SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *4466378 Nova Scotia Limited v. ZhiCong*, 2025 NSSM 57

Date: 20250910
Docket: SCCH 543694
Registry: Halifax

Between:

4466378 Nova Scotia Limited

Claimant

v.

Wan ZhiCong

Defendant

Adjudicator: Eric K. Slone

Heard: August 28, 2025

Decision: September 10, 2025

Counsel: Claimant, Yuncheng Li, owner
Defendant, self-represented

By the Court:

[1] 4466378 Nova Scotia Limited ("the company") is a limited company owned by Yuncheng Li. The Claimant operates a Drifty franchise in Halifax. Drifty operates as a vehicle rental service based on a car sharing model, the vehicular equivalent of Airbnb. Vehicle owners make their vehicles available to Drifty which in turn rents them out to customers. Drifty is part of the larger worldwide TURO system.

[2] One of the tasks the company must perform is jockeying cars from one place to another in connection with a drop off or pick up. The Defendant was someone engaged in January 2025 to perform this task, from time to time.

[3] The question of whether he was an employee or an independent contractor is an issue that presents itself, because it has an effect on whether or not the Claimant

is entitled to be indemnified for damage occurring as a result of the Defendant's actions on the job. This question arises because on February 14, 2025, while moving a vehicle the Defendant was involved in an accident that caused $8,965.96 worth of damage to the vehicle. The Claimant paid for the repairs, but now seeks to hold the Defendant responsible for the damage.

[4] The Defendant was hired shortly before this incident via an ad on a hiring website. He had a discussion with an individual (Mr. Fan) who was not called as a witness at the trial. According to the Defendant there was no discussion of his employment status, though he understood that he had to invoice the company monthly for the hours that he put in.

[5] Significantly, the Defendant says that there was no discussion about having to arrange for his own insurance. Mr. Li testified that Mr. Fan should have explained this to the Defendant, but there is no direct evidence that he did, and there is the uncontradicted evidence of the Defendant that he did not.

[6] Both the company and the vehicle owner carried insurance. Neither of these two insurers was willing to pay the claim. The company says that this risk fell on the Defendant who could have insured against it.

[7] The Defendant also claims that he knew that the vehicle had a steering problem and that he so advised the company, but he was instructed to drive it nevertheless. He says he felt he had no choice but to comply.

[8] This case raises several questions:

1. Was the Defendant an employee or an independent contractor, or something else?
2. When is an employee personally responsible for his negligent acts when on company business?
3. Was the Defendant negligent in these circumstances?

Independent contractor?

[9] This situation does not require a sophisticated answer to this thorny question which has occupied scholars over the last few decades. There is a third category of "dependent contractor" which more accurately captures the relationship.

[10] As the cases make clear, even if an "employer-employee" relationship cannot strictly be found, the dependent contractor relationship supplies most of the same protections, from the standpoint of notice on termination, entitlement to employment insurance and workers' compensation protection.

[11] Even so, these categories do not fully fit with the reality of gig-based work, but the dependent contractor category best captures it for present purposes.

[12] There is evidence that the Canada Revenue Agency considers the Defendant to have been an employee for EI and CPP purposes, though I do not know whether the Claimant had any input into that decision.

Is an employee personally responsible to his employer?

[13] The Alberta Court of Appeal case of *Hall v Stewart*, 2019 ABCA 98 (CanLII) illustrates how nuanced is the analysis of assessing whether an employee (in that case a company director) must bear the ultimate responsibility for tortious acts committed while on company business.

[14] One of the important factors to look at is the expectation of the parties.

[15] The evidence in this case is thin. Mr. Fan, the representative of the Claimant who hired and onboarded the Defendant, did not testify, so I am left with the uncontradicted evidence of the Defendant to the effect that he had no instruction to arrange his own insurance. Given the low paid nature of the work and minimal expected earnings, the Defendant would surely have taken careful note of any expectation that he lay out the money to obtain insurance. Unless told otherwise, he reasonably expected that the Claimant company would have insurance coverage. The Claimant never asked for confirmation that the Defendant had insurance coverage.

[16] In conclusion, I find that it was not within the contemplation of the parties that the Defendant would bear personal liability for negligent acts, and the claim will be dismissed.

Was the Defendant contributorily negligent?

[17] I accept the Defendant's evidence that he complained that the vehicle was unfit to drive. The Claimant was negligent in not heeding his warning and

arranging for an alternative to having him drive the vehicle back to the Claimant's lot.

[18] But the Defendant was negligent in setting out, knowing that the vehicle was at greater risk of getting into an accident.

[19] As such, had I found liability against the Defendant I would have found the parties equally responsible.

Order

[20] In the result, the claim is hereby dismissed.

Eric K. Slone, Small Claims Court Adjudicator