

Claim No: 442438

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Progressive Cabinets & Millwork Ltd. V. Canuel, 2015 NSSM 55

BETWEEN:

PROGRESSIVE CABINETS & MILLWORK LIMITED

Claimant

- and -

JUANITA CANUEL

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 5, 2015

Decision rendered on October 13, 2015

APPEARANCES

For the Claimant

Robert Chaisson, General Manager

For the Defendant

Self-represented

BY THE COURT:

[1] The Claimant is a Dartmouth-based company that designs and sells kitchens. The Defendant was a salesperson for the Defendant until November 2014.

[2] As part of her duties, the Defendant would design kitchens based on customers' specifications. To enable her to do that, she used a computer program called 2020 design ("2020"). As with some other high-end software products, each 2020 user requires a licence that is carried on a software key or "dongle" that must be plugged into a USB port on the computer that the person is using. The Claimant provided each of its sales force with such a key.

[3] The 2020 software keys are expensive. They each cost \$2,135.00 plus HST, according to the evidence of the Claimant's general manager.

[4] On the 22nd of October 2014, the Defendant's car was broken into and her laptop was stolen. The 2020 key was taken at the same time. The theft was reported to the police and to the Defendant's insurer. Unfortunately, the Defendant's insurance did not cover the software key because it did not actually belong to the Defendant.

[5] The incident led to the Defendant leaving the Claimant's employ in November 2014.

[6] The Claimant brings this Claim to recover the value of the software key. It says that the Defendant was responsible to safeguard it. It bases the claim

partly on an acknowledgement that it has every employee sign, acknowledging responsibility for the key in the event it is damaged, lost or stolen.

[7] The Defendant did not actually sign such an acknowledgement when she was hired in November 2013. This was a pure oversight on the part of the Claimant's administrator, Kathy Townsend, who had drawn up the acknowledgement and dated it, but put it in the file without getting it signed. After the theft, the Defendant agreed to sign it because she did not want to get Ms. Townsend into trouble. The Defendant now says that she was under duress and that the document should not be binding on her.

[8] The Defendant also testified that she had been expecting that the Claimant would make a claim on its own insurance, and that she might just have to pay the \$1,000.00 deductible. In the end, the owner of the Claimant company declined to make an insurance claim because he was cautioned that it would lead to increased premiums in the future and was not financially a wise move. I find that the Defendant was not obligated to make the insurance claim, if it would not have saved any money in the long run.

[9] The question for the court is who should bear the loss, and upon what legal theory.

[10] Quite apart from the acknowledgement, the Defendant clearly understood that the software key belonged to her employer, and as such she had a legal duty to protect it from damage or loss. I believe that was an implied term of her employment contract. On that theory, the Defendant would be responsible regardless of whether or not she had signed the acknowledgement.

[11] The legal status of the software key could also be seen as a “bailment” which (as succinctly defined by Wikipedia) is as follows:

Bailment describes a legal relationship in common law where physical possession of personal property, or a chattel, is transferred from one person (the 'bailor') to another person (the 'bailee') who subsequently has possession of the property. It arises when a person gives property to someone else for safekeeping, and is a cause of action independent of contract or tort.

[12] The Defendant clearly understood that the software key belonged to the Claimant, and that it was only hers to use as long as she was employed. That fits within the definition of bailment. In bailment, the bailee has a duty to take reasonable precautions to safeguard the property.

[13] On the facts of this case, it does not appear that the Defendant took reasonable steps to safeguard the key. It was left in a car along with a laptop computer, which is a known target for thieves. The software key could easily have been attached to the Defendant's keychain or kept in a purse or pocket, which would have been a much more reasonable approach for something the size of a thumb drive but worth in excess of \$2,000.00. Of course, the key could still have been lost or stolen even with a much greater amount of care, which would have made it a more difficult case to decide, but that is not what happened here. There was a small element of carelessness shown by the Defendant, which is enough to hold her responsible in bailment.

[14] On either a contractual or bailment theory of the case, however harshly it may be experienced, the Defendant cannot escape liability and must account for the value of the lost software key.

[15] The Claimant shall accordingly have judgment for \$2,455.25 plus costs in the amount of \$191.70, for a total of \$2,646.95.

Eric K. Slone, Adjudicator