

2008 CarswellOnt 1137
Ontario Superior Court of Justice (Divisional Court)

Toronto Standard Condominium Corp. No. 1543 v. Carson

2008 CarswellOnt 1137, 165 A.C.W.S. (3d) 828

**Toronto Standard Condominium Corp. No. 1543, Plaintiff/
Respondent and Wangden Carson, Defendant/Appellant**

Cumming J.

Judgment: January 28, 2008
Docket: Toronto 180/07

Proceedings: affirming *Toronto Standard Condominium Corp. No. 1543 v. Carson* (2007), 2007 CarswellOnt 9055 (Ont. S.C.J.) [Ontario]

Counsel: Kristine Anderson, for Defendant / Appellant
Douglas H. Levitt for Plaintiff / Respondent

Subject: Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Civil practice and procedure

XXIV Costs

XXIV.9 Particular items of costs

XXIV.9.d Disbursements

XXIV.9.d.ix Miscellaneous

Real property

X Condominiums

X.6 Condominium corporation

X.6.d Liability for damage

Headnote

Real property --- Condominiums — Condominium corporation — Liability for damage

Cumming J.:

1 For reasons given, appeal dismissed. Costs fixed at \$ 2518.95 payable to plaintiff Condominium Corp.

Cumming J.:

2 The appellant Carson appeals the judgment of Thomson J. of Small Claims Court dated March 22, 2007 pertaining to the claim of the Toronto Standard Condominium Corporation No. 1543 ("TSCC") against Carson, a resident/unit owner of TSCC, and his claim against Myriad Property Management ("Myriad").

3 TSCC claimed Mr. Carson hit the sensor post responsible for opening its underground garage door and claimed the costs of repairs. Mr. Carson denied his vehicle had struck the post.

4 Gail Jones, the property manager for Myriad, was the only witness called for TSC and Myriad at the trial.

5 Mr. Carson submits that the trial judge failed to allow him to fully cross-examine the witness and that she made a palpable and overriding error in her finding of fact that he caused the damage in question.

6 Mr. Carson appeared on his own behalf and testified at the trial.

7 Ms. Jones testified that on Saturday just after 5:45 pm, January 21, 2006 the garage door was stuck open after the sensor post was struck by a vehicle. She reviewed the security tapes the following Monday. She testified the tapes indicated that the garage door stopped working immediately after Mr. Carson's vehicle exited the garage.

8 Ms. Jones' evidence was that the tapes established it was at that point in time the sensor was damaged. The videotape of Mr. Carson's vehicle itself gives rise to the reasonable inference that his car came into collision with the sensor post. Ms. Jones determined who owned the vehicle. Cream coloured paint, similar to the colour of Mr. Carson's vehicle, was found on the floor inside the garage next to the post. Ms. Jones took photographs of Mr. Carson's damaged car on January 23. However, a claim was not made against Mr. Carson until March 13 upon the conclusion of an investigation. Five digital images from the on-site security tapes were sent to Mr. Carson with the letter.

9 Mr. Carson responded with a claim against Myriad for \$752.27, (reduced to \$1.00 at trial because, he says, the letter falsely accused him of causing damage to the garage door.) TSCC then initiated its action in Small Claims Court.

10 Mr. Carson denies he struck the post. He claims another vehicle hit his car while it was in a parking lot off the site of the condominium complex which caused the damage seen in Ms. Jones' photographs of his vehicle.

11 The appellant claims the trial judge erred in failing to allow him to fully cross-examine Ms. Jones and to fully present his evidence. I find that the trial judge intervened and interrupted Mr. Carson repeatedly. She was very impatient and frustrated with Mr. Carson, an unrepresented litigant. Her interventions were intended to control the proceedings by directing Mr. Carson to bring focus to his question of the plaintiff's witness during his cross-examination. But she was abrupt and impatient in doing so. She came perilously close in her many interventions to crossing the line and being unfair in not allowing him the opportunity to cross-examine effectively.

12 However, the trial judge's management of the trial must be seen in the context of a small claim hearing and the fact that there was very damning evidence presented by the plaintiff's witness (the videotape and photographs) which created a very strong case against Mr. Carson which he was not responding to in his unfocused cross-examination. The trial judge did not believe Mr. Carson. She did not find him credible. She was frustrated by his unfocused approach.

13 In my view, the trial judge's interventions did not result in an unfair trial. The preponderance of evidence certainly supported the trial judge's findings. There was no palpable and overriding error in her findings of fact.

14 For the reasons given, the appeal is dismissed.