

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Burris v. Disabled Consumer Society of Colchester, 2008 NSSC 121

Date: 20080422

Docket: 235229

Registry: Truro

Between:

Margaret Bernadette Louise Burris

Plaintiff

v.

**Disabled Consumer Society of Colchester and
Kinsmen and Kinette Clubs of Canada, Truro Club**

Defendants

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: March 11 & 12, 2008, in Truro, Nova Scotia

Counsel: Mr. Bradford Yuill, Solicitor for the Plaintiff
Ms. Patricia Mitchell/Mr. Donn Fraser, Solicitors for the
Disabled Consumer Society
Ms. Jean McKenna, Solicitor for the Kinsmen and
Kinette Clubs of Canada

By the Court:

[1] On May 13, 2003, Mr. Troy Martin, a common thief, entered premises owned by the Disabled Consumer Society of Colchester in Truro, Nova Scotia and grabbed a quantity of cash from the bingo proceeds in a bingo hall. The bingo was being operated by the Kinsmen and Kinette Clubs of Canada, Truro and Bible Hill Clubs. Immediately after the snatch and grab Mr. Martin ran through the crowd of bingo players out the front door onto Prince Street. He bumped into the plaintiff and knocked her to the ground as he fled. The plaintiff fractured her wrist as a result of the fall to the ground.

[2] The Disabled Consumer Society (DCSC) exists solely for the purpose of bettering the lives of individuals who are among the most disadvantaged in our society. The persons they help are afflicted with disabilities of one sort or another. The objective of the society is to allow those individuals to exist with dignity and to help them perform every day activities which most in our society take for granted. One of the main tools the society uses in meeting that objective is a bus in which they transport disabled individuals. They charge a moderate fee for travel either within the county or in some instances to places like Halifax for medical treatment. They also provide assistance by purchasing or assisting in the

purchase of wheelchairs, motorized scooters and various aides disabled persons in the community may require.

[3] Eighty to ninety percent of the funding for the DCSC is raised through the operation of a bingo hall at Prince Street in Truro. On one or two nights of the week the DCSC actually operates the bingo itself. The Provincial Gaming Regulations require that on other nights they rent the hall to other charities. Those other charities raise monies to fund their various charitable endeavours. On May 13, 2003 it was the Kinsmen and Kinette Clubs as identified above who were operating the bingo in question. The Kinsmen and Kinette Clubs are a group of volunteers who actually pay to be volunteers. Their objective is to simply serve the community. They are involved in various community projects including construction of playgrounds in the various communities. The local clubs also participate in national events such as the cystic fibrosis and multiple sclerosis campaigns. In other words Mr. Martin, as a common thief, was stealing from those whose only purpose was to better the community and help the disabled. As he fled with his pilfered cash, Mr. Martin seriously injured an innocent bystander.

[4] The plaintiff, Ms. Burris, now claims as against the two charitable institutions alleging they were negligent in the operation of the bingo hall and that the way they handled the cash gave rise to the incident in question.

[5] By agreement, the hearings held by this Court on March 11 and 12, 2008, related only to the issue of liability.

[6] I am satisfied that in this case the DCSC and Kinsmen and Kinette Clubs are not liable for the injuries sustained by the plaintiff on May 13, 2003. To hold they are liable in the circumstances of this case would establish a precedent whereby just about any operation wherein there are cash receipts would be potentially liable for injuries sustained should a thief or robber get cash and flee the scene. This would include every day operations such as grocery stores, flea markets, charitable fund raising, convenience stores, etc. If cash is within arms reach or even hidden away to be handed over to a thief or robber it is more probable than not that the criminal would flee the scene quickly possibly causing injury to an innocent bystander. I am not satisfied that it is appropriate for this Court to make victims of a theft or robbery liable to the injuries caused by a fleeing criminal.

