

Date: 1998 01 28
Docket: CV 07238

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOSEPH FORD and COLIN FORD

Plaintiffs

- and -

HAK'S AUTOBODY LTD.

Defendant

MEMORANDUM OF JUDGMENT

[1] This proceeding involves a dispute between a garage keeper and one of its customers, and the interpretation of the *Garage Keepers Lien Act*, R.S.N.W.T. 1988, c.G-1.

[2] The defendant has been operating an autobody repair shop in Yellowknife for twenty years. For the past eight years, it has provided to its customers, free of charge, the use of a "courtesy vehicle" during the time period that the customer's own vehicle is in the defendant's shop for repairs.

[3] The plaintiff Joseph Ford is the lessee of a 1995 Ford Aerostar Wagon under a lease/purchase agreement with a Ford dealer. The plaintiff Colin Ford is Joseph Ford's son, and lives in Yellowknife. During the relevant time, Colin Ford had sole possession of the vehicle with his father's consent. On November 28, 1996, the Ford vehicle sustained damage in an accident, and Colin Ford took the vehicle to the defendant for repair. The defendant indicated it would attempt to complete the repairs before Christmas.

[4] Colin Ford was offered the use of a courtesy vehicle but he initially declined, as he had the use of another vehicle. However, on December 5 he called the defendant and asked for a courtesy vehicle and the defendant provided him with a 1996 Dodge Neon.

[5] There are discrepancies between the testimony of Colin Ford and that of Mr. and Mrs. Mujcin regarding the discussion which took place about the use of the courtesy vehicle, and regarding other matters; e.g. the actual state of cleanliness of the courtesy vehicle upon its return to the defendant. I did not find Colin Ford to be a particularly credible witness, and where his evidence differs from that of Mr. or Mrs. Mujcin, I prefer the evidence of Mr. Mujcin or Mrs. Mujcin.

[6] I am satisfied that there was an understanding, either implied or explicit, that the courtesy vehicle was being provided to Colin Ford subject to certain reasonable conditions; i.e.:

- a) The vehicle was for his regular, day-to-day use in and around the City of Yellowknife until such time as the repairs were completed on his own vehicle.
- b) There was to be no smoking in the courtesy vehicle (a sticker to this effect was on the vehicle).
- c) The vehicle was to be returned in a similar condition as when received; i.e., clean and mechanically fit.

[7] The repairs were completed on December 24. I am satisfied that Mrs. Mujcin attempted to contact Colin Ford on December 24 and December 26 to so advise him, but she was unable to reach him at the telephone number he had provided.

[8] Colin Ford left Yellowknife in the courtesy vehicle on December 26 and drove to Calgary with friends. He returned to Yellowknife on Friday, January 3. On Saturday afternoon, January 4, without contacting Mr. or Mrs. Mujcin, Colin Ford returned the courtesy vehicle to the defendant's premises and drove his own (repaired) vehicle away from the defendant's lot, using keys he had retained.

[9] When the defendant realized that the repaired vehicle had been removed without payment for the repairs, it contacted the police and also arranged for the repaired vehicle to be towed back to the defendant's premises.

[10] Upon examining the courtesy vehicle, Mr. and Mrs. Mujcin noted that it was in a filthy condition. Inside the vehicle there were pop cans, food wrappers, food particles,

etc. There was a cigarette burn on the back seat and the smell of tobacco smoke throughout. Colin Ford testified that he gave the courtesy vehicle a thorough cleaning -- interior and exterior -- before returning it; however, I do not accept that testimony as credible.

[11] The defendant also noticed that the odometer on the courtesy vehicle indicated that it had been driven approximately 7,000 kilometres while in Colin Ford's possession since December 5.

[12] On about January 6, 1997, the defendant prepared an invoice (Exhibit 5) for the account of the plaintiffs in the total amount of \$8,318.83. The constituent parts of the invoice can be described as follows:

A.	Repairs to Ford vehicle		\$5,547.85(incl. GST)
B.	Courtesy vehicle		
	(1) Daily rate of \$59.95 for 15 days	899.25	
	(Dec.24-Jan.7)		
	(2) Mileage 6157 km @ .25/km	1,539.25	
	(3) Cleaning	150.00	
	(4) GST	<u>182.48</u>	<u>2,770.98</u>
	TOTAL		\$8,318.83

[13] Of the \$5,547.85 owing for the repairs to the Ford vehicle, \$5,047.85 was received by the defendant on January 17, 1997 (from Joseph Ford's insurer) and \$500.00 was received by the defendant directly from Colin Ford on or about January 15, 1997.

[14] Colin Ford refused to pay that portion of the invoice relating to the courtesy vehicle. His father's insurer advised him that the insurance policy did not cover that portion of the invoice relating to the courtesy vehicle.

[15] As a substantial portion of its invoice remained unpaid, the defendant retained possession of the Ford vehicle. On January 20, 1997, it purported to exercise its lien rights pursuant to the *Garage Keepers Lien Act* by filing a claim of lien in the Document Registry. On June 25, 1997, the defendant caused the Sheriff to effect a physical seizure of the Ford vehicle.

[16] Relevant provisions of the *Garage Keepers Lien Act* are as follows:

2.(1) In addition to every other remedy that a garage keeper has for the recovery of money owing to the garage keeper for the storage, repair or maintenance of a motor vehicle, or the price of accessories furnished for a motor vehicle, the garage keeper has a lien on the motor vehicle for the sum to which he or she is entitled to be paid for that storage, repair or maintenance or for those accessories.

...

