Citation: *Whimp v. Peters*, 2024 YKSM 3

Date: 20240705
Docket: 22-S0062
Registry: Whitehorse
Heard: Whitehorse and
Watson Lake

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Gill

WILLIAM WHIMP

Plaintiff

v.

KERRY PETERS

Defendant

Appearances:
William Whimp — Appearing on own his behalf
Kerry Peters — Appearing on own his behalf

REASONS FOR JUDGMENT

[1] The Plaintiff, William Whimp, makes claim in respect of a machine that he purchased, known as a faller buncher, (hereafter called “the machine”) for the sum of $23,000. He did not buy the machine from the Defendant, Kerry Peters, but rather from a Mr. Claude Lavoie, who had previously purchased the machine from the Defendant’s numbered company 16142 Yukon Inc. (the “Company”), and who only later sold it to the Plaintiff.

[2] The Defendant later seized the machine, at the time thinking he was re-taking it from Mr. Lavoie, not knowing that Mr. Lavoie had by then actually sold it to the Plaintiff.

[3] The Defendant asserts that neither Mr. Lavoie nor Mr. Whimp could have possibly obtained valid title to the machine because it was sold to Mr. Lavoie by two of

the Company's then employees (Mr. Damon Warren and Ms. Lorena Funnell) in a fraudulent manner, and that at all times, title to the machine has never been the Company's to give but rather, has always vested with the Defendant's brother, Darrell Peters. He argues that because the machine has always remained the property of Darrell Peters, this means that Mr. Lavoie did not receive good title when he bought the machine from the Company, and therefore Mr. Lavoie also did not have good title to pass when he sold it to the Plaintiff. It was on the strength of this assertion that the Defendant had actually seized the machine from the Plaintiff.

[4] This trial occupied two days and the Court heard from a number of witnesses. The Plaintiff testified on his own behalf and also called a number of persons to support his case. The Defendant testified on his own behalf and also on behalf of the Company, and he also called as a witness his brother, Darrell Peters.

[5] Mr. Lavoie testified on behalf of the Plaintiff. He said he bought the machine for $20,000; $16,000 paid by certified cheque and $4,000 in cash. A bill of sale, from the Company to Mr. Lavoie was presented and filed as an exhibit, along with receipts indicating payment as aforesaid.

[6] The Defendant testified that this bill of sale is fraudulent because the machine in question was actually owned by his brother Darrell and because the employees of the Company, being Mr. Warren (who signed the bill of sale on behalf of the Company) and Ms. Funnell, acted beyond the scope of any authority in facilitating this sale. The Defendant testified that in fact, he is currently suing each of those individuals in the Supreme Court of the Yukon Territory seeking damages in the vicinity of $2.7 million.

[7] In further assertion of his defence, the Defendant presented his brother, Darrell, who testified that he in fact was the purchaser of the machine in question and that he simply left it in storage at his brother's yard for later use or disposition, essentially to be kept as an asset. Darrell Peters produced and relied on a document from Ritchie Bros. auctioneers indicating a sale, on December 18, 2007, of the machine to Darrell Peters. This document, while on its face supplied by Ritchie Bros. auctioneers, is described only as a "display history detail". Darrell Peters said he had a bill of sale, but he did not produce it at this trial. Nonetheless, he emphatically denied that he bought the machine on behalf of the Company, but rather by himself, and only for himself.

[8] Of course, the foregoing assertions by the Defendant, if actually true, would seriously undermine the Plaintiff's claim. However, those assertions as will be seen below, are patently untrue. As will be seen, further and better documentation was produced, not by or on behalf of the Defendant, but by other witnesses serving to illuminate the true nature of the purchase of the machine by Darrell Peters.

[9] Two additional witnesses, Mr. Warren and Ms. Funnell, came to court to provide testimony on behalf of the Plaintiff. Mr. Warren testified that he had worked for the Defendant and his various companies for many years, since age 8, but no longer. He knew the history of the machine in question in great detail, noting that it had been purchased in 2007 at a Prince George auction, by the Company. He testified that as part of his employment duties with the Company, he sold many pieces of equipment, some owned directly by the Company and others via consignment, all with the specific knowledge and permission of the Company's owner, the Defendant, Kerry Peters. This machine was no different.

[10] Mr. Warren recognized and confirmed the receipts totaling $20,000 paid by Mr. Lavoie when he purchased the machine from the company. He testified that those monies were deposited into the Company's bank account. Mr. Warren also produced a copy of the bill of sale that he said was kept in the Company's office, confirming the sale of the machine by the Company to Mr. Lavoie.

