2002 CarswellOnt 4882
Ontario Superior Court of Justice

Caranci v. Ford Credit Canada Leasing Ltd.

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Alfred Caranci, Plaintiff (Respondent) and Ford Credit Canada Leasing Limited, Defendant (Appellant)

Desotti J.

Heard: October 21, 2002
Judgment: November 14, 2002
Docket: 1260

Proceedings: reversing (2001), 2001 CarswellOnt 2916, 17 M.V.R. (4th) 200 (Ont. S.C.J.)

Counsel: *C. Brandow*, *Ledroit Beckett*, for Plaintiff/Respondent
Kevin Egan, *McKenzie Lake*, for Defendant/Appellant

Subject: Civil Practice and Procedure; Contracts

Headnote

Judges and courts --- Jurisdiction — Jurisdiction of inferior courts — Jurisdiction of justices, magistrates, and provincial courts — Of provincial courts

Plaintiff entered agreement with credit company to lease new vehicle for 24 months — Pursuant to terms of lease, plaintiff paid lump sum of $11,821.71 — In accordance with lease, plaintiff insured vehicle for physical loss or damage — Plaintiff purchased insurance for full replacement cost if vehicle was totally destroyed — Vehicle was totally destroyed in motor vehicle accident — Insurance company paid credit company full replacement cost, totalling $30,730 — Credit company paid plaintiff $9,543.83 from insurance settlement — Plaintiff's action against credit company for damages for breach of contract and unjust enrichment was allowed — Trial judge found that credit company calculated refund based on remaining monthly payments and amortization schedule — Trial judge found that credit credit company chose to take lump sum payment without altering terms of lease to reflect this payment option — Trial judge found that credit lease did not stipulate plaintiff was required to purchase full replacement value insurance — Credit company appealed — Appeal allowed — Trial judge made award on basis of unjust enrichment and principle of restitution, both of which are equitable remedies which are not in power of small claims court to grant.

APPEAL by credit company from judgement reported at 2001 CarswellOnt 2916, 17 M.V.R. (4th) 200 (Ont. S.C.J.), allowing plaintiff's action for damages for breach of contract and unjust enrichment arising out of automobile accident.

***Desotti J.*:**

1 The learned Small Claims Court judge has made a palpable error in granting an equitable remedy of unjust enrichment and then confused this equitable relief with the law of damages. *Section 96 of the Courts of Justice Act* precludes a Small Claims Court from granting equitable remedies. Unjust enrichment and the law of restitution are both equitable remedies. As an aside, and for reasons stated in the Appellant's factum, I would not have found unjust enrichment had the remedy been available to the plaintiff in any event. For those reasons alone the appeal is allowed and the judgment set aside.

2 However, there is some reference to the *contra proferentem* rule in the judgment of the Small Claim's Court judge, and therefore, out of an abundance of caution, I have entertained the possibility that something in the agreement that is relied on by the Credit Company is ambiguous that somehow should lend itself to a different result or a similar judgment.

3 Clause 17 and 18 of the lease agreement speak to the rights, obligations and remedies of the parties, if the motor vehicle was destroyed. The respondent concludes that the wording is such that would disentitle the plaintiff to any recovery at all. I do not view the wording of Clause 17 in that manner even though there were advance payments. The Credit Company simply receives the insurance proceeds equal to the value of the motor vehicle of $30,730.00 minus the buyout price of the motor vehicle of $21,436.64 minus $250.47, the unused portion of the interest paid to the respondent pursuant to the lease.

4 Once it receives this amount, then any remaining sum goes to the plaintiff. In this case because the plaintiff had the foresight to purchase replacement insurance instead of depreciation insurance, and thus a sum of $9,543.83, was paid to the plaintiff. The plaintiff's claim for an additional sum of $3,678.21, because he no longer had the use of the motor vehicle for the further term of 8 months as originally leased is absurd. He destroyed his vehicle but he did have the use of this leased vehicle for 16 months. As the plaintiff conceded, no claim could be forthcoming if the plaintiff had been an impaired driver and he was in breach of the insurance policy. Certainly, on this basis, there is no ambiguity in the language of the lease. Whether, the original policy of insurance was replacement or depreciation, no unused portion of the lease was going to form the basis of an unjust enrichment claim.

5 Furthermore, with depreciation insurance, the plaintiff would have received significantly less money. However, would not the argument be the same? One can see that the gap between the amount of the settlement of $9,543.83 plus the judgment of $3,676:21 or $13,220.04 and the depreciation cost of the vehicle payable to the plaintiff would have been significantly less. Would the judgment then have been significantly greater to make up for this greater gap because the plaintiff purchased a different kind of policy? Is that the unjust enrichment?

6 The fact the appellant did not spell out the consequences of an advanced payment in the lease in the eventuality of the destruction of the plaintiff's car has created some confusion. The plaintiff believed that this somehow created a remedy for this loss of 8 month's of usage. While I find this wording is neither a fatal flaw in the contract nor an ambiguity per se, its silence has created this confusion. The appeal will thus be allowed but there will be no order as to costs.

Appeal allowed.

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