

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Chute v. McCulloch*, 2016 NSSM 60

Claim: SCCH-454292

Registry: Halifax

Between:

Joseph Troy Chute

Claimant

- and -

Danny McCulloch and Country Hills Auto Salvage

Defendants

Adjudicator: Eric K. Slone

Heard: October 19, 2016

Date of Decision: December 5, 2016

Appearances: Alex Embree, Counsel, for the Claimant
Danny McCulloch and Country Hills Auto Salvage, Defendants,
Self-Represented

By the Court:

[1] The Claimant is an individual who resides in the Dartmouth area.

[2] The Defendant Danny McCulloch resides in Upper Rawdon, Nova Scotia. The name "Country Hills Auto Salvage" appears to be a slight misnomer for "Country Hills Auto Sales & Recycled Parts" which is a registered business name for Mr. McCulloch. Because it is not a separate legal entity, I will refer to Mr. McCulloch as the Defendant.

[3] The Claimant seeks compensation for certain items that he says he left in the care of the Defendant, which have been disposed of.

[4] The Claimant has been in the business of buying and selling, and repairing vehicles and heavy equipment. He is also interested in restoring vintage cars. The Defendant is in a similar line of work, though he also does scrap and salvage.

[5] In the years prior to 2011, the two parties were on friendly terms. They had done business together. The extent to which they were personal friends is debatable. But when the Claimant got into some trouble, he called upon the Defendant to help him in a manner that one might expect a friend to do.

[6] In June 2011, the Claimant was arrested and charged with a serious criminal offence. At the time, he was storing a number of old vehicles and some heavy equipment at the home of a girlfriend, from whom he was about to separate. The Claimant did not get bail, and would remain in custody (of one type or another) pending trial and serving his sentence, until late 2013.

[7] The items that he considered valuable were a 1969 Ford Mustang, a 1979 Mustang, a John Deere front end loader, with a back-hoe attachment, and five miscellaneous cars (clunkers, really) that had scrap value only. The 1969 Mustang was

basically a shell, that the Claimant hoped to be able to restore, with all new engine and mechanical parts. The 1979 Mustang was actually driveable, though it was less valuable than the '69 which had a lot more prestige for Mustang aficionados.

[8] The abrupt incarceration, and uncertainty about his future, caused the Claimant to believe that he needed to safeguard these items. One of his first calls while in custody was to his step-daughter, Erin, who he instructed to call the Defendant and ask if he would be willing to transport the vehicles and hold them for the Claimant's eventual release. The proposal that he instructed her to make was that the Defendant could have the five cars to be scrapped, as payment for towing and storing the two Mustangs and the front end loader and attachment.

[9] What is not in issue is that the Defendant did, indeed, transport all of the vehicles, and the five clunkers were soon thereafter sold for scrap.

[10] Fast-forwarding to the present, it is a fact that the Defendant did not hold the items for the Claimant, but rather sold them all (at various times) and kept the proceeds as payment, or partial payment, for what he felt he was owed as storage fees. He says that he did not hear from the Claimant for several years, and that he felt no obligation to store them indefinitely.

[11] The main question for the court is: what was the deal?

[12] The Claimant's version of the deal was as stated earlier, namely that the Mustangs and industrial equipment would be stored awaiting his release, mostly as a favour but partially paid for by the salvage value of the five junk cars. He testified that he confirmed this directly with the Defendant in June 2011 in a phone call from jail, after the vehicles had already been transported. He said that the Defendant assured him that he would safeguard his property.

[13] The Defendant testified that he agreed to transport and store the items, based on the phone call with Erin, but he denied that the Claimant ever contacted him from jail. He said that he had agreed to keep them for a reasonable period of time, but that no one kept him informed or gave him any idea of how long it might take for the Claimant to be released.

[14] The Claimant's step-daughter, Erin Lynch, testified that the Defendant assured her that he would look after the Claimant's stuff. She also testified that she spoke at some length with the Defendant's late wife (who died in 2015) who also assured her that they would look after the items. She testified that the Defendant's wife and she exchanged several phone conversations and that the Defendant's wife knew how to get hold of her if something came up.

[15] The Defendant testified that his wife became ill with cancer in 2011 and that the years between 2011 and 2015 were very difficult for him. Not only was his wife dying, but he ran into financial problems and had to liquidate all of his inventory. He stated that his wife told him very little about the conversations she had with Erin Lynch. He also stated that he did not know how to contact Erin, although he apparently did not make any effort to do so.

[16] The Defendant also flatly denied that the Claimant called him from jail.

[17] I find the Claimant's version of the events described more credible than that of the Defendant. Erin Lynch, while not a disinterested witness, struck me as totally fair and reliable. The Claimant himself was very straightforward and consistent in his evidence. I find it more probable than not that the Claimant and Defendant did speak directly in June 2011. The Claimant, despite being in trouble with the law, was clearly very concerned about his property which he believed had some real value that he wanted to protect for his future. It was important enough that he made it his first priority

after being arrested. His behaviour thereafter was totally consistent with someone who believed that he had secured his property.

