SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Emami v. Giovannetti,* 2024 NSSM 42

Date: 20240411
Docket: 526752
Registry: Halifax

Between:

Doctor Amir Emami

Claimant

v.

Gerald L. Giovannetti

Defendant

Adjudicator: Eric K. Slone

Heard: February 27, 2024

Decision: April 11, 2024

Counsel: Both parties were self represented

By the Court:

[1] The Claimant is a physician who resides in Scottsdale, Arizona. He is also something of a car enthusiast. In 2023, he acquired a large 2016 Cadillac which he then had modified into a stretch limousine by a company in North York, Ontario.

[2] The Defendant, Gerald L. (Gerry) Giovannetti has been in the vehicle shipping business for several decades. He is the owner of WW Transport Solutions Inc., which carries on business as Motor Vehicle Shipping.com, as well as under some other business names. The Claimant has chosen to sue Mr. Giovannetti personally, despite the fact that he likely knew he was dealing with a company.

[3] I believe this is one of those cases where s.6 of the *Small Claims Court Forms and Procedures Regulations* applies, which provides that:

> 6 A claim may be brought or defended in the name under which the business or partnership carries on its business or the name of one or more persons believed to own or carry on the business.

[4] The nature of the cause of action also renders it arguable that if liability is found, it should attach directly to Mr. Giovannetti, who was the Claimant's only point of contact.

[5] The claim is for damages in the approximate amount of US $13,000.00, arising out of an aborted or ill-fated contract to transport the Claimant's vehicle from North York, Ontario to Scottsdale, Arizona. (All references to dollars in this decision will be deemed to be in Canadian currency, unless otherwise stated.)

[6] Many of the facts are not in dispute, though what flows from those facts is very much disputed, and acrimoniously so.

[7] The dispute centres on whether there was a contract at all, and if so, whether both parties fulfilled their respective obligations thereunder.

[8] The Defendant does not operate his own fleet of vehicles. He acts more as a broker, hiring independent equipment and operators as required, and coordinating their activities. His business in Halifax is mostly a one-man operation, though he undoubtedly has contacts all over North America and likely elsewhere. Looking at his website one might think it is a bigger operation than it is, but there is nothing deceptive about what the Defendant offers and, frankly, it is hard to see that any other business model would make any sense. I cannot believe that the Claimant was misled into believing that he was dealing with a large organization owning

and operating a large fleet of transport vehicles operating across the continent.

[9] It is not disputed that the Defendant was first contacted by the Claimant on March 16, 2023, seeking a quote to have his vehicle shipped from Ontario to his home in Scottsdale. Over the ensuing weeks, there were numerous communications, back and forth, including by email, telephone and text. The majority of communications was done by phone.

[10] Transportation of this type of vehicle, coupled with a Canada-US border crossing, involved logistical complications. First of all, a stretch limo could not be transported on a conventional multiple vehicle carrier. Secondly, there was the need for the involvement of a customs broker to get the vehicle across the border. Both of these factors involved extra expense and timely coordination.

[11] The original pick-up date discussed was between April 3 and 7, 2023, based in part on the anticipated date that the modifications to the vehicle would be complete. That date had to be adjusted as the Claimant decided to come up to the facility in North York to inspect the custom work before accepting delivery. Ultimately the date had to be moved by more than a week because the Claimant was not satisfied that all of the customization had been done correctly, and additional work needed to be done.

[12] By the time that change of plan was communicated by the Claimant, the Defendant had most of the arrangements in place for the earlier pick up, which had to be scrapped and re-organized.

[13] In the meantime, right from the outset there had been negotiation of the price. After some back and forth communication, the figure of $5,750.00 (no tax) was agreed to in principle, and an invoice for that amount was sent by email to the Claimant on March 21, 2023. The invoice was accompanied by 4 pages of terms and conditions which the Defendant described as his standard contract, signed by the Defendant. The accompanying email asked the Claimant to sign the terms and conditions and return it by email.

[14] The Claimant never signed the document. Nor does it appear that the Defendant ever followed up in writing to prompt the Claimant about signing the document, though he testified that he asked him over the phone to do so.

[15] The March 21, 2023 email also asked for full payment to be made in advance either by certified cheque or wire transfer. The Defendant's banking details were provided, in the event of an electronic transfer.

[16] On April 14 and 15, there were several conversations about the planned pick

up and shipment of the vehicle. On or about that time, the Claimant tried unsuccessfully to wire funds to the Defendant. It seems that the Claimant's bank in Arizona was unfamiliar with wire transfers to Canada, but the Defendant accepted that the Claimant was trying to pay but confronting obstacles not of his own making.

