

1218897 Ontario Ltd. (c.o.b. Castle Auto Collision & Mechanical Service) v. McEachern, [2016] O.J. No. 1702

Ontario Judgments

Ontario Superior Court of Justice

Small Claims Court - Toronto, Ontario

W.C. De Lucia Deputy J.

March 16, 2016.

Court File No.: SC-16-00001620-00RS

[2016] O.J. No. 1702

Between 1218897 Ontario Limited O/A Castle Auto Collision & Mechanical Service, Applicant, and Neil McEachern, Respondent

(14 paras.)

Counsel

Applicant's Representative: W. Xavier Navarrete (lawyer).

Respondent: No one appearing.

Insurer/Intervenor: Economical Insurance.

Represented by: Lisa Carr (lawyer).

ORDER

W.C. DE LUCIA DEPUTY J.

BACKGROUND

1 A hearing was held on February 24, 2016 in this matter. After oral submissions, this hearing was adjourned and the decision was reserved. The following is the reserved decision.

2 The Applicant has issued this Application under Section 23 of the Repair and Storage Liens Act ("RSLA") seeking a determination of the amount of daily storage owed to the Applicant as the lien claimant, a determination of the number of days of storage owed to the Applicant as the lien claimant, costs of the Application and pre-judgment interest.

3 The Respondent was the owner of a 2003 Ford Econoline E350 (the "vehicle") which was involved in a motor vehicle accident on January 23, 2016 which vehicle is the subject matter of the Applicant's lien and storage claim.

4 Economical Insurance is the insurer of the said vehicle. On or about February 1, 2016 an appraiser on behalf of the insurer inspected the vehicle at the Applicant's storage facility and the insurer determined that the vehicle was uneconomical to repair. Pursuant to Economical's obligations under Section 7.5 of the Ontario Automobile Policy, Economical settled the motor vehicle property damage claim with Neil McEachern, the Respondent owner of the vehicle for the actual cash value of the vehicle less the deductible and now owns the vehicle as salvage. On February 5, 2016, Economical assigned Impact Auto Auctions to remove the vehicle from the Applicant's facility. On or about February 10, 2016, the Applicant refused to release the vehicle without payment of its storage fees.

ISSUE

5 The issue for this Court's determination is the proper form and process of this Section 23 Application under the RSLA in the Small Claims Court.

ANALYSIS

6 An Application process is foreign to the Small Claims Court. It presupposes the right of cross-examination which again is foreign to this Court.

7 I find that the remedies under Sections 23 and 24 of the RSLA are mutually exclusive.

8 I further find that this Application under Section 23 of the RSLA may be brought in the Small Claims Court but subject to this Court's monetary jurisdiction. Section 25 of the RSLA provides as follows:

"Proper Court

25. An application under this Part may be brought in any court of appropriate monetary jurisdiction"

9 The problem with the Application language arises when the amount of the lien involved puts the dispute into the jurisdiction of the Small Claims Court. The Applicant has not defined the amount of the claim, but rather states in supporting Affidavits that the storage claim continues to accumulate at a daily rate of \$100.00 for storage plus \$13.00 for HST plus \$150.00 estimate fee and \$275.00 as an administrative fee.

10 The Small Claims Court rules do not speak to an Application process nor do the rules speak to the right of cross-examination on Affidavit evidence, which are essential features of the Application process.

FINDINGS AND DISPOSITION

11 While an Application is an originating process in the Superior Court, the main originating process in the Small Claims Court is a Plaintiff's Claim. I find that when the amount of the lien puts the matter within the Small Claims Court jurisdiction, I am of the view that the Application language of Section 23 and Section 25 should read as meaning Plaintiff's Claim.

12 I order that the Application in this matter shall mean the Plaintiff's Claim. As provided in Section 23 of the RSLA "the court may make such order as it considers necessary to give effect to those rights". "Those rights" are the rights contained in Section 23 1(a) to (e) of the RSLA.

13 This Section 23 Application lacks the option to pay into Court substituted security which is only available under a Section 24 Application.

14 This Application did not include the insurer, Economical Insurance. Notwithstanding the Affidavit filed by the Respondent and the Respondent's signature on a Repair Service Agreement, Economical Insurance is objecting to the storage charges as being excessive and the Applicant refuses to release the vehicle unless its storage charges

are paid. It is clear that Economical Insurance seeks the opportunity to dispute the storage charges of the Applicant. This Application process under Section 23 does not allow Economical Insurance to dispute these charges. Leave is granted to Economical Insurance to participate in this hearing. Further, in accordance with Rule 2 of the Small Claims Court, I find that it is necessary in the interest of justice to make the following order to secure the just determination of the real matters in dispute; namely,

1. The Application shall mean Plaintiff's Claim nunc pro tunc
2. The Applicant shall mean Plaintiff
3. The Respondent shall mean Defendant
4. The insurer Economical Insurance shall be added as a Defendant
5. The Defendants are granted leave to serve and file a Defence or Defences on or before April 11, 2016
6. The Defendants are granted leave to issue a Defendant's Claim on or before April 11, 2016.
7. At the close of pleadings, this matter shall proceed to a Settlement Conference and a trial within the Small Claims Court
8. Costs are reserved to the Trial Judge

W.C. DE LUCIA DEPUTY J.