

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Anderson v. Bailey's Service Centre, 2018 NSSM 28*

Date: 2018-05-28

Docket: Sydney, No. 462883

Registry: Sydney

Between:

Alfred C. Anderson

Claimant

v.

Bailey's Service Centre and Cliff Bailey

Defendant(s)

Adjudicator: Patricia Fricker-Bates

Heard: March 28, 2018 in Sydney, Nova Scotia

Appearing: Alfred C. Anderson, Claimant
Cliff Bailey, for the Defendant Bailey's Service Centre and on
his own behalf

BY THE COURT:

[1] The Claimant, Alfred C. Anderson, filed a Notice of Claim against the Defendant(s), Bailey's Service Centre and Cliff Bailey, on April 27, 2017, for the amount of \$1597.00, alleging the following:

Fail Inspection Sticker.

On a separate piece of paper attached to the Notice of Claim, the Claimant wrote:

I took my car to Bailey's Service Center for Inspection
Sold car to Lydia MacKay

Lydia MacKay sue me for Failed Inspection
My claim is to Receive \$1200.97 plus \$300.00 Expenche (sic)
\$210.00 – Travel
\$90.00 – Court Appeal

The Claimant represented himself at hearing on March 28, 2018.

[2] Cliff Bailey on his own behalf and on behalf of Bailey's Service Centre, filed a Defence on June 23, 2017, stating:

I WAS NOT INVOLVED IN THE INSPECTION OF THE VEHICLE IN QUESTION. THE STICKER WAS STOLEN. (All caps in the original.)

Prior to the hearing on March 28, 2018, Bailey's Service Centre was destroyed by fire. Defendant Cliff Bailey testified at the hearing as did his witness Robert Joseph Boutilier.

[3] This matter originally was set for hearing on June 21, 2017. The matter was adjourned to September 27, 2017, as the Defendant Cliff Bailey wished to file a defence. On September 26, 2017, a fax from the Nova Scotia Health Authority was sent to the Small Claims Court advising that the Claimant, Mr. Anderson, was an inpatient at hospital. Pending the reappointment of Adjudicators, the matter was then adjourned to January 10, 2018. However, on January 10, 2018, the Claimant failed to appear. Given the Claimant's previous hospitalization, this Adjudicator decided not to dismiss the case. The Claimant did contact the Small Claims Court on January 11, 2018, inquiring as to the time of the hearing and was advised that the hearing date had been scheduled for the previous evening, January 10th. By notification to the Claimant and the Defendant via registered mail, a new hearing date was scheduled for February 7, 2018. On that date, the Claimant did not appear but sent Crystal Murphy and Judy Eddy in his stead as he was again in hospital. However, as neither Ms. Murphy nor Ms. Eddy had been privy to the events surrounding the Claim, the matter was adjourned to and heard on March 28, 2018. All parties were present for hearing on March 28, 2018.

[4] The Claimant testified at the hearing. He maintained that the Defendant, Mr. Bailey, inspected his vehicle and put the sticker on the car that he, the Claimant, sold on Kijiji to Lydia MacKay in March 2016. He introduced into evidence the Stated Case of Adjudicator John Khattar (Exhibit No. 1) arising from his, the Claimant's, appeal of that Adjudicator's decision in favour of Lydia MacKay in the case of *Lydia MacKay v. Alfred Anderson*, Claim No. 450235. The Claimant also

introduced into evidence the Nova Scotia Supreme Court Decision (Exhibit No. 2) dismissing his appeal from Adjudicator Khattar's decision. Adjudicator Khattar had awarded Lydia MacKay the amount of \$1200 plus court costs of \$90.97. The Claimant testified that this amount, along with the costs he expended in appealing Adjudicator Khattar's decision, is the basis for the amount he is claiming in the current claim. The Claimant relied for the bulk of his case on the Stated Case of Adjudicator Khattar entered as Exhibit No. 1.

