

CITATION: Lewis v. Hertz, 2025 ONSC 4081
COURT FILE NO.: CV-24-00721367-0000
DATE: 20250709

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Oslyn Lewis, Plaintiff

-and-

The Hertz Corporation, Hertz Canada Limited, and Hertz Canada Vehicles Partnership, TD Canada Trust, Defendants

BEFORE: J.S. Shin Doi, J.

COUNSEL: Plaintiff, Self-Represented

Kate Byers and *Alan Merskey*, for the Defendants, The Hertz Corporation, Hertz Canada Limited, and Hertz Canada Vehicles Partnership

Hudson Manning, *Gillian Dingle*, and *Alina Butt*, for the Defendant, TD Canada Trust

HEARD: March 27 and April 22, 2025

ENDORSEMENT

I. OVERVIEW

[1] The Plaintiff rented a car from Hertz Canada Limited. When the Plaintiff failed to return the car on the date set out in the rental agreement, Hertz Canada Limited seized the car which contained the Plaintiff's belongings. The Plaintiff says that he extended the rental period and alleges the car was wrongfully seized. The Plaintiff delivered a draft Statement of Claim and the parties negotiated a settlement. The Plaintiff then commenced this action. The defendants, The Hertz Corporation, Hertz Canada Limited and Hertz Canada Vehicles Partnership (collectively, "Hertz"), bring a motion for summary judgment dismissing the action on the grounds that there is no genuine issue requiring a trial.

[2] I must determine whether there is a genuine issue requiring a trial.

[3] I grant the summary judgment motion and dismiss the Plaintiff's action against Hertz because there is no genuine issue requiring a trial. The parties settled their dispute and the Plaintiff

signed a release which covers this action. There is no evidence that Hertz breached the settlement. Hertz has provided the location data and other information sought by the Plaintiff. The Plaintiff has not suffered any prejudice or reputational damage. He now uses another company to rent cars and his bank and credit card provider, TD Canada Trust (“TD”), considers the Plaintiff a “good customer”.

II. FACTS

[4] The Plaintiff is a real estate developer and entrepreneur. On February 16, 2024, the Plaintiff rented a car from Hertz. The Plaintiff was required to return the car on February 17, 2024. The Plaintiff charged the rental on his TD credit card.

[5] On February 17, 2024, the Plaintiff sent an email to the email address provided by Hertz and asked for an extension of the rental period. Hertz did not respond.

[6] The Plaintiff states that on February 18, 2024, he received an email from Hertz stating that the return of the car was overdue. The Plaintiff sent an email again on February 18 and 20, 2024 requesting an extension. Hertz did not respond.

[7] The Plaintiff further states that on February 22, 2024, he went in person to the same Hertz rental office and asked for an extension and was given one.

[8] On February 24, 2024, the Plaintiff received an email from Hertz indicating that the car was overdue. The Plaintiff responded that he was given an extension. The Plaintiff called customer service and obtained an extension until February 26, 2024.

[9] On February 26, 2024, Hertz seized the car. The car contained the Plaintiff’s belongings including cash and business materials. The Plaintiff states that he had to cancel his trip. The Plaintiff complains that Hertz should have knocked on his door and told him that they were taking the car and the Plaintiff would have co-operated. The Plaintiff would have removed his belongings from the car before the car was seized.

[10] On February 27, 2024, the Plaintiff retrieved his belongings from the seized car but his cash was missing.

[11] The Plaintiff delivered an unissued Statement of Claim to Hertz. The parties settled the Plaintiff’s claims.

III. ANALYSIS

Is there a genuine issue requiring a trial?

[12] There is no genuine issue requiring a trial because the Plaintiff previously settled his claims and released Hertz.

[13] Rule 20.04 (2) (a) of the *Rules of Civil Procedure* provides that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[14] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 66 set outs the approach in applying Rule 20.04,

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

I find that the summary judgment process provides me with the evidence required to fairly and justly adjudicate the dispute between the parties.

[15] I find that the Statement of Claim for this action has the same or similar wording as the initial unissued Statement of Claim which was settled by the parties. The Statement of Claim for this action states that the Plaintiff claims damages for misconduct, false statements, providing false information causing emotional distress, and for being banned from using other brands. Those claims are in the initial Statement of Claim. The only new claim is the claim for damages for the alleged banning of the Plaintiff by Hertz. The Plaintiff pleads that he was banned from using Hertz which has impacted his car rental options. Also, the Plaintiff alleges that Hertz made false statements specifically to TD.

