

1998 CarswellOnt 1207
Ontario Court of Justice (General Division) [Small Claims Court]

Jenica Holdings Inc. v. Larromana

1998 CarswellOnt 1207, [1998] O.J. No. 1212

Jenica Holdings Inc. operating as Money Mart # 1005, Plaintiff and Ricardo Larromana operating as R. Paintings, Defendant

Young D.J.

Judgment: March 9, 1998
Docket: Brantford 3293/97

Counsel: *Steve Cuthbert* and *Kim Murray*, for the plaintiff.
Ricardo Larromana, in person.

Subject: Corporate and Commercial

Young D.J.:

1 This case came before me for pre-trial on February 3, 1998. The plaintiff moved for judgment and, because the facts were both clear and undisputed, I agreed to hear and determine the claim on that basis.

2 The defendant Ricardo Larromana is a painting contractor. In June 1997 he hired Carl Clugston to work on a painting project. Skeptical as to whether or not Clugston would complete the work he had undertaken, Larromana wrote him a cheque for \$500.00 but dated it for after the scheduled completion date of the project. This is how, on June 27, 1997, Clugston came to be at a branch of Money Mart in possession of a \$500.00 cheque from Larromana postdated to July 4, 1997.

3 Larromana's skepticism was borne out by Clugston's performance. He left the painting job incomplete. Accordingly, before July 4, Larromana stopped payment on the cheque. However, by then Clugston had already presented the cheque to the plaintiff Money Mart. It paid him its \$500.00 face value less its commission. Larromana's bank acted on his direction to stop payment and returned the cheque, dishonoured, to Money Mart. Money Mart sued Larromana. Its claim reads as follows:

On June 27, 1997 plaintiff cashed a cheque payable to Carl Clugston drawn on Ricardo Larromana o/a R. Paintings in the amount of \$500.00. On July 8, 1997, the cheque was returned to us marked stop payment. All attempts to collect have failed. Plaintiff is holder in due course and seeks reimbursement in full plus costs and interest.

Larromana's handwritten defence is cryptic —

I cancel the check before the date of issue.

4 The legal issue is whether Money Mart is a holder in due course. Ordinarily a person who cashes a cheque for another is entitled to be reimbursed for the value of the cheque by the person who drew or wrote it in the first place. There is an exception to this rule if the person who cashes the cheque is aware of defences available to the drawer or of other problems that undermine the validity or genuineness of the cheque. This principle is expressed in s. 73 of the federal *Bills of Exchange Act*:

73. The rights and powers of the holder of a bill are as follows:

(a) he may sue on the bill in his own name;

(b) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c) where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and

(d) where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

R.S., c. B-5, s. 74.

5 The plaintiff has marshalled a number of legal authorities in support of its position and I have reviewed others uncovered in my own research:

- *Bank of Nova Scotia v. Kelly Motors Danforth Ltd.*, [1961] O.W.N. 34 (Ontario County Court)
- *Bank of Commerce v. Burman et al* (1979), 38 N.S.R. (2d) 262 (Nova Scotia County Court)
- *Royal Bank of Canada v. Hollyburn Development Corp.*, [1988] B.C.J. No. 1576 (British Columbia County Court of Vancouver)
- *King Mortgage Ltd. v. Annapolis Roofing & Renovation Ltd.*, [1992] A.J. No. 28 (Alberta Provincial Court, Civil Division)
- *Money Mart Cheque Cashing Centre (Wpg.) Ltd. v. Reis Lighting Products and Services Inc.*, [1994] M.J. No. 385 (Manitoba Court of Queen's Bench)
- *Wheatland Investments Ltd. operating under the name and style of Money Mart Regina v. Sask Tel*, [1994] S.J. No. 558; (1994), Q.B.M. No. 89/1994 (Saskatchewan Court of Queen's Bench)
- *Jenica Holdings Inc. operating as Money Mart # 3 v. A. Belluz & Son Ltd.*, (unreported) August 18, 1995, Divisional Court, Ontario, Court File No. D414/94
- *2203850 Nova Scotia Limited, carrying on business as "Money Mart" v. Sarkar*, [1995] N.S.J. No. 342 (Supreme Court of Nova Scotia, Court File No. 115106)

