

Date: 20170512
Docket: CI 17-01-05623
(Winnipeg Centre)
Indexed as: Brauer v. Tartan Towing
Cited as: 2017 MBQB 89

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:)	APPEARANCES:
)	
GORDON BRUNO BRAUER,)	<u>Gordon Bruno Brauer</u>
)	In person/self-represented
- and -)	
)	<u>Robert Campbell and</u>
)	<u>Satnam on behalf</u>
5174245 MANITOBA LTD. operating as)	self-represented on behalf
TARTAN TOWING,)	of respondent
)	
respondent)	<u>Judgment delivered:</u>
)	May 12, 2017

TOEWS J.

[1] The applicant, Gordon Bruno Brauer ("Brauer"), entered into an agreement with Chateau Roofing & Siding Ltd. ("Chateau") to store four motor vehicles on its property. Brauer advises that as of August 1, 2016, Chateau was paid in full under the terms of his agreement, but that on or about August 4, 2016, Chateau caused the vehicles to be towed from its property by a towing company, 5174245 Manitoba Ltd. ("Tartan Towing") because it needed to do some work on that property in the area in which the vehicles were being stored.

[2] The evidence led by Tartan Towing is that it was advised by Chateau that Brauer had not met the obligations under his agreement to make the appropriate payments for the storage of the vehicles. This is disputed by Brauer.

[3] It appears from the affidavit and *viva voce* evidence that when Chateau contacted Tartan Towing to remove the vehicles, the representative of Tartan Towing advised Chateau that in order to remove the vehicles under the authority of the relevant City of Winnipeg parking by-law (City of Winnipeg Private Parking By-Law No. 6549/95) respecting parking on private property, Chateau would first have to put into place "tow-away" signs at the entrance of the Chateau property. In order to facilitate that, Tartan Towing provided Chateau with signs to that effect and those signs were posted by Chateau. A few days after the signs were posted, and apparently without any notice to Brauer, Tartan Towing removed the vehicles from the Chateau property.

[4] This matter has come before the court by way of a notice of motion by Brauer to prevent Tartan Towing from selling the vehicles pursuant to a lien it claims it has as a result of the operation of the by-law.

[5] Chateau did not appear at the hearing of this matter and all of the evidence filed was provided by Brauer and Tartan Towing. The affidavit materials, however, do include a letter from Chateau which was considered by me. After reviewing the affidavit evidence and hearing *viva voce* evidence from Brauer and a representative of Tartan Towing, I made the following orders or declarations:

- a) I permitted the motion to proceed although it should have been commenced by way of a statement of claim or an originating motion and

not a notice of motion. The reason I did so is that there was some urgency in dealing with the matter as Tartan Towing was proceeding to a sale of the vehicles in a very short period of time. On March 8, 2017, another judge of this court, Spivak J., had provided directions on how this matter was to proceed, including directions in respect of the filing of evidence by way of affidavits. The issue of how the matter had commenced was not addressed at that time and it is clear that both parties were under the impression that the matter was to proceed to a hearing on May 11, 2017, the date I heard this matter. Both parties were unrepresented and in view of the fact that the amount of the purported lien was under \$10,000, I deemed it appropriate to proceed on the basis of the principle of proportionality.

- b) In my opinion, Tartan Towing does not have a lien or charge under the City of Winnipeg parking by-law or by virtue of ***The Garage Keepers Act***, C.C.S.M. c. G10, or ***The Warehousemen's Liens Act***, C.C.S.M. c. W20. There was an agreement between Chateau and Brauer in respect of these four vehicles and if there was a breach of that agreement by Brauer, the remedy that was available to Chateau is found under either of the two aforementioned Acts, or under the common law. However, there was no authority for Chateau to proceed in the manner it did by attempting to change the nature of the legal relationship between it and Brauer by posting "tow-away" signs in an attempt to bring the agreement

for storage into an unauthorized parking on private property situation subject to the provisions of the City of Winnipeg by-law.

- c) In my opinion, if Tartan Towing has a cause of action in respect of the towing work that it did on behalf of Chateau, that action lies against Chateau and not Brauer. It did the work on behalf of Chateau and it has no lien or other basis to advance a claim against Brauer for the cost of the towing and other related matters, including storage of the vehicles on its property.
- d) In my opinion, the attempt to bring the matter within the scope of the City of Winnipeg parking by-law by posting "tow-away" signs is simply a colourable device and Tartan Towing cannot rely on the provisions of the by-law to advance a claim against Brauer. At the same time Chateau may have a cause of action against Brauer if there was a failure of Brauer to meet the obligations of the agreement he had with Chateau in respect of the storage of his vehicles.
- e) Accordingly, it is my decision that Brauer is entitled to the possession of his vehicles which are identified in the materials and which were removed by Tartan Towing from the property of Chateau where those vehicles were being stored. Brauer is to remove those vehicles from the property of Tartan Towing within seven days of the date of hearing which took place on May 11, 2017. There are no fees or other charges payable by Brauer to Tartan Towing for the removal of those vehicles from the

property of Tartan Towing, but those vehicles will be removed at the expense of Brauer. Tartan Towing shall facilitate the removal of those vehicles by Brauer in every reasonable way.

- f) There shall be no order of costs in favour of either party.

_____ J.