



CANADIAN ASSOCIATION OF MOVERS

Legal Update

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7 April 2009

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INTRODUCTION

- Canadian Courts continue to adjudicate disputes involving lien claims

- **Ontario Superior Court of Justice**
 - * was there a valid lien?

 - * claimant failed to establish debtor agreed to pay for storage of goods



INTRODUCTION cont'd

- **Manitoba Court of Queen's Bench**
 - * did the defendant have a valid lien over the goods?
 - * defendant acted improperly in retaining possession of property and had no claim to a lien
 - * neither at common law under its contract or as a warehouseman
- **Ontario Court of Appeal**
 - * did the defendant moving company that offered short term storage have a right to rely on a limitation of liability?
 - * no – in circumstances where conduct was unconscionable and unreasonable



National Bank of Canada v. CJC Bottling Ltd.
Ontario Superior Court of Justice (April 2006)

FACTS:

- CJC was bottler of bottled water
- CJC purchased bottles from Ascent
- CJC had financial problems, owed \$3.5 million to Ascent
- Ascent exchanged portion of debt for 80 percent interest in CJC
- Eventual goal= to amalgamate two companies
- CJC fell into arrears of lease obligations for warehouses



National Bank v. CJC Bottling cont'd.

- Ascent leased warehouse space and moved CJC's goods to new warehouse
- CJC filed notice of intention to make bankruptcy proposal
- Interim receiver sought sale of goods stored in Ascent's warehouse
- Ascent resisted, asserting lien over goods for unpaid storage charges under RSLA
- Sale of goods ordered with proceeds ordered preserved to satisfy lien claims



National Bank v. CJC Bottling cont'd.

- Net proceeds of sale of CJC's goods were \$93K
- 915471 Ontario Limited ("915") purchased security held by Bank of Montreal over Ascent's assets
- Ascent went bankrupt
- 915 claimed all of Ascent's A/R, including unpaid storage fees from CJC
- 915 asserted lien under RSLA for unpaid storage fees
- National Bank, secured creditor and receiver of CJC, disputed 915's claim



National Bank v. CJC Bottling cont'd.

ISSUE: *Whether CJC goods were stored by Ascent “on the understanding that the person will be paid for the storage”:*RSLA section 1(1)

- Ascent’s former president swore affidavit in support of 915’s motion
- Claimed Ascent rented warehouse “specifically to store” CJC inventory, but did not expressly state understanding existed that CJC would pay Ascent for storage
- CJC’s president unaware of agreement to pay Ascent for storage



HELD: 915's motion for finding of a lien under the RSLA was dismissed

- 915 failed to establish the existence of an agreement between Ascent and CJC requiring CJC to pay Ascent for storage of goods
- 915 failed to establish that it was a "storer" as defined by the RSLA for purpose of asserting a lien claim under the RSLA



- Therefore, 915 was not entitled to a lien for an amount equal to either the amount agreed upon for the storage, or the fair value of the storage: RSLA sections 1(1) and 4(1)
- Had 915 been successful, its lien under the RSLA would have enjoyed priority over claims of CJC's secured creditor: RSLA section 6



SIGNIFICANCE OF THE CJC CASE:

To sustain a lien under the RSLA, you must be able to establish that you received goods for storage ...on the understanding that you would be paid for the storage (See “storer” definition under RSLA)



Canadian Freight Assembly Ltd. v. Garden Grove Distribution (1998) Ltd.
Court of Queen's Bench of Manitoba (November 2005)

- Garden Grove entered into freight hauling and warehouse contract with CFAL
- Six months later, CFAL terminated the contract verbally, alleging breaches by Garden Grove
- Dispute arose as to amounts owed to Garden Grove by CFAL for storage and transport
- CFAL claimed costs associated with various breaches



- Following termination, goods were erroneously delivered to Garden Grove's warehouse
- Shipping documents clearly showed goods were delivered in error
- Goods valued at \$119K
- Garden Grove stored the goods in its warehouse