[17] The Claimant also tried to pay via Zelle, a US-based digital payments network, but was informed that not all Canadian banks (if any) can receive money via Zelle. The Defendant's bank clearly cannot.

[18] April 19, 2023 was an eventful day. Even though he did not have a signed contract in hand, nor advance payment, as ostensibly required, the Defendant elected to follow through with the arrangements that he had put in place. The vehicle was picked up early in the day and loaded onto a specialized carrier, headed for the Ontario-Michigan border.

[19] According to the Claimant, and as evidenced by a copy of an email allegedly sent, he purported to cancel the contract in the very wee hours of the morning - shortly after midnight. The email read:

> **Hello, I wanted to thank you for considering moving my vehicle. Because of the delays, I will be searching for another shipment company. Thank you.**

[20] The Defendant says that he never received this email. Given the timing of the email, he could not reasonably have been expected to read it until the following morning, by which time the arrangements were already in motion. I can accept that he either did not receive the email, or he only saw it after it was too late to call things off. In the end, given what came later, it does not matter.

[21] The parties connected by phone later in the day, with the vehicle already at the border and the customs broker looking to be paid before allowing the vehicle to cross. The Claimant insisted that he had cancelled the contract with the Defendant, which the Defendant denied knowing about.

[22] Meanwhile, with the vehicle loaded onto the carrier and sitting at the border, there was nothing else to do but continue to transport the vehicle toward its destination. The Defendant insisted that he would do so, as long as he received immediate payment. The Claimant agreed and made some further unsuccessful attempts to wire the money.

[23] On April 20, the Defendant made a fateful decision. He had still not been paid and was concerned that he might never be paid if he delivered the vehicle to its final destination and allowed it to leave his possession. Instead of having his drivers continue all the way to Scottsdale, he arranged to have them drop off the

vehicle at a Cadillac dealership in Memphis, Tennessee, then proceed to a planned pick up in Texas. Memphis was roughly halfway from Ontario to Arizona.

[24] The vehicle was dropped off in Memphis on or about April 21. The Defendant and Claimant were in regular touch by phone. The Defendant assured the Claimant that the vehicle was safe and protected, but that he was not going to reveal its whereabouts until he was paid.

[25] It should be noted, to the Defendant's credit, that the vehicle was handled carefully by the Defendant and his agents throughout, with every effort to avoid damaging it in any way.

[26] The Defendant also advised the Claimant that there would be an extra charge to complete the delivery to Scottsdale. There is some disagreement as to what that charge would have been. The Claimant says he was quoted $3,000.00, though this figure is nowhere in the written communication. The Defendant insists he quoted $600.00 to $800.00. Nevertheless, the Claimant considered it to be an attempt to extort money by holding his vehicle to ransom.

[27] The money in the original amount ($4,950.00 US) showed up in the Defendant's bank account on April 25.

[28] Despite only having the original money and not the extra, the Defendant set about making arrangements to have the vehicle picked up in Memphis in the next few days and delivered to Scottsdale a day or two later. He conveyed to the Claimant that he would do so if paid the extra $600.00.

[29] In the meantime, the Claimant learned somehow that his vehicle was sitting at Cadillac Memphis. For various reasons, he decided to take matters into his own hands. He happened to be working at a hospital in St. Louis, which is only a few hours drive from Memphis. He rented a car in St. Louis, dropped it off in Memphis, then drove his limo back to St. Louis where it remained for a couple of months.

[30] The Defendant only learned that the vehicle was no longer in Memphis when he contacted that dealership to make arrangements to retrieve it himself.

The Claim

[31] The Claim seeks recovery under these main categories:

a. A refund of money already paid to the Defendant.
b. Expenses associated with travelling to Memphis to pick up the vehicle, and later driving it back to Arizona.

c. Lost income for the time he took off to accomplish this.

Discussion and analysis

[32] Both parties contributed to this situation. Neither is totally blameless.

[33] I am suspicious of the Claimant's late-night attempt to cancel the contract on April 19. He had verbally agreed to have the Defendant transport his vehicle. He knew that the Defendant was putting arrangements in place on his behalf. The delay that he complained about in his email was not of the Defendant's making. Everything would have proceeded had he not required extra work by the custom facility, delaying the pick-up time by at least a week. The Defendant kept him fully informed about the new arrangements.

[34] Even though the Claimant never signed a written contract, that does not mean that there was not a binding contract. I find that there was a verbal contract.

