

[16] On June 22, 2022, this claim was filed, and the defence and counterclaim was filed about two weeks later.

[17] For the last few months, the Claimant has been concealing his vehicle to avoid having it repossessed. He claims damages for loss of use of the vehicle, fraud and other claims which I will consider later.

Claim for lien

[18] In my opinion, the Defendant utterly misconceived her rights. Notwithstanding what someone may have told her, she was not a person to whom title of the vehicle transferred by operation of law. Section 23(6) of the *Motor Vehicle Act* does not confer lien rights; it merely provides a mechanism for ownership to be transferred in situations that are not as straightforward as a sale.

[19] The lien to which she might have been entitled (assuming the legitimacy of the debt) falls under the *Builder's Lien Act* which is the successor to the old

Mechanic's Lien Act. That Act recognizes a possessory lien enforceable in one way only, namely by way of an auction sale to recover the debt:

Builder's lien on chattel

45 (1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement in its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists, but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell by auction the chattel or thing in respect to which the lien exists, on giving one week's notice by advertisement in a newspaper published in the county in which the work was done, or in case there is no newspaper published in such county, then in a newspaper circulating therein, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of such county.

(2) Such mechanic, or other person, shall apply the proceeds of the sale in payment of the amount due him and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto. (Emphasis added)

[20] In my opinion, this remedy requires that the lien claimant remain in possession of the vehicle and follow the steps set out in the Act, including initiating a sale at auction. The underlined words "*while such lien exists, but not afterwards*" is consistent with the fact that this lien is exercised by retaining possession of the vehicle, and is lost when possession is given up.

[21] The history of mechanic's liens is reviewed at some length in *Hutchison v. Hawker Siddeley Canada Ltd.*, 1972 CanLII 1169; 32 DLR (3d) 759 at 762-3:

A mechanics' lien is one of the possessory liens known to the common

law as a particular lien attaching to property to secure a debt relating to that property. Wallace, *Mechanics' Lien Laws in Canada*, 2nd ed. (1913), pp. 135-6, states:

A mechanics' lien is a particular or specific lien which confers upon a mechanic who has bestowed labor, skill or expense upon or in respect of the chattel of another, the right to retain the chattel for his reasonable charges until they are satisfied. The work done must be authorized expressly or impliedly by the owner of the chattel.

.....

The *Mechanics' Lien Acts* do not create the lien. In proper circumstances, the lien exists by reason of the common law. By the statute is given the right of sale and the mechanics of it. Wallace explains at pp. 137-8 :

The Mechanics' Lien Acts give the additional right of sale to the lien-holder. Under the common law the mechanic already had the right to retain the chattel in his possession until his claim was satisfied, but there was no efficient method of enforcing the lien, as he did not have the right to sell the chattel, there being in that respect a distinction between a mechanics' lien and an express pawn or pledge of goods by the owner, as collateral security for a loan of money, as the creditor might sell the pledge in the latter case.

A reference to possessory liens in 35 Hals., 3rd ed., p. 787, para. 1212, is as follows:

A possessory lien is the right of a person in whose possession a ship or her appurtenances is or are to retain possession thereof until payment or discharge of some debt or obligation due to that person in respect thereof. Such a right belongs to one who repairs, alters or otherwise bestows labour or skill upon a ship, and retains possession thereof. There is no power to realise the security, even though expenses and inconvenience must be incurred in keeping it.

I would be prepared to hold, that if the motor vessel had remained in possession, the lien would attach to it and its appurtenances.

[22] A bit more recently, in *J. Gary Hughes Inc v. McGowan Motors Limited (Receiver of)*, 1999 CanLII 4611 (PE SCAD), the PEI court was urged to recognize a non-possessory lien under that Province's legislation. It commented as follows:

[16] The scheme of the Act is to protect the claims of a garage keeper for repairs done to a motor vehicle. A garage keeper had a possessory lien at common law for the costs of the repairs to a motor vehicle as long as he retained possession of the motor vehicle, but once the garage keeper voluntarily gave up possession of the motor vehicle, the lien was lost. Mr. Justice Kelly of the Ontario Court of Appeal states in *Royal A. Vaillancourt Co. Ltd. v. Trans Canada Credit Corporation Ltd.*, 1963 CanLII 195 (ON CA), [1963] 1 O.R. 411, at p.413:

At common law, when a workman bestowed skill, labour or money upon personal property with the express or implied authority of the owner, a particular lien attached to such personal property and continued in existence so long as such personal property remained in the lien-claimant's possession: *Beven v. Waters* (1828), Mood. & M. 235, 173 E.R. 1143; (1828), 3 Car. & P. 520, 172 E.R. 529.

