

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

SHAWN EVANS

- and -

NORTHSITE SECURITY SERVICES LTD.

Transcript of the Oral Reasons for Judgment by The Honourable Judge B.A. Bruser, at Yellowknife in the Northwest Territories, on November 25th A.D., 2002.

APPEARANCES:

Mr. S. Evans:	Appeared on his own behalf
Mr. B. Carter:	Appeared on behalf of the Defendant Northsite Security

1 THE COURT: Good morning, you may come
2 forward. We have finished all the other work and we
3 can begin this immediately. You may both be seated
4 too.

5 The Clerk of the Court has a letter which I
6 have asked her to let each of you read. She didn't
7 know how to spell "Northsite", whether it was two
8 words or one word so did a search of the Corporate
9 Registries here in Yellowknife and they don't have
10 any indication that such a company as Northsite is
11 registered here or incorporated here which means it
12 may be a nonexistent entity.

13 I will hear from you, Mr. Carter, about that.
14 What is the situation with Northsite?

15 MR. CARTER: Your Honour, Northsite, as I
16 mentioned before, is an operating division of
17 Twilite Security Services. It operates the passenger
18 screening. It is registered extra-provincially. It
19 is a federal incorporation.

20 Now, I spoke to my lawyer about it and they are
21 going to file it. He felt that it might be a good
22 idea to file it territorially but it has always
23 operated as an operating division of Twilite.

24 THE COURT: Is Northsite one word or two
25 words, that's what the issue is.

26 MR. CARTER: It's one word, Your Honour.

27 THE COURT: Thank you, that would help Madam

1 Clerk.

2 Is there anything more from you, Mr. Evans?

3 MR. EVANS: No, Your Honour.

4 THE COURT: Mr. Carter, anything more from
5 you?

6 MR. CARTER: No, Your Honour.

7 THE COURT: I will deliver the judgment now.

8 I'm sorry that I couldn't be here on November 1st.

9 I was sick, I had that flu bug that was going around
10 and it just happened to hit me on that day but if it
11 waited one more day, we could have done this
12 November 1st. I'm sorry about that.

13 The plaintiff, Shawn Evans, commenced an action
14 against Twilite Security Limited on the 13th day of
15 August, 2002. The name of the defendant was changed
16 by court order to Northsite Security Services Ltd.
17 and this was done during the trial. The reason for
18 the name change was to conform to the evidence after
19 I determined that there would be no harm to the
20 proper defendant by allowing the change. I will use
21 the name "Northsite" in these reasons.

22 This judgment is more formal than many
23 judgments that I give, if not most, in civil court
24 because of the unique nature of the claim.

25 A summary of the material facts that give rise
26 to the claim are as follows:

27 On February 28th, 2002, the plaintiff

1 purchased a digital camera and accessories. The
2 total sale amount in the first exhibit, which is an
3 invoice from CasCom, a computer communications
4 business, shows that the sale amount was \$1,443.43.
5 That includes a sale amount of \$1,349 and GST of
6 \$94.43. According to the document, \$94.95 was paid
7 on that day, February 28th, leaving a balance due of
8 \$1,348.48.

9 The amount of the claim is for this last
10 figure, \$1,348.48, and not for the actual amount
11 apparently paid.

12 The plaintiff is also claiming costs.

13 On March 26th, the plaintiff was travelling by
14 air out of the Yellowknife Airport. He was to depart
15 on a First Air flight to southern Canada.

16 Before passengers were allowed to board the
17 flight, they had to submit themselves and their
18 carry-on effects to a security check at a site in
19 the airport that I will describe as the screening
20 area. Security at the screening area was conducted
21 by employees of Northsite. There were three
22 employees doing security at that time. There were
23 many passengers who had to be checked at the
24 screening area, including a tour group. Most were
25 boarding the same flight as the plaintiff.

26 Northsite security personnel at the screening
27 area inspected the plaintiff's camera and a cell

1 phone that he also had with him. These items were
2 placed into a bowl provided by the security employee
3 once the items were deemed safe to be carried onto
4 the aircraft. The security employee then apparently
5 placed the bowl on top of an x-ray machine nearby at
6 the same time as goods belonging to other passengers
7 were being loaded through the scanning equipment.

