

SUPERIOR COURT OF JUSTICE  
(SMALL CLAIMS COURT)

B E T W E E N :

ANDRE RAYMOND

Plaintiff

-and-

LINDA AND JOHN WOODCOCK

Defendants

R E A S O N S F O R J U D G M E N T

HEARD BEFORE THE HONOURABLE DEPUTY JUDGE HASTINGS  
on December 4, 2008, at WHITBY, Ontario.

APPEARANCES:

Mr. A. Raymond

In Person

Ms. Chaudri

Counsel for Linda and John Woodcock

(i)  
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*Legend*  
[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.  
  
(ph) - Indicates preceding word has been spelled phonetically.

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FRIDAY, DECEMBER 4, 2008

## R E A S O N S F O R J U D G M E N T

HASTINGS, DJ (ORALLY):

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So, as I said in what I indicated before when we started this oh so long ago, that somebody has to win; somebody has to lose. It is based upon the evidence that is presented to me today and I look at everything. I look at -- not necessarily an expert report but I do have to look at all of the testimony of all of the parties. So even though somebody is providing an expert report does not necessarily mean that side is automatically going to win because I have to tie everything together and that is taking into account what I consider to be the credibility of all parties and what their evidence is. And sometimes it is scary when you are trying to get information out and maybe you are not asking -- for Mr. Raymond's sake, the right question or you are trying to submit something through questioning but we have given you a lot of leeway today, only because there is a legal representation on one side and you are not represented on the other but I still have to follow the rules with respect to evidence and with respect to credibility. And so that is why my hands are tied. I have to look at what is presented to me today.

So I am just going to go through it in my

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submissions now that I have heard from the both of you.

I have to look at Mr. Dorinellis (ph), his expert testimony. I mean, at one factor; not the only factor. And what he indicated is that -- and he has had quite a bit of experience with fires. He has no reason to lie today in court. He is just a totally independent party. And he has indicated that the fire damage started, in his best belief and his knowledge, from smoke, and has indicated where the cigarettes were, which is in the bedroom of the plaintiff. So I have to look at then the liability of the plaintiff with respect to how the fire was caused. Do I believe the expert? Do I believe that something else caused the fire because I am looking at a couple of issues here. One is, is there a possibility that the fire started through as what the expert is saying, through smoke issues from the basement, which is what he is indicating. And then looking at the fact that it would be the plaintiff that probably is negligent based upon the expert evidence; in which case then if I consider that then the defendants are not liable for the damages claimed by the plaintiff because it was through his negligence that the fire got started to begin with. So I have to look at that.

I have to look at whether, in fact, the plaintiff admitted he smoked. And through his testimony he indicated one time very briefly that

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he didn't smoke that morning but indicating that he does smoke. So, again, that is another factor.

I truly believe the plaintiff that he lost everything in the fire. All his contents were in that house in the basement so that is very credible to Mr. Raymond and why he has started this action in the first place is because you have nothing and I understand that. And the fire left you with nothing. So I can understand that part.

I then have to look at also the -- supposed is there a tenancy agreement or is there not. And if I accept the cheque, the two cheques, the 400 and the \$50 cheque as rent and accept that there is a tenancy or verbal agreement then I would expect the tenant, which is Mr. Raymond, who he is indicating he is the tenant, to cover his contents through tenant content insurance, which is what every tenant does when there is a tenancy. And that would have protected the plaintiff's contents if there was a fire, in which case there is today; there was.

I can also question the validity of those cheques by saying it's two different signatures, or not signatures but the handwriting is different on the same cheque, and I could question whether, in fact, there was rent or no rent but I take the plaintiff's word that he was a tenant in the basement, whether it was to renovate or whatever, then I would accept the information that the

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plaintiff was living in the basement. So there was no denial of that by the defendants or anybody else here. Then even if I say there was a tenancy agreement based upon, and I believe the plaintiff, and he did pay rent and that was by his own admission, he should have had content insurance. So again, the plaintiff is negligent in not having tenant content insurance.

Then I look at the promissory note, and we had great discussion on the promissory note. Again, there's a question about the promissory note. There's a question with respect to different types of ink, two different times when the sentences were added, signatures, et cetera.

At this conjecture when I was thinking about this through the testimony of Mr. Woodcock I truly did not believe everything that Mr. Woodcock said around the signing of that promissory note, especially when he is indicating to me that the tape is not relevant, he was not aware of the tape. He had great concern as to whether I should be listening to it or not. I wanted to listen to it just on the basis of giving the plaintiff full opportunity to present his evidence but I really have an issue about credibility of Mr. Woodcock around the promissory note.

However, I then have to look at the other witnesses, not just the expert. And for the plaintiff, he had his mother. So even though I

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may believe his mom, which, "By the way, Mom, it does not mean I disbelieve you, but you are not an independent witness."