Background

[7] The DCSC has operated the bingo hall at 777 Prince Street, Truro, for many years. Prior to the DCSC owning or acquiring the bingo hall it was owned by a Mr. John Henderson and was operated as John's bingo hall. Sometime in the 1990's DCSC purchased the premises and, as noted above, they operate the bingo hall on one or two nights a week. On the other nights of the week other charitable organizations operate the bingo. All of the organizations who run bingo at the Prince Street location basically operate in the same way. As patrons enter the main entrance doors they first come to the main cash counter to purchase their main bingo cards. These cards are required in order to allow them to play other specialty bingo games. Patrons could then move around a counter to various locations and purchase other specialty bingo cards. The largest cash intake is at the main bingo card station. At that station the cash was placed in a cash drawer beneath the counter. At all stations there was a limited amount of cash on top of the counter used to make change for the patrons as they purchased the various bingo cards. At the beginning of the evening each location would start with a float with various amounts and denominations of cash.

[8] On the 13th of May, 2003, sale of the largest volume of bingo card sales had ended well before the theft. The ongoing cash sales at that time were specialty cards located away from the main counter. At the various stations and at the main counter any larger bills or larger sums of cash were removed from the cash boxes and either placed in the tray underneath the main cash tray or removed completely from the cash tray and placed in the cash drawer at the main cash counter. Just prior to the theft the person sitting at the main counter had moved to the area of the specialty bingo card sales and took his cash with him from the main counter. He placed it in front of two other individuals who were working in the sale of the specialty bingo cards. That person then proceeded to go to the stage area in the bingo hall to get bank deposit materials. As noted, he left his cash with the two other attendants in the specialty bingo card area. Cash was never left unattended at any of the various collection points.

[9] The thief entered the hall, asked those two attendants what the jackpot was on the night in question. They pointed to a screen which displayed the jackpot amount. As they did the thief grabbed two fist fulls of cash and ran out the main doors where a large number of patrons were standing either inside or immediately outside the main doors of the bingo hall. The patrons were standing in that area

because there was a health break. As noted above, the thief ran into the plaintiff who was standing outside at or near the curb area on Prince Street in front of the main doors. He appears to have knocked her onto the traffic portion of the street or to the curb area immediately beside the traffic area of the street. She fractured her wrist as she struck the ground. There was a lot of evidence on the issue of whether the bingo hall or operators controlled the public area of the sidewalk and whether the plaintiff was just inside or just outside the no smoking exclusion zone. I am not convinced that any of that evidence makes a difference on the issue of liability in this case.

[10] There were two earlier thefts from the bingo hall as operated by the DCSC. One occurred in 1999 or 2000 and one in 2002. Both of those were grab and run events where a thief entered the facility and grabbed cash and ran out through the main doors. During the 2002 grab and run a Mr. Greg Reddick was able to chase down the thief and recover the cash in question. In that same incident a Ms. Orr grabbed the thief as he tried to flee. She was pushed by the thief and was slightly injured. All volunteers were again instructed not to ever try to apprehend a thief in the future. They were told to just hand over the cash and let the thief leave. That policy has always been the same since the DCSC began operating bingo. On

May 13, 2003 that same Mr. Greg Reddick was at the bingo hall and outside on a smoke break when he heard someone yell that the person fleeing on foot had stolen cash. He again was able to chase down the thief (Mr. Troy Martin) and able to apprehend him after football tackling him.

[11] It is to be noted that Prince Street in Truro is a busy thoroughfare, well lit and located immediately adjacent to the police station on a main street in the Town of Truro. The hall is equipped with an emergency buzzer system which rings into the police department. There is an established protocol which is then triggered if the buzzer rings into the police. The police then call to the bingo hall to determine the reason for the buzzer being pushed. If there is no response or explanation they go to the hall.

[12] It is to be noted that after an earlier theft from the bingo hall there were meetings by the executive of the DCSC and relevant committees. As a result of those meetings it was agreed that a new counter would be constructed so there would be a closed-in area under the counter with shelves. Larger amounts of cash could be removed from the top of the counter and placed underneath out of sight as cash receipts came in. The DCSC also had a system in place whereby when they

operated the bingo any rolls of twenties or large bills were immediately taken from the various stations and placed in the cash drawer under the main cash area. The executive and committees also discussed as to whether a plexiglass barrier should be constructed in the area where the cash was being collected. This plexiglass structure was not installed until after the theft on May 13, 2003. I am not convinced the plexiglass will stop would be thieves. About all that has been accomplished by that glass is an inconvenience to patrons and volunteers.

