

COURT OF QUEBEC

Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
TOWN OF MONTREAL
Civil Division

No: 500-32-124757-107

DATE: January 17, 2012

BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.

FRANCO DILELLA

[...] Pierrefonds, Quebec [...]

Plaintiff

v.

RUTH ALEXIS

[...] Montreal, Quebec [...]

Defendant

JUDGMENT

[1] The Plaintiff, Franco Dilella, the owner of a 1970 Oldsmobile Cutlass that he stored at a rented garage complains that the Defendant, Ruth Alexis, is responsible for damages to the body of the vehicle on the left side allegedly caused by the movement of items belonging to her that she stored in the other half of the garage space rented from the third party.

[2] The Defendant denies that the damages were caused by her effects asserting that these damages may have been caused by other parties in possession of half of the garage space prior to her lease of the space in April 2010.

[3] The Plaintiff replies that his car was not damaged prior to Ms Alexis taking possession on this space and that the damages were most likely caused during her possession of the space and that they are her responsibility.

[4] The damages to the paint on the left side of the car are shown through photographs (P-4) and by an estimate prepared by Auto Deenson 200 Inc. (P-1), a body shop in Lachine.

[5] The estimate is for \$1,219.05. It appears legitimate.

[6] The Plaintiff put the Defendant in default June 21, 2010 (-P-2), enclosing a copy of the estimate and seeking payment. There were also discussions between the parties where Ms Alexis expressed her intention to have someone look at the car to evaluate the damages.

[7] Although she seemed to be going along with the process, there is no clear admission on her part of liability.

[8] The Court was shown pictures showing the red Cutlass partly covered by a sheet on the left side of the garage and a pile of boxes furniture, bags and other items on the right side.

[9] There is barely enough room to walk between the pile of stored items and the car. Their picture shown the placement of the stock at various times but always after the events.

[10] Suffice it to say that the space is extremely full from floor to ceiling and boxes, bags and furniture are stacked in an unstable manner. There are some photos showing items stored on the ground outside the garage at the time when the stored items were being moved in and out.

[11] The Defendant collects used articles to send to Haiti to assist needy family members who live there.

[12] The Court is prepared to accept the sincerity of Mr Dilella's testimony when he affirms that, prior to Ms Alexis' arrival in April 2010, none of the scratches he complains of had already occurred.

[13] In the absence of any other explanation, it is likely that items fell from the pile, which was visibly unstable, and scratched the surfaces on the left side of the car.

[14] The photos show a very unstable situation and point clearly to the likelihood that, at some point prior to Mr Dilella's discovery of the scratches, they were caused by falling articles.

[15] The Court was impressed, however, by the fact that the car did not have a very effective protective cover.

[16] Mr Dilella asserts that the vehicle is very valuable, a collector's item and that he is investing significant amounts of money to bring it up to exposition quality.

[17] On the facts of the case, he was himself negligent in not investing in a proper padded cover to completely protect all of the painted surfaces of the car.

[18] For that reasons, the Court finds that Mr Dilella is also responsible for the loss in equal proportions to Ms Alexis.

[19] The Plaintiff will therefore have judgment for 50% of the amount claimed.

FOR THESE REASONS, THE COURT:

CONDEMNNS the Defendant to pay, to the Plaintiff the sum of \$609.52, together with interest at the legal rate of 5% per annum and the additional indemnity provided at article 1619 of the *Civil Code of Quebec*, calculated from June 21, 2010;

Each party paying their costs.

DAVID L. CAMERON, J.C.Q.

Date of hearing: December 19, 2011