TC Civ. 91-002

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

EMANUEL IKE IGBOJI

Plaintiff

- and -

OLD TOWN CHRYSLER LTD.
and TONY VANE

Defendants

Heard at Yellowknife, N.W.T.

Reasons filed: August 19, 1991

REASONS FOR JUDGMENT

of

His Honour Judge T.B. Davis

Counsel for the Plaintiff: Plaintiff appeared in person

Counsel for the Defendants: Represented by Anthony Vane

CIV 3404

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REASONS FOR JUDGMENT

The Plaintiff, Emmanuel Ike Igboji, claims damages against the Defendants, Old Town Chrysler Ltd. and Tony Vane, for the replacement costs of a stereo which was missing from his vehicle when he picked up the car in May, 1991, having delivered it to the Defendants in November, 1990.

There were discussions between the parties on what repair services or replacement parts were needed to repair the turbo in the vehicle. At the request of the Plaintiff, the Defendants made inquiries from suppliers about new and reconditioned replacement parts after the Defendants had determined that it could not locate new seals only for the replacement of the damaged seals in the turbo. Misunderstandings developed between the Plaintiff and the repair shop manager of the Defendant company, resulting in no work being done on the vehicle as the Defendants had not received a work order from the Plaintiff until mid-May, 1991, although the Plaintiff had understood that he had instructed the company to attempt to replace the defective seals rather than to install a new or reconditioned turbo.

Very little if any contact was made between the parties over extended periods between December, 1990 and May, 1991. During this time, the vehicle had been put in the corner of the Defendants' lot and was enclosed behind other vehicles as was the usual storage custom of the Defendants.

The Defendants acknowledge that, in the month of January, some of the vehicles on its lot had been broken into, resulting in loss of items that were stolen from some of the vehicles.

The question of liability for the loss of the stereo from the Plaintiff's vehicle while it was left in the care of the Defendants must be determined by the Court and is based on the law of bailment and the relationship between the parties.

A bailee for reward, being the person who has the care of the goods, has a greater duty than a gratuitous bailee. In this instance, although the Defendants have not charged the Plaintiff for storing the vehicle on its property, such a difference will not affect the outcome of this decision, which is based on the more onerous responsibility.

THE LAW:

The Ontario Court of Appeal in 1929 stated the law of bailment in Porter v. Muir Bros. Dry Dock Co., reported in 63 O.L.R. 437, following an earlier case, Pratt v. Waddington, 1911, 23 O.L.R., page 178.

> "When goods are given to and accepted by a person as bailee, and are lost or damaged while in his custody, the onus lies upon him to show circumstances negativing negligence on his part."

This general statement was confirmed by the Alberta Court of Appeal in A-1 Rentals Sales & Service Ltd. v. Alta. Arches & Beams Ltd., reported in 1966 in 58 W.W.R. at page 227.

Bailees have been found negligent in the care of bailed goods when vehicles were stolen because there was a failure to safeguard the keys (Budget Rent-A-Car Ltd. v. Penguin Auto Body Ltd. [1975] 5 W.W.R. 39).

A bailee must exercise the care and diligence that a careful and diligent person would have exercised in the same circumstances but would not be liable for loss or damage to the property which arose from a mere temporary lapse of duty such as may occur when anyone is safeguarding his own property (Gorin v. Douglas Securities Ltd. 1985, 25 W.W.R. 408 B.C.S.C.).

The Defendants placed the Plaintiff's vehicle on the lot with vehicles of other customers and of the Defendants. The Plaintiff had not expected the Defendants to store his vehicle in any different way while the parties were discussing what work was to be done on the vehicle to repair the faulty turbo.

I find that the Defendant had the duty to establish the exercise of reasonable care which a prudent person would exercise for the protection of his own property, as was required in Babin's Distributing Co. v. Masco Enterprises Ltd. (1985) 42 Sask. R. 113 (Sask. Q.B.)

Any vehicle that is in an open lot is subject to possible vandalism. It would be unreasonable to expect more security from a bailee than that usually provided by persons for the protection of their own goods. Without some agreed upon terms requiring special security, a bailee must exercise no more than is reasonable under the circumstances.

I am satisfied that the Defendants exercised reasonable care and that the theft from the Plaintiff's vehicle could have occurred

whether the vehicle was on the lot of the Defendants or on any other open lot in the city and while under the care of the Plaintiff, the Defendants, or any other person.

Under these circumstances, the Defendants have shown that they had acted reasonably and the claim of the Plaintiff is dismissed. The Defendants are entitled to the fees charged for the checking of the mechanical condition of the vehicle and for keeping the car on the site at the agreed upon and reduced amount of $100.00.

If payment of the account is not made within one month, the Defendants shall be entitled to enter judgment against the Plaintiff for the sum of $100.00.

JUDGE T.B. DAVIS