- Garden Grove refused to deliver goods to CFAL when demanded
- Claimed a lien on the goods stored in its warehouse
- Delivered some of the goods to ultimate consignees
- Collected and retained payments for past debts
- Took the position that the contract had not been properly terminated



ISSUE: *Whether laws applicable to warehousemen's liens permit a warehouseman to claim a lien on present goods for past debts*

- CFAL commenced an action, claiming damages for wrongful detention of the goods
- CFAL asked for an immediate order releasing the goods delivered in error to Garden Grove's warehouse
- Court ordered Garden Grove to release the goods to sheriff and make a payment into Court



- Soon after that, CFAL filed an assignment in bankruptcy
- TD Bank was secured creditor of CFAL
- Trustee sought Court Order that TD Bank was entitled to monies paid into Court by Garden Grove



- Garden Grove argued that:
 - it was entitled to monies paid into Court
 - Monies stood as replacement for the goods it lawfully detained and over which it had a right of lien
 - Monies replaced goods over which it held a security interest (i.e. lien rights)
 - Monies were in fact an exchange of one security for another
 - On bankruptcy of CFAL, Garden Grove became secured creditor



- Court dealt with a number of issues in connection with Canadian bankruptcy laws
- Court found that there was clear evidence that CFAL had made it known that it would no longer use services of Garden Grove
- Subsequently, goods were erroneously delivered to Garden Grove
- Court found that Garden Grove failed to follow procedure in exercising a warehouse lien under Manitoba laws



- Garden Grove claimed a lien over the goods for debts arising from dealing with property formerly stored with it, but which were no longer in its possession
- Is the amount of lien restricted to debts arising out of warehousing of goods currently in possession of warehouseman?
- Or does the amount of lien extend to unpaid charges due in respect of goods warehoused in the past?



- Court looked at warehouseman lien legislation in Manitoba
- Court found Garden Grove had no claim to a lien, either at common law under its contract or as a warehouseman in connection with goods that were erroneously delivered



- Court also concluded that Garden Grove could not claim a lien over the goods for amounts owed with respect to storage of other property
- Court relied on decision of B.C. Court - same conclusion in context of BC Warehouseman's Lien Act: *Squamish Terminals v. Dutton Pacific Forest Products* (1980)



Solway v. Davis Moving & Storage Inc. O.J. No. 4760 (C.A.)

- Claim for lost personal property that the plaintiffs had placed in the care of the defendant moving company
- Trial Judge held that the defendant moving company could not rely on the limitation of liability contained in the bill of lading
- Found the moving company had made several misrepresentations to the plaintiffs about the care that would be taken of their goods
- Goods were being temporarily stored by the moving company



Solway v. Davis Moving & Storage cont'd.

Facts:

- Plaintiffs had contracted with Kennedy Moving for the moving and storage of their household goods
- Contained normal household items, and also expensive art and objects of great personal significance
- Agreed that goods would be stored in the trailer unit until such time as the plaintiffs' new home was ready
- According to the plaintiffs, Kennedy had represented that the goods would be stored in a locked trailer in a supervised yard



Solway v. Davis Moving & Storage cont'd.

- Trailer would be stored with its landing gear down and would be securely locked
- One night during the period of storage, trailer was left on an unsupervised residential street so that the Kennedy yard could be snow plowed
- While the trailer was on the street, it was stolen



Solway v. Davis Moving & Storage cont'd.

Trial Court Decision

- Kennedy attempted to rely on the limitation of liability clause contained in the *Truck Transportation Act* and the bill of lading
- The plaintiffs alleged that Kennedy's conduct was unconscionable and unreasonable
- Kennedy should not be able to rely on the limitation of liability
- Trial court agreed with the plaintiffs
- Kennedy held liable for the full value of the plaintiffs' goods



Solway v. Davis Moving & Storage cont'd.

Appeal Court Decision

- Court of Appeal agreed with the trial court decision
- Kennedy Moving should have anticipated that a theft might occur if the trailer was left unattended overnight on the public street
- Court found conduct of moving company was “unconscionable” and “unreasonable”
- Leave to appeal this case to the Supreme Court of Canada was denied
- No final determination on this issue from our highest court



Thank You

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