[5] In his evidence before this court, Claimant Anderson was very clear that he wanted to recoup from the Defendant(s) his losses from the case involving he and Lydia MacKay, including the appeal (see Exhibits No. 1 and 2); and, in addition, he wanted his court costs related to the current claim.

[6] Under cross-examination by the Defendant, the Claimant was challenged on his assertion that the Defendant Cliff Bailey put the sticker on the car. The Defendant Cliff Bailey maintained that he was not present when the sticker was put on the car, that he did not inspect the car in question, a 2004 Grand Prix. The Claimant was directed to paragraphs 19-20 of Exhibit No. 1, the Stated Case of Adjudicator John Khattar, that states, in the context of evidence given by Motor Vehicle Inspector Lindsay Morris (see paragraphs 10-23 of Exhibit No. 1):

19. It was found that the motor vehicle inspection was signed by Louis Dechever who had signed Cliff Bailey's name to the certificate.

20. The witness [Lindsay Morris] was told by Louis that he passed the inspection although he was aware of the car's condition, but was under the impression that the vehicle was going to be repaired.

The Claimant responded that he had no idea about the state of the car, the 2004 Grand Prix, that he sold to Ms. MacKay. However, according to paragraph 26 of the Stated Case (Exhibit No. 1), Adjudicator Khattar found, on the evidence before him, that "the motor vehicle was in such bad condition that it should never have been sold."

[7] The Claimant Anderson then testified that, *as far as he knew*, the Defendant Cliff Bailey put the sticker on the car, this in contrast to his earlier testimony that the Defendant *did put* the sticker on the car. When asked in cross-examination as to why Louis Dechever's name would be on the inspection sticker if he, Cliff Bailey, had conducted the inspection, the Claimant responded: "I didn't know the difference." It was the Claimant's position that Defendant Bailey inspected the

vehicle and is responsible for the Claimant's out-of-pocket expenses arising from both the former case of *Lydia MacKay v. Alfred Anderson*, Claim No. 450235 and the case-at-bar; or, in the alternative, that the Defendant is responsible for the actions of his employee, Louis Dechever, and, therefore, is equally responsible for those same out-of-pocket expenses.

[8] The Defendant Cliff Bailey testified that Louis Dechever was looking after the garage—Bailey's Service Centre—because he, the Defendant, was at home looking after his sick wife. He testified that the Claimant and Louis Dechever put the sticker on the Claimant's car, that he didn't know anything about the matter until after Motor Vehicle Inspector Lindsay Morris inspected the car. He acknowledged that he is responsible for the work of his employees but not for "the criminal actions" of an employee such as affixing an inspection sticker to a car that the employee knows is operationally unfit (see paragraph 20 of Exhibit No. 1). The Defendant testified that the inspection sticker book was locked away in a drawer at the Service Centre, that Dechever took the keys, removed the sticker book and put one of the stickers on the Claimant's car. He denied directing his employee, Louis Dechever, to put the sticker on the car. Rather, he testified that the sticker was stolen.

[9] According to the Defendant, in December 2016, the Claimant made demands on him for money for the car following the decision of the Nova Scotia Supreme Court dismissing the Claimant's appeal from the decision of Adjudicator John Khattar, threatening to take him to court. The Claimant would drive by his Service Centre, taking pictures and upsetting his customers.

[10] Under cross-examination, the Defendant admitted that his inspection license was taken away by the Department of Motor Vehicles. On that point, witness Robert Joseph Boutilier testified that the inspection licence suspension came after the complaint lodged by Lydia MacKay. Mr. Boutilier testified in his capacity as a customer and friend of the Defendant, noting that he has been around garages most of his life and has retired from the car business. He testified that the investigation by Inspector Morris, following Ms. MacKay's complaint, found that Dechever had put Bailey's name on the sticker. This is borne out by the evidential summary found in Adjudicator Khattar's Stated Case that the Claimant introduced as part of his case (see paragraphs 10-23, Exhibit No. 1). Witness Boutilier also questioned the value of the car noting that a car without an inspection sticker is worth, at most, \$100-\$200, not the \$1500 that the Claimant received on the sale of the car. There

was no dispute between the parties that a car without an inspection sticker has little or no value.