[13] I am not satisfied the DCSC or Kinsmen clubs should now be found liable based on failure to install the plexiglass or the way they handled the cash on May 13, 2003. To find such liability would impose upon not only the DCSC but all other operations where there are cash receipts, a requirement to build barriers between the area of cash receipts and would be thieves. The evidence suggests that even with the plexiglass in place, the policy is for all volunteers who assist in the bingo fund raisers, that they should simply hand over cash to anybody who enters the hall and demands it. Whether it is a grab and run event or a situation where somebody enters the bingo hall and demands cash, I would assume that the thief would flee the site as quickly as they could so as to avoid apprehension.

[14] There was evidence from a senior account manager with a chartered bank who was working on the Kinsmen bingo on the night of May 13, 2003. That individual recalled an incident in the bank in Stellarton where he was employed. A thief entered the bank and handed the teller a note demanding cash. The teller did not have any cash at her station and she took the note over to the main cashier who was working behind plate glass in a secure area. That employee then handed cash to the bank teller who, in turn, handed it over to the would be thief. That event suggests that thieves will, no matter how much security is in place, take what steps are necessary to acquire cash from victims and flee with the cash. That fact therefore begs the question of how much security is enough security in a given situation. I also must ask whether organizations or individuals who deal in cash should be liable for the actions of a would be thief during their subsequent flight.

[15] After the earlier theft the DCSC, and those who lease the property from them to operate bingo, took reasonable steps to limit the amount of cash that was available for a grab and run event. They could not and still do not have a system in place which is going to guarantee that there would be no thefts from the facilities. In fact, as I have indicated by my earlier reference to the bank situation, it would be virtually impossible for any operator to take steps which would guarantee that

the cash would not be stolen when there are cash receipts or cash on hand. To impose liability in this case would subject every victim of a theft to potential liability. I refer, for example, to individuals leaving a cash machine where a would be thief would expect that individuals leaving cash machines would likely have cash on hand. Automatic bank machines are in practically every community. Individuals leaving a cash machine are easy prey for would be thieves. Should they also be subjected to potential liability as a thief flees?

[16] In this case the thief entered the premises with hundreds of people in the immediate vicinity. The hall was immediately adjacent to the police station on a well lit main street. A security system was installed and there was limited cash on the counter. None of these things were sufficient to deter the would be thief.

[17] The plaintiff was standing on the sidewalk on public property when she was struck by an individual who was in the course of fleeing after having victimized the Kinsmen by stealing cash. Neither defendant had control over the thief nor what could befall the plaintiff as she stood on the curb on Prince Street. It would be unreasonable to suggest that there is a duty of care which requires cash funds to be concealed or locked away at all times so as to be unavailable to a would

be thief who might attempt to grab those funds. To impose such a duty would create a commercially unreasonable result for these and many other charitable or commercial operations. Any retailer who wishes to display product on open shelves or who deals in cash is subject to a grab and run. To suggest that all cash or goods should be locked into secured areas imposes an unreasonable burden and the proposition is unsound from a public policy perspective.

[18] Counsel for the plaintiff referred to the case of **Cairns v. General Accident Assurance Co. of Canada**, [1992] O.J. No. 1432 (O.C.J.G.D.). It concerned the liability of a car dealership in a situation where a vehicle was stolen from its lot. Most of the vehicles on the dealers lot were stored with keys in them. Earlier on the day of the accident the defendant driver had stolen the keys from a particular vehicle which he would later steal. The dealership noticed the missing keys, but did not believe anyone would steal the vehicle during the day. The dealership was found negligent in the circumstances based on the fact that the keys were left in the vehicles and for failing to secure the vehicle once the loss of keys was known. Even in those circumstances, the dealership was found to be only twenty percent liable for the result of the loss. The case turned largely on the fact that the keys were known to likely be in the hands of young people without a great deal of

experience in driving such that the car could be involved in an accident. That case is akin to the situation of leaving a loaded weapon (the car) within easy reach of a would be thief. The likelihood of potential harm was substantially increased when one considers the risk of a thief fleeing with a car at high speeds as compared to a situation where there might be a grab and run. I am satisfied the **Cairns** case should be distinguished.

[19] I am satisfied the claims against the defendants should be dismissed with payment of costs to both defendants.

[20] I am prepared to hear the parties on the issue of costs if they cannot agree.

J.