

Machado v. Red Label Vacations Inc. (c.o.b. Red Tag.ca), [2008] O.J. No. 5524

Ontario Judgments

Ontario Superior Court of Justice

Small Claims Court - Toronto, Ontario

C. Ashby Deputy J.

February 22, 2008.

Court File No. SC-06-043199-00

[2008] O.J. No. 5524

Between John Machado, Plaintiff, and Red Label Vacations Inc. o/a Red Tag.ca, Defendant

(10 paras.)

Counsel

Counsel For The Plaintiff: Mr. Stefanescu.

Agent For The Defendant: Mr. J. Wiggins.

REASONS FOR JUDGMENT

C. ASHBY DEPUTY J.

1 This difficult case arises from arrangements being made between the plaintiff and the defendant for a vacation for the plaintiffs family in 2006.

2 The plaintiff alleges that those arrangements were made for the vacation to take place during the March break of 2006 and were booked on January 30, 2006 for a trip on March 9, 2006. It is the defendant's position that the plaintiff asked for a holiday on February 9, 2006. The following is the evidence on behalf of the parties.

Jacklyn Machado:

3 Ms. Machado testified that she made a telephone call to the defendant's office to book the holiday, which was to be during the children's March Break period. Ms. Machado testified that she gave the dates of March 9th to March 16th 2006 to the agent on the telephone. She testified that she gave the agent the Visa number and was given a confirmation number. Ms. Machado asked whether it was possible to pick-up tickets at the airport, and the agent advised her that this was acceptable. Ms. Machado was told that she would receive an invoice and email. Ms. Machado testified that she did not receive either. If she had received an e-mail, which indicated that the holiday was

booked for February 9th to February 16, she would immediately have called. Ms. Machado testified that she did not receive any telephone call or message on February 9th, but she did say that a message could certainly be left on the home phone line. The total cost that was applied to the Visa was \$5,160.20.

John Machado:

4 Mr. Machado testified that this holiday was planned to coincide with a family reunion and he asked his wife to make the arrangements. He did not receive any e-mail or invoice, nor did he receive any message on February 9, 2006. He first had a suspicion something was wrong when his sister called him to advise him that she had checked with the hotel and that the Machado family was not on the list of guests. Mr. Machado testified he called the agent, gave them the confirmation number and was told that everything was okay. His sister however called again on March 8th and said the Machado family was still not on the list, and it was at this point Mr. Machado called the agency again. This time he asked the agency to send him the invoice, and the envelope, which is dated March 7th, 2006, and the invoice was sent to him. Upon reviewing the invoice, which is dated January 30th, 2006, it shows a vacation date of February 9th to February 16th, 2006, which made Mr. Machado realize there had been a mistake. He called right away and this time the agency acknowledged that the holiday was not booked for March 9th but for February 9th. Although alternative arrangements were attempted Mr. Machado eventually made his own arrangements for an alternative vacation, which was taken between March 14th and March 21st. This holiday actually cost less than the original vacation plan, and in view of the fact that a holiday did take place, the only claim for Mr. Machado is for the return of the monies paid, i.e. \$5160.20.

Julianna Garcia:

5 Ms. Garcia testified on behalf of the defendant. She has been a travel agent for many years. Ms. Garcia testified that she did receive the call from Mrs. Machado and wrote down the dates that Ms. Machado wanted for the vacation and provided the information from the screen. Ms. Garcia testified that Ms. Machado asked for February 9th to February 16th. Ms. Garcia testified that she spoke to Nollitours and was able to confirm arrangements. The cost was then placed through the Visa with some difficulty but she then called to confirm and gave Ms. Machado the confirmation number. It was at this point that Ms. Machado asked if the tickets could be picked up at the airport, and Ms. Garcia agreed to that proposal. Ms. Garcia did agree that she told Ms. Machado that an e-mail and an invoice would be sent in the mail within 48 hours. The e-mail in question is dated January 31, 2006 and is entered as Exhibit "3" although it was not sent by Ms. Garcia, and I did not hear any evidence from the alleged sender of this e-mail. If this e-mail was sent and received, it clearly shows that the holiday is booked for February 9th to February 16th. Similarly, the invoice which is Exhibit "4" if it was sent and received, it clearly shows that the holiday is between the February dates and not in March.

6 Ms. Garcia testified that Nollitours called her on the 9th of February and stated that their clients had not shown up at the airport. Ms. Garcia testified she called the clients and left them a message to call back immediately. Ms. Garcia testified that she did not hear back from Mr. or Mrs. Machado in spite of two subsequent calls.

7 Although, Ms. Garcia in the witness box advised that she still had her original notes, I did not allow these notes into evidence, as they had not been produced prior to the commencement of the trial, in contravention of the Rules of the Small Claims Court.

Joe DeMaranis:

8 Mr. DeMaranis is one of the owners of the defendant. It was brought to his attention by an employee of the company that there was a problem with the holiday booking and he spoke to Mr. Machado. Mr. DeMaranis took the position that the mistake arose from the Machados and not from the defendant, and has refused to refund the plaintiff the amount charged to his Visa.

9 All of the witnesses were credible and the documents presented support each party's position. I find in favour of

the plaintiff only because it seems improbable to me that if the Machados had received the e-mail, the invoice and the telephone message that they would not have immediately contacted the defendant confirm there was a mistake. In particular, if a message had indeed been left on the Machados' voicemail machine it seems improbable to me that the Machados would wait until almost immediately prior to their intended vacation to call the defendant in some vague hope that they could still take their intended vacation on March 9th to 16th.

10 Accordingly, I find in favour of the plaintiff and there will be judgment for \$5,160.20, plus pre-judgment interest from January 30, 2006 to today's date at the rate pursuant to the Courts of Justice Act. The parties may make submissions with respect to costs within 14 days of the receipt of these reasons.

C. ASHBY DEPUTY J.

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