Decision of the Court

[11] There is no doubt that there was an employer-employee relationship between the Defendant(s) and Louis Dechever. I'm also aware that an employer can be held vicariously liable for fraudulent/negligent acts committed by an employee. However, in this case, the employee act in question was one of *knowingly* putting a sticker on an operationally unfit vehicle (see paragraph 20, Exhibit No. 1), a serious unlawful act that could jeopardize the health or safety of an occupant of the vehicle or another person. According to paragraphs 19-20 of Exhibit No 1:

19. It was found that the motor vehicle inspection was signed by Louis Dechever who had signed Cliff Bailey's name to the certificate.

20. The witness [Lindsay Morris] was told by Louis that he passed the inspection although he was aware of the car's condition, but was under the impression that the vehicle was going to be repaired.

In his evidence, the Defendant maintained that the Claimant Anderson and Louis Dechever put the sticker on the car. I find support for that evidence in the above passages. Given that the vehicle was deemed unworthy to be on the road by the Motor Vehicle Inspector, I fail to see how the Claimant, as the seller, can allege that he had no idea about the state of the car when he sold it to Ms. Mackay. According to paragraph 6 of Exhibit No. 1, for instance, "[h]er [Ms. MacKay's] children's father looked at the car and advised that she was not taking the children in the car." I note that the term "unworthy" under Vehicle Inspection Regulations, NS Reg 214/2006, s. 2(o), made pursuant to s. 201(7) of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293, means "having a defect or defects that could result in loss of control of the vehicle or could jeopardize the health or safety of an occupant of the vehicle or another person."

[12] At paragraph 21 of Exhibit No. 1, it states that a summary offense ticket was issued to "Louis Dechever for not being a licensed mechanic." Under the Vehicle Inspection Regulations, NS Reg 214/2006, s. 2(o), made pursuant to s. 201(7) of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293, a tester for Class 1 vehicles—like

the 2004 Grand Prix sold by the Claimant—has to have certain qualifications, one being that of a service station mechanic. The evidence before me establishes that Louis Dechever was not a licensed mechanic.

[13] I find that the actions of the Claimant and Louis Dechever resulted in a motor vehicle inspection sticker being put on the 2004 Grand Prix, a vehicle unworthy to be on the road within the meaning of the *Motor Vehicle Act* (N.S.), a vehicle owned and later sold by the Claimant to Lydia MacKay. I find that the Defendant Cliff Bailey had neither a part in nor authorized the decision to pass the inspection on the Claimant's 2004 Grand Prix. Mr. Dechever was not a licensed mechanic and could not legitimately act as a tester under the *Motor Vehicle Act* (N.S.). He removed the inspection sticker from a locked drawer without the knowledge or consent of the Defendant(s). According to the evidence before this court, Louis Dechever signed the Inspection Sticker using Defendant Cliff Bailey's name. The actions of employee Louis Dechever led to the cancellation of the Defendant Service Station's license to inspect motor vehicles, a fact that in no way furthered the employer's interests. In the circumstances of this case, I find that Mr. Dechever's intentional wrongful acts "are not sufficiently related to conduct authorized by the employer to warrant the imposition of vicarious liability" on either the Defendant or his business: see Allen Linden and Bruce Feldthusen, *Canadian Tort Law*, 10th ed. (LexisNexis: Toronto, 2015) at pg. 591.

[14] I hereby dismiss the Claim against the Defendants.

[15] There will be no order for costs.

Patricia Fricker-Bates, Adjudicator
Small Claims Court of Nova Scotia
May 28, 2018