8 At about the same time, the plaintiff proceeded
9 through the metal detector gate. This is a standard
10 procedure for all passengers. Something metallic on
11 the plaintiff triggered an alarm and, as is standard
12 practice, an employee of Northsite did a wand check
13 of the plaintiff. This activity diverted the
14 plaintiff's attention from his personal property
15 that had been placed into the bowl a few moments
16 earlier. Part of the wand check required the
17 plaintiff to turn around in part or wholly thereby
18 positioning himself where he was not in a good
19 position to keep an eye on his camera equipment and
20 on his cell phone.

21 After the security check, the plaintiff went to
22 retrieve his camera and the cell phone. They were
23 not in sight. He conducted a short but thorough
24 search for his property but did not find them before
25 he had to board the aircraft.

26 The camera and the cell phone have not been
27 found. The plaintiff's claim is only for the value

1 of the camera and its accessories. He is not
2 claiming for the loss of the cell phone.

3 The position of the defendant is that its
4 business, insofar as the circumstances of this case
5 are concerned, is restricted to doing security
6 checks at the screening area. It says that it owes
7 no duty of care to passengers for loss of property.
8 Northsite says that it is far too busy with its
9 screening duties to be able to ensure that property
10 that it inspects is matched back to the same people
11 who deposited the property. For these reasons, it
12 says that it cannot be held liable for the loss of
13 the plaintiff's possessions.

14 A good sense security system must logically
15 include taking reasonable and prudent care to ensure
16 that what a passenger hands over to security
17 personnel for checking and what a passenger puts
18 onto the security belt for inspection be picked up
19 by the same customer. In each case, the security
20 company has for a brief period of time control over
21 the passenger's effects. This arises whether the
22 items are actually touched by security or merely
23 examined on a moving conveyor belt.

24 In the latter case, the conveyor belt and the
25 examining equipment are under the sole control of
26 Northsite.

27 Leaving anything unattended in an airport in

1 these times is universally dangerous. Tight,
2 continuous security makes good sense because it
3 saves lives and affords piece of mind to the public.

4 Canadians know that when they check in luggage
5 during their travels by commercial airlines, they
6 are asked questions that include, at the check-in
7 counter, at a minimum whether they are aware of the
8 contents of the luggage, whether they packed it
9 themselves, and whether the luggage has been left
10 unattended. Often even more questions are asked
11 particularly regarding electronic equipment.

12 I find it unsettling, as must the public, to
13 learn in the course of this trial that at the
14 screening area passengers are actually expected to
15 part with their effects, albeit for a short time,
16 and that Northsite does not think that it has any
17 responsibility to match property to person when both
18 are under their control and watch.

19 Northsite's views are inconsistent with overall
20 airport security.

21 These observations, and my assessment of the
22 evidence, leaving aside for the moment what happens
23 at the check-in counter with luggage, lead me to
24 conclude that there is a duty of care by Northsite
25 toward the property of passengers. This duty of care
26 arises from the law of bailment.

27 In this case, it is a voluntary bailment that I

1 am concerned about because there is no direct
2 compensation flowing from the passengers to
3 Northsite. Additionally, the passengers are free to
4 make a decision not to board a flight in which case
5 Northsite would not have any business examining
6 their effects at the screening area.

7 What is bailment? Has there been a breach of
8 Northsite's duty arising from bailment?

9 Northsite would not be liable to the plaintiff
10 if it did not breach its duty arising from bailment.
11 I now will say something about the law of bailment
12 and I will try not to make it too legally complex.

13 Bailment is defined in *Black's Law Dictionary*,
14 (6th ed.), as a delivery of goods or personal
15 property by one person who is called the bailor to
16 another who is called the bailee. The delivery of
17 the property or goods is in trust for the execution
18 of a special purpose or object regarding the goods
19 or property. That purpose or object will be
20 beneficial either to the bailor, to the bailee, or
21 to both. And there will normally be a form of
22 contract, expressed or implied by law, to perform
23 the trust and carry out the purpose or object and
24 thereupon either to deliver the goods or property
25 back to the bailor or otherwise dispose of it to
26 conform with the purpose of the trust between the
27 two. The bailee is responsible for exercising due

1 care toward the goods or property.