6 Many of these cases are appeals taken from small claims courts to provincial superior courts. The trend they disclose is that small claims courts consistently dismiss such actions, finding that the party in the position of Money Mart is not a holder in due course. Superior courts, after a brief showing of judicial support for the idea that the very fact that a cheque was postdated was a warning that it was disputed or defective, have consistently concluded that, as a matter of law, a postdated cheque is a bill of exchange and that a cheque casher such as Money Mart is entitled to the benefit of being treated as a holder in due course. From a review of the cases, one draws the conclusion that a postdated cheque may be honoured before its due date. The rulings further suggest that unless the person who honours or cashes such a cheque can be shown to have had notice that the writer or drawer of the cheque had defences against it or that there are other reasons to consider it to be invalid or defective, he or she becomes a holder in due course. This is so even though the bank on which the cheque was drawn would not, and could not, honour the cheque until its due date. Although the writer of a postdated cheque may countermand it or stop payment on it, that is a matter between him and the bank he drew it on. A stop payment does not affect others who cash the cheque along the way without notice of the stop payment or of any underlying agreement or dispute that led to the cheque's being postdated in the first place. The mere fact that a cheque is postdated is not sufficient to put the person honouring the cheque on notice that it is defective.

7 One lesson to be gleaned from these cases is that anyone who writes a postdated cheque with the intention of reserving an opportunity to stop payment on it is at risk. Without some clear and unequivocal endorsement on the cheque describing its limitations, the purpose of postdating it could easily be defeated if the payee of the cheque presents it to a cheque cashing service.

8 Another lesson to be taken from this series of cases touches on the jurisdiction of small claims courts. This inferior court has a unique jurisdiction. In Ontario, for example, Small Claims Courts are to "... hear and determine in a summary way all questions of law and fact and may make such order[s] as [are] considered just and agreeable to good conscience." (s. 25, *Courts of Justice Act*). To assist it to achieve such ends, this court is endowed with informal procedure and relaxed evidentiary rules. But it is still very much a court of law. As I have already noted, many of the authorities on this point involving postdated cheques are a study in how small claims courts regard their mandate by siding with writers or drawers of postdated cheques. Such cases have, however, been consistently overturned when appealed to provincial superior courts. These cases serve as a guide to small claims courts to interpret their mandate as one, above all, to work within the scope of legal precedent and principle. The modest judicial freedom given to small claims courts may allow appeals to equity and good conscience, but its exercise still demands a principled and predictable approach.

9 In accordance with the cases that bind me, and however sympathetic Larromana's circumstances may be, I must find in favour of Money Mart. The plaintiff is a holder in due course and, unaware of any defences on or defects in title to the note, is entitled to be paid its value. In the eyes of the law, Larromana's loss of \$500.00 is a matter for him and Clugston - not for Money Mart.

10 My endorsement is as follows:

For written reasons delivered March 9, 1998, judgment for the plaintiff for \$500.00. The plaintiff is to recover prejudgment interest at the court rate from July 8, 1997 when the cheque was returned. In the circumstances, I do not consider this to be a case for costs and so I allow none.

Citing References (3)

Treatment	Title	Date	Type	Depth
Considered in	H 1. Grant v. V & G Realty Ltd. 2008 NSSC 180 (N.S. S.C.) Judicially considered 1 time	June 10, 2008	Cases and Decisions	
Referred to in	C 2. Settle v. Punnett 2010 CarswellOnt 11256 (Ont. Small Cl.Ct.) Judicially considered 1 time	Aug. 20, 2010	Cases and Decisions	
Referred to in	C 3. Contract Air Compressors Inc. v. A.W. Service Industries Inc. 2000 CarswellOnt 1868 (Ont. S.C.J.) Judicially considered 12 times	May 25, 2000	Cases and Decisions	