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And then with respect to your other witness he really could not tell too much. He did not see who signed what. I actually thought he was very, very credible. "I can't recall", like he was very honest with what he was saying. He was not there when the signature. Quite honest and forthright. He did not have really a lot to offer in support of the plaintiff but a very credible witness. So that was actually -- he really did not offer too much because he could not remember too much and who can on a certain date. Everything is important to the plaintiff but not necessarily to everybody else.

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So, those are all the issues that I had to look at during the course of the trial and I was writing my notes and could not start or decide what I was trying to question and what I was not. I had a great concern, again, as to the rent issue, the promissory note issue and the evidence of all of the experts and the reason for the fire.

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I looked at also the terms of the promissory note. Mr. Raymond, you are not a lawyer and you do not even pretend to be a lawyer but there are certain things that have to go into a promissory note in order for it to be enforced. Sort of like what I said this morning to somebody that actually

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could not enforce their promissory note. There are things that have to be put in a promissory note for it to be payable on demand. It has to be the meeting of the minds as to how much is owing and when the demand date is so that you can then enforce it. The more problems that you had with the promissory note, not just the signatures, because I am not saying I disbelieve you because I really have an issue about Mr. Woodcock's credibility around the promissory note. It was the lack of information put into the promissory note. And you have to be a lawyer to figure that out but I still have to go by the evidence. But I am not saying that you are not right on the issue surrounding it. Okay?

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So that is what I wanted to say about all of the information and what I had to come together with.

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ANDRE RAYMOND: Did you take into account, too, that they threw all my stuff out without....

THE COURT: Yes.

ANDRE RAYMOND: Okay. Sorry.

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THE COURT: Okay, so now I'm proceeding with the judgment.

Unfortunately, with all of the information and the credibility of the witnesses I am relying on the expert testimony that the reason for the fire was smoke and smoking. I have to rely on that. That does not necessarily mean I tie everything else together against the plaintiff but

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I looked at this case in two parts. One is liability. The liability of the plaintiff who possibly started it because it was from his bedroom area and with the smoking.

And then I have to look at all the other factors from that. And if the fire had started or there was a question that it started from somewhere else, Mr. Raymond, I would have probably granted for you.

And so I have to make the judgment that the plaintiff will receive nothing and the defendant want in this particular case reluctantly, considering the fact that Mr. Raymond did lose everything but I have to take a look at the credibility of all of the witnesses and what they supply to me and unfortunately, even though I may not believe Mr. Woodcock on the promissory note I have to look at the liability. So Mr. Woodcock to me, does not come with clean hands and Mr. Raymond, I'm giving my judgment and I am not changing my mind.

ANDRE RAYMOND: No. You just have got your information wrong about where the fire started.

THE COURT: Excuse me. So with that I am also saying that the defendant can get back any of disbursement costs. If the defendant's lawyer wants to ask me for costs I am not going to entertain costs due to the fact that the plaintiff lost everything and due to the fact I do not believe that the defendant came in also with clean

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hands. So I am not awarding costs against the plaintiff, even though, Mr. Raymond, right now I could order you to pay costs for losing this but I am not...

ANDRE RAYMOND: Thank you.

THE COURT: ...because I believe the defendants are not totally telling the truth in their evidence.

ANDRE RAYMOND: Thank you.

THE COURT: So even though I have to give a judgment, Mr. Raymond, against you in this hearing, it is not based upon what you are telling me. It is based upon the legal part of the evidence that I have to rely on. So I do not want you to walk away saying you were not credible. Please do not take it like that. I believe you were credible. I have to look at the evidence presented to me, the contents of the promissory note, whether I believe you were a tenant, which I do believe you were, but I also have to look at the issue about the fire. So that is legal evidence. It has nothing to do with your credibility so please understand that, okay, which is why you are not paying costs at this trial. Okay?

And that is my judgment.

MS. CHAUDRI: Thank you, Your Honour.

JOHN WOODCOCK: Thank you, Your Honour.

FORM 2

CERTIFICATE OF TRANSCRIPT

EVIDENCE ACT, Subsection 5(2)

I, Eleanor Flynn, certify that this document is a true and accurate transcription of the recording of *Andre Raymond v. Linda and John Woodcock*, in the Superior Court of Justice, held on Friday, December 4, 2008 at Whitby, ON, taken from the recording which has been certified in Form 1

Date: July 8, 2015



Signed Digitally July 8, 2015

Wendy Ponka, COM, CVR, ICDR, ICDDT, CLR, CSU, ACT  
(Commissioner of Oaths, Certified Verbatim Reporter,  
Internationally Certified Digital Reporter,  
Internationally Certified Digital Transcriptionist,  
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