2 A voluntary or gratuitous bailment is also
3 called a naked bailment. It is made only for the
4 benefit of the bailor and it is not a source of
5 profit for the bailee.

6 There is a large body of law regarding
7 bailment. A few cases that I refer to say what is
8 necessary for the purposes of this case.

9 The first case that I refer to is AMO
10 Containers Ltd. vs. Mobile Oil Canada Ltd., (1989),
11 234 A.P.R. 208.

12 There, the Court of Appeal said that the onus
13 is on the bailor to establish the bailment and the
14 failure of the bailee to return it. The onus of
15 proof after the plaintiff satisfies this is on the
16 bailee to establish that the failure to return the
17 bailed article was not due to any want or lack of
18 care or diligence on its part.

19 In 1975, in New Brunswick, the Court of Appeal
20 in the case of Stephen MacDonald vs. Whittaker
21 Textiles (Marysville) Ltd., 64 D.L.R. (3d) 317 said
22 that as bailee, the defendant in that case, ought to
23 have used that degree of care and diligence that a
24 careful and vigilant person would use in the custody
25 of his own goods. The Court went on to say that the
26 defendant failed to meet its onus of proving that it
27 had exercised such care.

1 The defendant's attempt there to escape
2 liability through its own rules and regulations
3 failed to exempt it as a bailee from liability for
4 loss due to negligence.

5 Finally, in Ontario, the Court of Appeal in
6 1942, Appleton et al. vs Ritchie, a Taxi, et al.,
7 (1942) C.C.S. 435 and 1942 O.W.N. 396 said that the
8 onus, apart from any special contract that might be
9 proved, was upon the defendant, once a bailment had
10 been established, as bailee to prove that reasonable
11 care was used. It held that while a bailee is not an
12 insurer, it must take such due and proper care as a
13 prudent owner would take of his own property.

14 Northsite has a duty of care to the property of
15 the travelling public once passengers elect their
16 option to place their private property into its care
17 for a security check. The duty of care is only of
18 very brief duration in most cases.

19 The duty includes, for the purposes of this
20 case, the requirement to take reasonable and prudent
21 care and be vigilant with the property while it is
22 under the control of Northsite.

23 There is no doubt that the plaintiff's camera
24 equipment was in the care of Northsite when the
25 property went missing. It did not go missing while
26 in the plaintiff's care, and it certainly was at no
27 time in a no man's land with nobody responsible for

1 it. To find that nobody was responsible for the care
2 of the equipment would be an affront to airport
3 security requirements, and it would be to ignore the
4 reality that while the plaintiff was being searched
5 by wand at the metal detector gate, he had no way to
6 keep an eye on his property. And the defendant knew
7 this.

8 It is my conclusion that Northsite breached its
9 duties of bailment. The plaintiff has established a
10 bailment and the onus shifts at that point to the
11 defendant.

12 I reject the evidence led on behalf of the
13 defendant to the effect that it would have been an
14 impossible task to match property to passenger.

15 The reason that the defendant found it to be an
16 impossible task was simply because it had inadequate
17 resources to do its job properly. The task itself
18 was not inherently impossible, nor was it one that
19 could not reasonably have been done if appropriate
20 measures of care and diligence had been taken. The
21 reason the resources were inadequate arose from the
22 contract between Northsite, as a subcontractor, and
23 its contractor. That problem is one owned by the
24 parties to that contract. It is for them to work
25 out. It is not the passenger who has to resolve
26 their problem. And it is not the responsibility of
27 passengers to monitor their property so long as it

1 is under the control of Northsite, particularly
2 given the impossibility on the part of passengers to
3 be able to do that - some of the property is out of
4 sight for a brief period of time. They are being
5 subjected to a search at the metal detector gate if
6 they set off an alarm. They can't monitor their
7 property but the defendant can do so if set up
8 properly. The dangers of inadequately financing
9 Northsite should not cause harm to the travelling
10 and trusting public.

