

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
cite: *Heddon v. Halifax Regional Municipality* 2020 NSSM 20

SCCH 497429

Between:

Curtis Grant Heddon

Claimant

— and —

Halifax Regional Municipality

Defendant

Adjudicator: Augustus M. Richardson, QC
For the Claimant: Curtis Heddon, for himself
For the Defendant: Elise Martino, counsel for the defendant
Heard: September 22nd, 2020
Decision: September 24th, 2020

DECISION and ORDER

Introduction

[1] When a bicycle falls off a bus operated by the Halifax Regional Municipality (“HRM”) and is damaged beyond repair when the bus rolls over it, is there anyone to which liability should attach? In the specific circumstances of this case the answer must be “yes.”

Evidence

[2] At the hearing, which took place by teleconference, I heard the evidence of the claimant on his own behalf. On behalf of the defendant I heard the testimony of Jason Kehoe, an experienced bus mechanic working for the defendant. I also heard the submissions of the claimant, and of Ms Martino on behalf of the defendant.

[3] Based on that testimony and the exhibits filed by the parties I am satisfied as to the following facts.

[4] On March 27, 2019 Mr Heddon caught the HRM bus operating on Route 330 at the Albemarle stop. This bus travels to Sheldrake Lake-Tantallon, and at some point travels along Highway 103. Mr Heddon secured his bicycle to the rack located at the front of the bus. The rack operates as follows. It has room for two bicycles. Mr Heddon used the rack closest to the front of the bus. The rear wheel, located on the driver's side, fits into a slot. The front wheel, located at the passenger side, is secured with a lever that clamps down on the top of the front wheel close to the stem of the handle bar. Mr Heddon had performed this operation many times in the past, and on Route 330. He gave the bicycle a firm shake to ensure it was secure. It was. He then boarded the bus, which then departed.

[5] A short time later the bus was travelling on Highway 103. There is a spot just before Exit 5 where the road surface has two bumps. These bumps have been there for some time—they were not new. The bus was travelling in the left lane at at least highway speed. After going over the two bumps the bus driver noticed that the rear wheel of the bicycle was leaning over. He began to move the bus over to the right hand lane, intending to stop in order to re-secure the bicycle. However, before he could accomplish that plan the bicycle continued to lean over and then fell off the bus. The bus then ran over the bicycle. The bus came to a stop off the right lane with its four-ways flashing. Mr Heddon got out, took some pictures of his bicycle and returned with it to the bus. The damage was severe enough to make it a write off.

[6] The bus continued on to the Tantallon park and ride stop. There it was met by a supervisor, who inspected the damage and the bike rack. A few days later Mr Kehoe inspected the bike rack. His duties include inspection and maintenance of the bike racks on all HRM buses. His inspection report noted the following: "Found rubber bump stop was gone and a bolt with nuts installed in its place. This was causing bike rack to not stow properly. Removed nuts and installed rubber bump."

[7] At the hearing Mr Kehoe testified that these missing parts had nothing to do with the tension exerted by the rack on a stowed bicycle. However, he acknowledged in cross-examination that he did not know what the proper tension should be, and that he had no tool or equipment to measure whatever tension was being exerted.

[8] There was nothing on the bus in question suggesting that use of the rack was at the owner's risk. Nor is there any such notice on the test rack that customers can use to learn how to use the racks on HRM buses.

[9] Taking these facts into consideration I am satisfied that the HRM is liable for the damage to Mr Heddon's bicycle. I accept that bumps and jolts are usual and common events on buses. I also accept that the fact that a bus is jolted or bumped, thereby causing injury to person or property, is not in and of itself proof of negligence or breach of the contract of carriage: *Orlov v. Halifax Regional Municipality (Halifax Transit)* 2018 NSSC 152; *Duffy v. Halifax (Regional Municipality)* 2005 NSSC 335. But the issue here is not that the bus travelled over two bumps on Highway 103. The issue rather is whether the bus rack supplied by the defendant was fit for its purpose of holding bicycles securely while the bus was moving; and whether there was any negligence, or breach of contract, on the part of HRM when it offered Mr Heddon a bike rack that proved inadequate for that purpose. And I am satisfied that the defendant was either negligent, or in breach of the contract of carriage, or both on the facts of this case.

[10] The defendant owed a duty of care in negligence and in its contract of carriage to provide equipment that was reasonably fit for the purpose intended, which purpose included holding a properly secured bicycle securely while rolling over bumps at highway speed. Here bike racks were offered for use. Mr Heddon used the rack, securing the bicycle in the manner advised by the defendant. He secured it firmly. Mr Kehoe's testimony established that the racks were inspected and maintained by the defendant's mechanical staff. His report establishes that someone—who could only have been someone working for the defendant—substituted a bolt and nuts for the rubber stop that the manufacturer had made part of the rack. Moreover, this stopgap caused the rack “to not stow properly.” Added to that is the fact that Mr Heddon was familiar with the use of the bike racks on HRM buses, had used them many times before, including on Route 330, and had never had any trouble before. The only conclusion I can come to based on such facts is that the stop-gap substitution of the bolt and nuts for the rubber stop rendered the bike rack susceptible to what happened—that is, a bicycle that would otherwise be secure coming loose when experiencing a bumpy ride.

[11] I turn now to the question of damages. Mr Heddon claims \$1,600.00 for the loss of his bicycle. It was virtually brand new at the time of its destruction. He submitted a quote listing the cost of replacement at \$1,076.23. He testified that the balance was made up of a claim for a bicycle computer, for which he had no quote. The onus of proof lies with the claimant, and I find that his provable loss is only the \$1,076.23. I accordingly make the following order:

IT IS ORDERED that the defendant Halifax Regional Municipality pay to the claimant Curtis Grant Heddon \$1,076.23 plus costs of \$100.00 for a total of \$1,176.23.

DATED at Halifax, NS
this 24th day of September, 2020

Augustus Richardson, QC
Adjudicator