[35] I also find that an implied term of that contract was that it could not be terminated without reasonable notice. No one in the position of the Defendant would have agreed that this contract could have been terminated on just a few hours' notice, given the expenses associated with putting all of the arrangements in place. That would not have been commercially reasonable.

[36] I do not believe that the Claimant has been totally forthcoming about his reasons for attempting to terminate the contract. Although I am not precisely sure of the timing, at some point the Claimant became aware of some negative reviews and media stories about the Defendant and his business. Apparently, some people have had bad experiences with the Defendant and have characterized his business practices in very unflattering terms. To be clear, there is no admissible evidence before me to establish the truth of any of these claims, and I make no findings adverse to the Defendant based on unproven allegations.

[37] Perhaps the Claimant became spooked by these stories. Whatever his motive, I find that he was too late to get out of the contract he had verbally agreed to.

[38] In any event, even if there was no subsisting contract at the time the vehicle was picked up and driven to the border, both parties agreed that the transport should continue on the original terms. This could be seen as a new, verbal contract.

[39] The Defendant made it clear that advance payment was required. It took a further five days for that payment to be made. The Claimant says that he was given wrong or incomplete banking information. I am not sure if that is entirely accurate, though I can accept that the Claimant's bank is at least partly to blame. It is not unheard of for American banks to exhibit petty provincialism.

[40] That brings us to the errors that the Defendant made.

[41] The Defendant should have insisted on a signed contract. The lack thereof was unprofessional and created uncertainty.

[42] The Defendant should have insisted on payment in advance before picking up the vehicle in Ontario. This too created uncertainty, and directly led to the situation that occurred with the drop-off in Memphis.

[43] By picking up the vehicle and transporting it as far as Memphis, without payment, the Defendant created the very dilemma he faced, which he resolved by dropping the vehicle off and sending his transport truck off to its other task in Texas.

[44] Although I understand why he did as he did, I believe the Defendant made the wrong choice, in law. It is understandable that he began to question whether he would ever be paid, but it was his own mistakes that put him in that position. He had proceeded to this point on the basis of trust, and the reasonable thing to do would have been to continue to carry out his part of the bargain.

[45] At the very least, he ought not to have attempted to charge the Claimant any additional amount to move the vehicle from Memphis to Scottsdale. This was an extra amount that he should have absorbed. By demanding additional money, he allowed the impression to be created that he was using unfair leverage to extract money from the Claimant, possibly feeding into the negative impressions that the Claimant already held.

[46] I find that the Defendant breached the verbal contract by refusing to complete the delivery from Memphis to Scottsdale.

Damages

[47] The Claimant is entitled to some damages, but nowhere near what he claims. The legal principles that affect his recovery fall under several categories:

d. Foreseeability or remoteness
e. Failure to mitigate
f. Contributory negligence

Foreseeability or remoteness

[48] Damages are only recoverable to the extent that they are foreseeable. Put another way, damages are not recoverable if they are too remote.

[49] Here, it would not have been foreseeable that the Claimant would take several

days out of his busy medical practice, foregoing thousands of dollars of income, to personally drive the vehicle halfway across the continent back to Arizona.

[50] It was obviously tempting to do so, since the Claimant was coincidentally working in St. Louis at that time, but it was a very expensive way of transporting a stretch limo that was not even licenced to be on the roads.Failure to mitigate

[51] Another way of reflecting the same thing, is to find that the Claimant failed to mitigate his damages by taking the more reasonable, cost-effective route of hiring someone to transport the vehicle for him. A simple Google search would have revealed any number of vehicle shipping companies who might have undertaken the job for him.

[52] It was not unreasonable for the Claimant to travel from St. Louis to Memphis to personally attend to the situation but driving it back to Arizona more than a month later was more costly than it need have been. Alternatively, he could have done the drive during vacation time or other time off.

Contributory negligence

[53] I find that the Claimant was partially at fault for creating the situation and causing the losses that he incurred. Despite the reference to negligence, the *Contributory Negligence Act* is applicable to breach of contract claims, as well: see *Finance America Realty Ltd. v. Speed and Speed*, 1979 CanLII 4269 (NS CA).

[54] That statute is not lengthy, and reads, in part:

> **Apportionment of liability**
>
> 3 (1) Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
>
> **Interpretation of Section**
>
> (2) Nothing in this Section operates so as to render any person liable for any damage or loss to which his fault has not contributed. R.S., c. 95, s. 3.
>
> **Determination of degrees of fault**
>
> 4 Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree to which each person was at fault. R.S., c. 95, s. 4.
>
> 5 **Questions of fact**

6 In every action, the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact. R.S., c. 95, s. 5.

Power of court

7 Where the damages are occasioned by the fault of more than one party, the court has power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just. R.S., c. 95, s. 6.

