Ranzona v. Gero Bros. Movers, No. 671-08 CnCiv (Katz, J., Aug. 8, 2008)

[The text of this Vermont trial court opinion is unofficial. It has been reformatted from the original. The accuracy of the text and the accompanying data included in the Vermont trial court opinion database is not guaranteed.]

STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. 671-08 CnCiv

RANZONA

v.

GERO BROS. MOVERS

FINDINGS OF FACT
CONCLUSIONS OF LAW
NOTICE OF DECISION

This matter was tried to the court July 8, 2008. On the basis of evidence presented, the following decision is announced.

FINDINGS OF FACT

Plaintiff, of Bennington, and defendant, located at the old Fort Ethan Allen, were both long-time members of the moving and storage industry, both affiliated with Mayflower Van Lines. As such, they had frequently cooperated on jobs, including using each other's crews and equipment. Apparently, the moving and storage business has gone into decline in recent years, with the result that both parties, although knowledgeable and experienced in the business, have found it unprofitable to continue.

Plaintiff Ranzona began to leave the traditional moving and storage business sometime after 2000. Also, in this time, Ranzona separated from and divorced his wife. He had started a related self-storage business, which acquired substantial value. During the summer of 2004, Ranzona arranged for the sale of the self-storage operation. As an operator of storage businesses, Ranzona had accumulated a very large mass of personal property. This included equipment from the traditional moving and storage business, personal and family items from both the divorce and his new girlfriend, and many items which had been abandoned by customers over many years. With the impending sale of the self-storage business, Ranzona lost any space in which to continue to store all that accumulation. To give some sense of the large mass involved, it amounted to some fifteen seven foot high containers, all filled, plus many items too big for the containers—a large fork lift, two photocopiers, a conference table, a pallet of moving pads, a crate for rugs, etc.

Faced with moving this mass out of the soon-to-be-sold self-storage facility, and having filled any available barns and garages of local Bennington friends, Ranzona called on his friend Greg Lewis, manager of defendant Gero Brothers. Beyond a good deal of inter-company cooperation, Ranzona and Lewis were quite friendly; they had spent time together even outside of work.

As Ranzona communicated his need to Lewis, he had to get his things out of the self-storage before the sale, but would not receive his share of the sale proceeds until thirty days after closing. He needed a place to put it all. That share of the proceeds was expected to be $300,000. So Lewis agreed, on behalf of defendant Gero, that Ranzona could bring all his property up to the Gero warehouse. Ranzona used Gero trucks and he unloaded those trucks and packed the large warehouse containers himself. Given his experience in the business, Lewis always permitted Ranzona to do his own work in the warehouse. Based on Ranzona's request and communication of it, Lewis expected this storage to last something like thirty days. He permitted it to occur with no charge, as a favor. Near the end of that thirty days, Ranzona indicated that release of his escrowed share would be further delayed, perhaps another thirty days. When it became apparent that this was no thirty-day in-and-out deal, Lewis told Ranzona "We're going to have to start charging you." Ranzona moved some of his things, such as a very large safe, but the fifteen crates, plus assorted equipment, remained.

Lewis, on behalf of Gero, determined to charge Ranzona $30 per month per crate and $50 per month for large items stored in a trailer. These rates

were considerably below Gero's usual retail rate. Gero communicated these rates to Ranzona. It then proceeded to regularly send invoices and statements to him. When they would be returned as undeliverable, Lewis would get on the phone and find out Ranzona's new address, which changed from Bennington to Florida and back to Bennington. Gero regularly mailed its billing statements to Ranzona's actual addresses. There is no reason to believe they were not delivered virtually every month. No payments were made. There were occasional phone calls between Lewis and Ranzona on the subject of the latter's ongoing financial difficulties and search for a new career. As of July 2008, Ranzona's bill with Gero is $19,754.

On several occasions, Ranzona came up to the Gero facility to retrieve some of his property. Gero always permitted him access. Two years ago, Ranzona reduced his storage from fifteen containers to twelve. This was never reflected in billing. Lewis's reason for not reducing the billing was that he had always billed considerably below the actual retail rate, had never been paid, knew of Ranzona's ongoing financial problems as well as of his decision to put his eventually received self-storage payout into a new home in Florida, instead of paying the bill to Gero. Ranzona never disputed the bill. Indeed, he made several statements to Lewis, over time, acknowledging his debt: "I've got to get this straightened out; I'll settle up; I'll give you $10,000; don't worry Greg, you will be taken care of."

Among the items stored at Gero was Ranzona's large Caterpillar forklift truck. Although apparently several decades old, it was still a valuable machine, purchased by Ranzona in 1996 and fully paid off in 2001. Ranzona's position at trial was that Gero's use of the forklift constituted full payment of the storage, a fair exchange. We decline to find that this was ever an agreement between the parties. Instead, we find that Gero did not have any real need or use for Ranzona's forklift. Gero had a quite comparable model, its own model had a longer useable fork, and Ranzona's fork proved somewhat tippy in moving Gero's containers. Instead, Gero had to pay to service Ranzona's fork lift so it could start it and thereby move it out of the way from time to time. It was started and run infrequently, largely for the purpose of keeping the lift itself in running condition, rather than using it per se. Although never agreed as payment, Gero's possession of the lift may have been mutually understood as security for payment. But whatever the informal understanding, such a status for the machine was never reduced to writing or any explicit agreement. We are not persuaded by Ranzona's testimony that engine hour readings suggest substantial use of the lift by Gero. In the end,

that testimony is based on service records showing 453 hours as of September 2002, fully two years before it came into the possession of Gero. Although there may have been some use by Gero, such use was never agreed to constitute payment for storage nor was it of value anywhere equal to the value of storage. Ranzona has not shown diminished value of the lift because of Gero use; if anything Gero has preserved its value by repairing, servicing and starting it from time to time.