3. A lien ceases to exist on the 21st day after the day on which, in respect of the motor vehicle that is subject to the lien,

- (a) storage of the motor vehicle terminated,
- (b) repairs to the motor vehicle were completed, or
- (c) accessories for the motor vehicle were furnished,

unless on or before the 21st day, the garage keeper files or causes to be filed in the Document Registry

- (d) a claim of lien in the prescribed form and signed by the garage keeper or a person authorized by the garage keeper, and
- (e) an affidavit of the garage keeper or an agent of the garage keeper in the prescribed form verifying the claim of lien.

4.(1) On the filing of a claim of lien, the lien continues for six months after the date of filing.

(2) A lien ceases to exist on the expiration of six months after the date of filing of the claim of lien unless, within the six months,

- (a) a true copy of the lien and a warrant in the prescribed form and addressed to the Sheriff are issued and delivered to the Sheriff, directing the Sheriff to seize the motor vehicle that is subject to the lien in accordance with the *Seizures Act*; and
- (b) the motor vehicle that is subject to the lien has been seized.

[17] Notwithstanding a novel submission on behalf of the defendant that the provision of a courtesy vehicle by a garage keeper constitutes an “accessory” furnished for the vehicle under repair, in my view the plain words of the statute do not allow such an interpretation.

[18] The *Garage Keepers Lien Act* does not give a lien to a garage keeper for losses arising out of a courtesy car arrangement between the garage keeper and its customer. The garage keeper may have a remedy in damages, but not a lien over the vehicle under repair.

[19] Accordingly, the lien which the defendant had against the Ford vehicle ceased to exist upon payment to the defendant of the sum of \$5,547.85 for repairs to the Ford vehicle; i.e., on or about January 17, 1997. The seizure on June 25, 1997 amounts to an unauthorized seizure and is hereby set aside. Paragraph 5 of the Court's interim order of August 22, 1997 restricting the plaintiffs' use of the Ford vehicle is hereby rescinded.

[20] I am not satisfied that the plaintiffs are entitled to any damages arising from the unauthorized seizure. Colin Ford states that he was told by the defendant in late January that it would not release the Ford vehicle to him until the invoice (Exhibit 5) was paid in full, yet he took no steps to obtain the release of his father's vehicle until August 11, 1997 when he filed an application in this Court. On August 22, 1997, the Court ordered the defendant to deliver up possession of the vehicle to Colin Ford.

[21] With respect to the lien/seizure aspect of this proceeding, in my view the plaintiffs have already received the real remedy to which they were entitled; i.e., the return of the repaired vehicle. In the circumstances, the plaintiffs shall have costs of the August 22, 1997 application, which I hereby set at \$250.00, inclusive of disbursements.

[22] I turn now to the defendant's claim against the plaintiffs for damages suffered as a result of the unauthorized use of the courtesy vehicle.

[23] In my view, there is merit in the defendant's claim. The courtesy vehicle, pursuant to the agreement, should have been returned to the defendant on or about December 24, 1996 when the repairs to the Ford vehicle were completed. It was unreasonable, and a breach of the agreement, for Colin Ford to leave town with the courtesy vehicle, without notice to or without the consent of the defendant. He is liable to the defendant for the value of the use made of the 1996 Dodge Neon from December 24 to the date of its return; i.e., January 4, 1997. He is also liable for the cleaning job and the \$30.00 parking ticket he incurred, at the defendant's expense, while the Dodge Neon was in his possession.

[24] The quantum of damages can only be estimated by this Court, as there was no agreement between the parties at the commencement of the courtesy car arrangement

regarding a daily rate, mileage, etc. (Their agreement was simply that there would be no charge for the use of the vehicle up to December 24.)

[25] At trial, Mrs. Mujcin explained that she called a local car rental agency and was told that the rate for a 1996 Dodge Neon was \$59.95/day, plus 25 cents per kilometre. Colin Ford, in his testimony, stated he received a daily rate quote from another car rental agent at \$29.95. In these circumstances, I shall split the difference and use a daily rate of \$45.00 for the 10 days of unauthorized use between December 24 and January 4. As to mileage, I find that the plaintiff Colin Ford should reimburse the defendant for the additional 3,600 kilometres (approximate) wear and tear on the Dodge Neon represented by the trip to Calgary. Such a use of the courtesy vehicle was clearly not contemplated by the arrangement between himself and the defendant.

[26] The defendant shall accordingly recover damages from the plaintiff Colin Ford as follows:

a)	10 days @ \$45.00/day	\$ 450.00
b)	3600 km @ .25/km	900.00
c)	cleaning	150.00
d)	parking ticket	30.00
e)	GST	<u>107.10</u>
		\$1,637.10

[27] In the circumstances, I disallow any claim for interest. And, as there is mixed success, each party shall be responsible for their own costs of the Counterclaim. The plaintiff Colin Ford shall be entitled to setoff the \$250.00 costs owing by the defendant from the judgment amount of \$1,637.10.

[28] In summary, an order shall issue:

1. declaring that the defendant's lien against the Ford vehicle ceased to exist upon the payment of \$5,547.85 for repairs;
2. setting aside the Sheriff's seizure effected June 25, 1997;
3. rescinding paragraph 5 of the Court's order of August 22, 1997;
4. awarding to the plaintiffs costs of its application contained in Notice of Motion filed August 11, 1997, in the amount of \$250.00;
5. dismissing the plaintiffs' claim for damages, as prayed in the Statement of Claim;

6. granting judgment to the defendant in the total amount of \$1,637.10 (less setoff of \$250.00 for costs as above) as against the plaintiff Colin Ford, as prayed in the Counterclaim; and
7. directing that each party shall be responsible for its own costs, except as indicated above.

[29] Dated at Yellowknife, Northwest Territories this 28th day of January 1998.

J.E. Richard,
J.S.C.

Counsel for the Plaintiffs: Olivia Rebeiro
Counsel for the Defendant: Kelly A. Payne

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