[18] The Defendant may not be lying outright when he denies the conversation with the Claimant. I find it equally probable that, under the stress of his wife's illness and his financial problems, that he may simply have forgotten. But there is other troubling evidence that suggests his version of the events is unreliable.

[19] The Claimant was released into a half-way house in November 2013. He waited until the new year to get in touch with the Defendant. He asked his parole officer to contact the Defendant on his behalf and check on the property. The parole officer reported back to him that the Defendant initially denied knowing the Claimant, but eventually owned up to the fact that he no longer had the front end loader or attachment, because he had sold them (allegedly for \$1,500.00). I conclude that the Defendant's denial that he knew the Claimant was a crude effort to deflect scrutiny, because he knew that the Claimant would be unhappy with things he had done.

[20] The Claimant did not do anything further about this until his parole ended in June 2015. He started trying to contact the Defendant, and left messages for him. Eventually, he drove out to the Defendant's yard in the hope of seeing him personally.

[21] He testified that the Defendant said he had sold the front end loader for \$1,500.00, and that he had long ago scrapped the five cars. The Mustangs were still in his yard. He said that the '69 looked OK, but the '79 had its wheels off. Apparently the conversation got a little heated, and the Defendant ordered him to get off his property. After that, the Claimant began to think that the only way he would get his property back, or value for them, was through the legal process.

[22] The Defendant testified that transporting and storing the items was more work than the Claimant perhaps recognizes. He said that he had to move them occasionally,

because of environmental concerns, and that both Mustangs (in particular) were rusting away. He testified that when the Claimant visited in June 2015, he did not offer him any money, and additionally insulted him by making a derogatory comment about his late wife. He then felt no further obligation to hold onto the Mustangs and sold them. He had sold the industrial equipment a couple of years earlier when he was in financial trouble.

[23] The Claimant seeks damages for the loss of his vehicles. He places a fairly high value on them. He values the Loader at \$8,000.00, the back hoe attachment at \$4,000.00, the '69 Mustang at \$8,000.00 and the '79 Mustang at \$5,000.00, for a grand total of \$25,000.00.

[24] The Defendant has counterclaimed for \$15,925.00. He arrives at this figure by charging \$1,125.00 for the original towing job, and \$18,000.00 for storage fees. He then credits the Claimant for sale proceeds of \$3,200.00 which he received at various times for the vehicles.

[25] Dealing first with the counterclaim, I reject the claims entirely. I find that the Defendant agreed that his compensation would be the salvage value of the five cars. I also find that he agreed to store the other vehicles and equipment for a reasonable period of time, the length of which no one knew at that time. I find that it cost him very little, if anything, to store the vehicles in his rather large yard.

[26] I agree that the Defendant probably did not expect to have to store these items for as long as four years, but he always had the option of contacting the Claimant or Erin and giving notice that he could no longer continue to do so, which would have given them an opportunity to make other arrangements. I reject his position that he did not know how to contact the Claimant. Had he made any type of effort, he could have located Erin Lynch, at least.

[27] I also reject the Defendant's claim that under the *Storage Warehouse Keepers Act*, he had a right to sell the property after three months. The relevant sections of that statute provide:

3 A keeper of a storage warehouse shall have, in addition to his ordinary lien, the right absolutely to sell and dispose by public auction of any goods, chattels, wares or merchandise which may have been deposited or stored with him or in or upon the tenements or premises kept by him for the storage of goods and chattels, where the payment of storage charges in respect of such goods, or rent or hire of the premises in which such goods are stored, are or is in arrears.

4 No such sale as aforesaid shall be made until after the said goods, chattels, wares or merchandise have been for the space of three months in such charge or custody or in or upon such premises without the storage charges or rent or hire having been paid or satisfied.

[28] Under s.5, there is also a requirement to advertise the sale in a particular way:

5 At least one month before any such sale is made, the keeper of the storage warehouse shall cause to be inserted at least three times in at least one newspaper circulating in the district where the goods, chattels, wares or merchandise are stored, an advertisement containing notice of the intended sale and giving shortly a description of the goods intended to be sold, together with the name of the owner or person who deposited or left the same, where known.

[29] **As such, he had no right to sell any of the industrial machines or Mustangs. His actions can legally be classified as either "conversion" or a breach of bailment. The result is the same. He must account for the reasonable value of what he has deprived the rightful owner of having.

[30] I believe that he very likely sold them for whatever he could get, which probably was well below their intrinsic value. I believe the industrial equipment, which he says he sold for \$1,500.00, was worth closer to \$6,000.00. I believe that the Defendant sold

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them because he was experiencing financial trouble and simply took what was easy to get.

[31] The Mustangs were sold after the 2015 confrontation with the Claimant. The Defendant was vague on what he got for them. I am not prepared to allow the amounts that the Claimant places on them, as I believe they were deteriorated after four years of outside storage. I find that the '69 Mustang was worth \$5,000.00 and the '79 Mustang was worth \$3,000.00.

[32] In the end, the total value of the vehicles that the Defendant improperly disposed of was \$14,000.00.

[33] I accordingly dismiss the counterclaim, and allow the Claimant damages in the total amount of \$14,000.00 plus costs of \$199.35.

Eric K. Slone, Adjudicator