(Emphasis added)

[23] The *Builder's Lien Act* does not authorize a lien claimant to transfer ownership of the chattel to the debtor's name, even where the lien claimant remains in possession. Nor does any other legal provision do so, as far as I am aware. As such, I see no legal basis for the Defendant to exercise a lien, while not in possession of the chattel, by purporting to have title transferred into her own name. Once she released the vehicle to the Claimant, her lien rights were lost.¹

¹ To further complicate the picture, the transfer process bypassed the Claimant because he had never been the registered owner of the vehicle. As he explained, it was not yet ready to pass inspection.

Remedies

[24] In my view the Claimant has established that his rights have been violated. I find that the Defendant unlawfully transferred title of the vehicle into her own name, thus standing in the way of the Claimant being able to register the vehicle in his own name and preventing him from making full use of his vehicle. If it is necessary to put a name to the unlawful action, I find that the Defendant committed the tort of conversion.

[25] I find that at no time did the debt to the Defendant exceed the \$573.35 owing from the original bill. I find that the Defendant failed to exercise her lien rights in accordance with the *Builder's Lien Act* and had no basis to claim anything further. Even the claimed interest is not payable as there is nothing on the original invoice indicating that interest would be charged at any particular rate.

[26] The Claimant says he has been denied the use of his vehicle because he has not been able to register it or take it out of hiding and expose it to seizure. He values that claim at \$10,000.00. It may be true that he has been hamstrung for the last few months, but it does not explain why he never registered it between October 2021 and June 2022, before the Defendant put the ownership in her own name. I do not consider that the Claimant has proved that he has suffered an economic loss of this magnitude. I am prepared to award him nominal damages of \$600.00 for loss of use, based on \$100.00 per month for six months, to the end of 2022. It appears that he is operating another vehicle, and only has about \$10,000.00 tied up in the subject vehicle. In my view, \$100.00 per month fairly compensates him for the opportunity loss of his investment.

[27] I do not find a basis for any other damages.

[28] Somehow, the title transfer should be undone. I find that the Defendant has no legal interest in the vehicle under any statutory or common law right. She has no possessory rights either. She is a simple debtor to the tune of \$573.35, at most.

[29] I will leave it to the parties to figure out the least costly way to undo the transfer. Probably the most straightforward method would be to simply sign the ownership directly to the Claimant. If there is any cost to effect this transfer, it should be at the Defendant's expense. In the event that a further order of the court is required, I will retain jurisdiction and the hearing may be resumed before me.

[30] In summary, I find that the Claimant is entitled to a judgment for \$600.00 plus costs of \$199.35, for a total of \$799.35.

[31] I find that the Defendant is entitled to a set-off in the amount of \$573.35, representing payment in full of the original invoice. I am not convinced that there should be any deduction on account of further repairs needed after the vehicle was repaired by the Defendant.

[32] This results in the Defendant paying to the Claimant the net sum of \$226.00.

[33] Further damages at the rate of at least \$100.00 per month would accrue in the event that the Defendant refuses to surrender her illegitimate title, and the court is prepared to make further orders, should that be necessary.

Order

1. IT IS HEREBY ordered that the Defendant shall restore title of the vehicle to the state it was in at the time of the unlawful transfer of title on June 17, 2022, all at her own expense.
2. IT IS FURTHER ORDERED that the Defendant shall pay to the Claimant the net sum of \$226.00, as set out in the reasons above.
3. IT IS FURTHER ORDERED that the court shall retain jurisdiction to make such further or other orders in the event that there are obstacles that prevent or delay the prompt restoration of the Claimant's title to the vehicle.

DATED at Halifax, Nova Scotia this 31st of December 2022.

Eric K. Slone, Adjudicator