[55] I believe it is appropriate to find both parties equally at fault.

Quantum of damages

[56] Assessing damages is not always an exact science, especially when some of the damages are remote, and the Claimant has failed to mitigate the losses.

[57] I will consider each of the items in the Claimant's claim documents, most but not all of which are expressed in US dollars.

[58] In my view, it is appropriate to keep in mind the proposition that the damages are best assessed by asking what would have been a cost-effective way of retrieving his vehicle, getting it first to St. Louis and later shipping it back to Scottsdale.

Retrieving the vehicle and getting it to St. Louis:

05/01/2023	$31.92	Fuel charge to drive to Memphis, Tennessee to recover limousine.
05/01/2023	$181.74	Hotel charge to stay in Memphis, Tennessee when recovering limousine.
05/01/2023	$75.34	Fuel charge to drive from Memphis, Tennessee to Missouri after recovering limousine.
05/01/2023	$570.00	Lost wages from being late for work after recovering limousine ($190.00/hour x 3 hours).
	$859.00	

[59] I consider these expenses to have been reasonably incurred. It was not unreasonable to retrieve the vehicle and get it to a place of safety.

Amounts paid to Defendant

04/25/2023	$4,950.00	Wire transfer to Mr. Giovannetti.
04/25/2023	$45.00	Wire transfer fee.
	$4,995.00	

[60] There is no basis to refund the amount paid on the contract, as services were rendered. It would be double recovery to treat these expenses as damages.

Cost of transporting vehicle from St. Louis to Scottsdale

06/29/2023	$50.68	Fuel charge to drive limousine from Missouri to Arizona
06/30/2023	$2,280.00	Lost wages from work to drive limousine from Missouri to Arizona and to drive back to Missouri for work ($190.00/hour x 12 hours)
06/30/2023	$5.00	Toll road fee driving limousine from Missouri to Arizona
06/30/2023	$5.00	Toll road fee driving limousine from Missouri to Arizona
06/30/2023	$65.45	Fuel charge to drive limousine from Missouri to Arizona
06/30/2023	$57.57	Fuel charge to drive limousine from Missouri to Arizona
06/30/2023	$61.49	Fuel charge to drive limousine from Missouri to Arizona
06/30/2023	$58.72	Fuel charge to drive limousine from Missouri to Arizona
07/01/2023	$2,280.00	Lost wages from work to drive limousine from Missouri to Arizona and to drive back to Missouri for work ($190.00/hour x 12 hours)
07/02/2023	$2,280.00	Lost wages from work to drive limousine from Missouri to Arizona and to drive back to Missouri for work ($190.00/hour x 12 hours)
07/02/2023	$74.71	Fuel charge to drive back to work from Arizona to Missouri

07/02/2023	$68.90	Fuel charge to drive back to work from Arizona to Missouri
07/02/2023	$4.75	Toll road fee driving back to work from Arizona to Missouri
07/02/2023	$0.75	Toll road fee driving back to work from Arizona to Missouri
07/02/2023	$5.00	Toll road fee driving back to work from Arizona to Missouri
07/02/2023	$75.00	Fuel charge to drive back to work from Arizona to Missouri
07/02/2023	$18.50	Fuel charge to drive back to work from Arizona to Missouri
	$7,391.52	

[61] As I have already observed, the Claimant chose an expensive and time-consuming method of getting his vehicle back to his home in Scottsdale. He made no real effort to mitigate his damages. The most cost-effective way to transport the vehicle would have been to have it shipped, or to hire a driver to drive it on the Claimant's behalf. It was not reasonable to utilize his own valuable time at physician rates.

[62] There is no direct evidence before me as to what that might have cost. Using my best judgment, I estimate that it might have cost the Claimant $2,500.00 USD to get the vehicle moved.

Summary of damages

[63] Accordingly, I assess the Claimant's damages at $3,359.00 USD, which I convert to Canadian dollars and round it off to $4,400.00.

[64] As already stated, I find both parties equally at fault. The Claimant is entitled to recover $2,200.00 from the Defendant.

Costs

[65] The apportionment of damages also applies to costs.

[66] The following costs are claimed:

cost to file	$199.35

cost to serve	$81.55
shipping, printing, thumb drives (approx)	$335.00
	$615.90

[67] I will round it off and order the Defendant to pay $300.00 in costs, for a total judgment of $2,500.00.

ORDER

[68] For all of the above reasons, the Defendant is ordered to pay to the Claimant the sum of $2,500.00.

Eric K. Slone, Small Claims Court Adjudicator