11 In the particular circumstances of this case,
12 the plaintiff had a reasonable expectation that his
13 property would be in the same bowl once he was
14 cleared at the scanning gate. The only reason his
15 property was no longer there is because Northsite
16 failed in its duty of care to him.

17 The argument by the defendant that passengers
18 often wait until almost the last minute at the
19 Yellowknife Airport and then flood the security area
20 is a weak one without merit.

21 It is a weak argument because the evidence from
22 the defendant is that this is the norm. Recognizing
23 that the norm is a busy time shortly before flight
24 departures in Yellowknife, it is encumbant upon
25 Northsite to react upon this reality. If they are
26 unable to react to the surge of passengers, whether
27 by way of a tour group or not, they should consider

1 handing over the screening area contract to another
2 company. So long as Northsite accepts the contract,
3 it must take proper measures in law to safeguard
4 property left under its control and supervision.

5 I find it of some interest that despite the
6 claim by the defendant that it is not responsible
7 for the property of passengers, there is no
8 indication of any waiver, by signage or otherwise,
9 to alert the public to a claim that Northsite is not
10 responsible.

11 The defendant says that it is prohibited from
12 posting signs in the screening area. The point of my
13 observation, however, is to underscore the fact that
14 so far as passengers are concerned, there is
15 apparently nothing anywhere at the airport, (or at
16 least not in the evidence before me), to suggest
17 that Northsite regards itself as not at any time
18 being responsible for the property of passengers in
19 the screening area; yet this is the area that is
20 under the control of Northsite for security
21 purposes.

22 I find it disturbing that Northsite takes the
23 view that passengers, who may have had their
24 property stolen or otherwise go missing at the
25 security area while the property is under the
26 control of Northsite, ought to take up the matter
27 with their own insurance companies instead of

1 expecting Northsite to reimburse them.

2 This case is an excellent illustration of why
3 passengers should not be expected to do so.

4 Passengers who claim on their own insurance may
5 have to pay heavy deductibles and they run the risk
6 that their insurance premiums may rise following a
7 successful claim. Why should the public be placed in
8 such a position when liability rests squarely with
9 Northsite?

10 There was some argument that if the plaintiff's
11 claim were successful, the value of the camera
12 equipment ought to be depreciated and the plaintiff
13 should therefore recover less than he has claimed.

14 The best evidence before me is that the camera
15 was in brand new condition, having been purchased
16 less than 30 days before it went missing. There has
17 been no evidence as to the depreciated amount, if
18 any. It is not the plaintiff's responsibility to
19 lead evidence about the depreciation of his
20 property. Even if it were his responsibility, the
21 evidence does not lead me to conclude that the claim
22 should be depreciated any lower than the amount
23 claimed of \$1,348.48 which, in any event, does not
24 appear to be the full price. The evidence is that it
25 was brand new. "Brand new" means, in this case, that
26 the camera has not sustained any depreciation and
27 the tender young age of it reinforces that part of

1 the testimony of the plaintiff.

2 For the reasons given, I award judgment in
3 favour of the plaintiff. It will be in the amount
4 that he has claimed, plus his costs.

5 The Court clerk will prepare the judgment. She
6 will give it to me to review. I will, if it is in
7 order, sign it and then a filed copy will be
8 provided to each of you.

9 The judgment, because it is over \$500, is
10 appealable by the defendant and there are time
11 periods in which any appeal has to be filed.
12 Failing that, it may be barred as being outside the
13 allowable time. I don't say it would be but it may
14 be.

15 Does the plaintiff have anything further?

16 MR. EVANS: No, Your Honour.

17 THE COURT: Does did the defendant?

18 MR. CARTER: No, Your Honour.

19 THE COURT: Thank you, to both of you. And
20 that's it for the morning.

21 (AT WHICH TIME THE PROCEEDINGS CONCLUDED)

22 Certified correct to the best
23 of my skill and ability,

24
25
26
27 

Lois Hewitt,
Court Reporter