[11] The bill of sale from the Company to Mr. Lavoie, and signed by Mr. Warren on behalf of the Company, is of course the document that the Defendant asserts was fraudulently made out because the company did not own the machine and so Mr. Warren had no such authority to sell it.

[12] As it turns out, the Defendant is wrong, and the Company did indeed own the machine. I make this finding based on a variety of supporting evidence which I will review in the following paragraphs.

[13] Firstly, Mr. Warren produced an invoice from Ritchie Bros. auctioneers that he obtained from the files kept in the office of the Company. That invoice, dated December 18, 2007, confirms the sale of the machine to the said Company via Mr. Darrell Peters who is described only as acting as an agent on behalf of the Company. This written document, authored by Ritchie Bros., directly contradicts the testimony of Darrell Peters.

[14] Further, Ms. Funnell testified that she also worked for the Company at the same time as Mr. Warren, and it was her duty to manage the office generally. She also recognized the receipts issued to Mr. Lavoie for the sale of the machine. She testified that it was part of her office managerial duties to maintain a list of the Company's

assets. She testified that the machine in question was on the Company's list of assets. Furthermore, when Mr. Lavoie purchased the machine, she instructed another employee at the Company to remove that particular machine from its list of assets.

[15] The Defendant, when given an opportunity to cross-examine Mr. Warren and Ms. Funnell, only took the opportunity to point out that he was suing each of them in the Supreme Court for fraudulent conduct and seeking damages of $2.7 million. Both Mr. Warren and Ms. Funnell replied that his claim in that regard was entirely without merit and indeed, asserted that much of the claim had already been disposed of. Be that as it may, the main point here is that the Defendant did not question either of these witnesses with respect to their testimony as it directly pertains to this case.

[16] Asking Mr. Warren only how he managed to get possession of the Ritchie Bros. invoice, the Defendant did not challenge its authenticity nor its underlying assertion of title of the subject machine actually being owned by the Company, and not by the Defendant's brother.

[17] Further, the Defendant did not challenge Mr. Warren on the receipt of $20,000 from Mr. Lavoie that was deposited into the Company's account. Nor did he challenge the assertion by Ms. Funnell that this machine was indeed on the Company's list of assets, removed from that list only upon the sale to Mr. Lavoie. All of that testimony by both Mr. Warren and Ms. Funnell went unchallenged by the Defendant.

[18] There is more. Another witness, Mr. John Forsberg, also testified on behalf of the Plaintiff. He is a resident of the community of Lower Post and was present when the Defendant attended in that community to take back the machine. Mr. Forsberg testified

that the Defendant acted entirely without authority when he removed the machine from the community without first obtaining the explicit permission of the local Band Chief.

[19] But more to the point, Mr. Forsberg testified that when he asked the Defendant whether Mr. Lavoie would be getting his money back, the Defendant replied yes, there would be no problem. Of course, by this time, and unbeknownst to those individuals, Mr. Whimp had already purchased the machine from Mr. Lavoie, so it would be he, and not Mr. Lavoie, who would be entitled to any such payment from the Defendant.

[20] Regardless, it should be noted that while the Defendant himself denies making any such promise to Mr. Forsberg, I prefer the testimony of Mr. Forsberg in this regard, and I reject that of the Defendant, whose testimony is at the very least, also incorrect and flawed in respect of other important facts relating to these proceedings.

[21] Based on the foregoing, and according to the Ritchie Bros. invoice, Mr. Darrell Peters did not purchase the machine for himself but rather for the Company. To the extent that Mr. Darrell Peters testified contrary to this, his testimony is also rejected.

[22] On the basis of all of the foregoing, I find that the Defendant attended the community of Lower Post and seized the machine which, at the time, was lawfully owned by the Plaintiff, having been purchased from Mr. Lavoie, who had previously taken good title to it from the Company for fair and proper consideration. On this basis, it is clear that the Defendant unlawfully took personal possession of the machine that was not his to take and he is therefore liable personally in damages to the Plaintiff to make good for the sum paid by the Plaintiff to Mr. Lavoie for its purchase. That amount is $23,000.

[23] The Plaintiff also sought compensation for lost revenue arising from deprivation of use of the machine. While he may well have sustained such loss, his claim in that regard is dismissed because it was not plead, because no specific evidence was led as to the amount of that loss, and finally, because any such award would likely exceed the monetary jurisdiction of this court in any event.

[24] The Plaintiff, William Whimp, shall have judgment against the Defendant, Kerry Peters, in the sum of $23,000, plus interest, to be calculated by the registry from the date of filing until the date of judgment. The plaintiff is also awarded his costs relating to filing and service of process.

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GILL T.C.J.