This was at all times an undocumented arrangement between the parties, except for the Gero billings. There was never a warehouseman's receipt issued by Gero. More than three years into this arrangement, Gero decided to close its moving and storage business. It notified Ranzona of intent to auction off his goods, pursuant to a claimed warehouseman's lien, for want of payment. Steps taken toward this involuntary sale led to the filing of this suit.

Plaintiff's evidence regarding damages was vague and unpersuasive. For example, there was much discussion of fur pelts. From the testimony, it appears that what may be involved is the long ago fashion of women wearing pelts. Even elderly judges have only a vague recollection of women wearing dead *carnivora* around their shoulders as ornamentation. There was no evidence suggesting these have been worn in the past fifty years or have any present value. If they are not worn, they are not bought and sold and presumably have little if any value. Plaintiff and his girlfriend were not able to identify the specie of any these pelts, or provide any description or value. Their only attempt at specificity involved polar bear mittens. For this category, it was suggested that the evening before trial a website was located retailing such mittens for $950. We are unpersuaded that antique mittens, which reach above the elbow, have the same value as brand new mittens for which we received no description whatever. Similarly, the wooden conference table was given only the vaguest of descriptions. Even were we to accept the rather vague suggestion that the table involved is actually walnut, we have no idea if it is solid or veneer, we are not persuaded that either witness actually can identify a valuable wood with reliability, and we have no evidence whatever as to the value of seven foot "walnut" tables. At best, plaintiff's evidence is that he delivered to Gero a large quantity of "stuff," some of which he thinks is no longer there. That's all, and that is insufficient proof of any damages.

CONCLUSIONS OF LAW

> Vermont's version of the UCC provides that
> A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.

9A V.S.A. § 7-209(1). Thus, if there is a receipt, there is a statutory lien. However, the statute says nothing about the converse situation, when there is no receipt. Although no Vermont court has addressed this issue, several other jurisdictions have recognized a common law warehouseman's lien in addition to the UCC-based lien, providing a right to recovery when the elements of the statute may not have been satisfied to the letter. E.g., Jewett et ux. v. City Transfer & Storage Co., 18 P.2d 351, (Cal. Ct. App. 1933) (statutory remedy is cumulative to common law remedy); Chart One Auto Finance v. Inkas Coffee Distributors Realty, 2005 WL 1097097 (Conn. Super., Mar. 10, 2005) (unpublished) (recognizing common law lien where no written storage agreement in place between parties); Austin v. Acey, 660 S.W.2d 441, 443 (Mo. App. 1983) (warehouseman has common law lien for storage fees).

The Vermont legislature gives us some guidance, at 1 V.S.A. § 271, stating that the common law may supplement a statute, provided that it does not conflict with either the Constitution or any other statute, and provided that the provision in question does not expressly supersede the common law. Id. (common law "not repugnant to the constitution or laws shall be laws in this state"); Langle v. Kurkul, 146 Vt. 513, 516 (1986) (statute changes common law only if its intention to do so is stated "in clear and unambiguous language, or if the statute is clearly inconsistent with the common law" or attempts to cover entire subject matter). 9A V.S.A. § 7-209(1) does not state that it is the sole remedy for a wronged warehouseman. This view is buttressed by Official Comment 1: "Subsection [7-209](1) defines the warehouseman's statutory lien." (emphasis added). In the end, Plaintiff's position is supported not by § 7-209's language, but by its converse – absent a warehouse receipt there can be no lien. The converse of a true statement (the statute) is not necessarily true. See Tyrrell v. Prudential Ins. Co. of America, 109 Vt. 6, 13 (1937). Because a common law lien does not pose any conflict with § 7-209(1), we believe that the Vermont Supreme Court would recognize a common law warehouseman's lien.

Here, Plaintiff availed himself of both the goodwill and the storage services of Lewis and Gero Brothers for four years, even though their original agreement was that Ranzona's belongings would only be there for thirty days. As any prudent business owner would do, and after it became apparent Ranzona was in no hurry to retrieve his stuff, Gero began charging storage fees and documenting the accruing amounts. Gero even sent invoices to Ranzona, despite its difficulty in keeping track of his current address.

The fact that no document entitled "warehouse receipt" was issued to Ranzona at the moment he moved his stuff onto Gero's premises does not mean that Ranzona is now entitled to the full claimed value of his belongings and Gero gets nothing for the years of storing it. Ranzona and Gero had an oral agreement for storage, Gero has demonstrated that it has stored the stuff, without payment, for a period of four years and that Ranzona has accrued over $18,000 in unpaid storage fees. Moreover, Ranzona was charged lower rates than other customers, and now Gero is going out of business and forced to do something with all of this stuff, none of which has been demonstrated to have any value exceeding that of the unpaid storage fees.

As for the Vermont Consumer Fraud Act claim, recovery requires the existence of a contract, and is premised upon the idea that the wronged party was induced into making the contract due to the other party's "false or fraudulent representations or practices. . . ." 9 V.S.A. § 2461(b). Here, Ranzona has adduced no evidence whatsoever that Gero brothers induced him to enter into a contract by making fraudulent promises. All of the evidence before us pointed to an agreement made between friends, for the temporary storage of belongings. There was no fraud.

NOTICE OF DECISION

Judgment is awarded for the Defendant Gero Brothers in the amount of its bill, together with interest and costs, and also declaring that Gero Brothers holds the goods pursuant to an ongoing, possessory lien.

Dated at Burlington, Vermont, _____, 2008

_____
M. I. Katz, Judge

_____
Thomas M. Crowley, Assistant Judge