[16] The Plaintiff and Hertz entered into a Confidential Settlement and Release dated April 15, 2024 (the “Settlement Agreement”). Section 4 states that upon execution of the Settlement Agreement and receipt of the settlement payment, the Plaintiff releases and forever discharges Hertz:

Release of Hertz. Upon execution of this Settlement Agreement and receipt of the Settlement Payment, Claimant, on his own behalf and on behalf of his present and former attorneys, agents, insurers, affiliates, predecessors, successors, heirs and assigns, fully releases and forever discharges Hertz, and its present and former parents, subsidiaries, affiliated entities, officers, directors, partners, members, managers, employees, shareholders, attorneys, agents, insurers, affiliates, predecessors, successors and assigns (“Hertz Released Parties”) of and from any and all actions, causes of action, suits, debts, sums of money, accounts, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever, of every kind, nature or description, whether known or unknown, fixed or contingent, in law, or equity,

that Claimant ever had, now has, or might have, **upon or by reason of any matter, cause or thing whatsoever arising from, referring to, or in any manner relating to the Pending Action or any other dealings with Hertz by the Claimant.** Claims arising from any alleged breach of this Settlement Agreement are excluded from this release.

[17] The Plaintiff's Pending Action, which is referenced in the Release of Hertz clause, was attached to the Settlement Agreement as Schedule "A" – Statement of Claim. In the Statement of Claim/Pending Action, the Plaintiff claims from Hertz damages for misconduct from falsely accusing the Plaintiff of not having been given permission to extend the car rental and removing the car; providing false information causing emotional distress; loss of personal property in the car; and loss of business revenue arising from a business trip cancellation. The Plaintiff alleges that Hertz fraudulently charged him \$1348.53 and that the false allegations caused him great embarrassment, emotional distress and loss of the Plaintiff's reputation. The Plaintiff further alleges that Hertz was malicious and made defamatory statements. The Plaintiff pleads that Hertz breached its duty of care and is liable for negligence, negligent misrepresentation, fraudulent misrepresentation.

[18] Pursuant to the Settlement Agreement, the Plaintiff released Hertz from all of the claims set out in the Statement of Claim/Pending Action, and "all claims relating to the [Statement of Claim/Pending Action]" and "any other dealings with Hertz" by the Plaintiff. So, the Plaintiff has already released Hertz from all of the claims in the Statement of Claim for this action, including the new claim of being banned by Hertz and also the false statements made to TD.

[19] The release is a contract between the parties and courts are directed to "read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract" (*Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 S.C.R. 540 at para. 20). The Supreme Court of Canada held at para. 27 that a release can cover an unknown claim:

[27] A release can cover an unknown claim with sufficient language, and does not necessarily need to particularize with precision the exact claims that fall within its scope. In entering into a release, the parties bargain for finality, or as Lord Nicholls put it, "to wipe the slate clean": Ali, at para. 23. The releasor takes on the risk of relinquishing the value of the claims he or she might have had, and the releasee pays for the guarantee that no such claims will be brought. The uncertainty or risk that is allocated to the releasor is precisely what the releasee pays for. Of course, difficulty can arise in deciding what wording is sufficient to encompass the unknown claim at issue in a given case. However, it is clear that releases can encompass such claims, and the Blackmore Rule has not been interpreted to hold otherwise.

The Plaintiff took on the risk of relinquishing the value of the claims he had against Hertz, and Hertz paid for the guarantee that no such claims may be brought. The uncertainty or risk that is allocated to the Plaintiff is what Hertz paid for in its settlement with the Plaintiff. The Plaintiff does not dispute that he signed the Settlement Agreement and is bound by the release. He also does

not deny receiving the settlement funds. The Plaintiff says that he had legal advice when he signed the Settlement Agreement.

[20] The Plaintiff should be held to the promises made in the release. In *Sinclair-Cockburn Insurance Brokers Ltd. v. Richards*, (2002) 61 O.R. (3d) 105 (C.A.), the Court of Appeal held that an action unquestionably fell squarely within the terms of a release. The Court of Appeal held at para. 16 that “parties should be held to their promises,” and the “court is entitled to enforce these promises...”

[21] The Plaintiff was aware of a possible ban before releasing Hertz. The Plaintiff in an email dated April 5, 2024, prior to signing the Settlement Agreement on April 15, 2024, states to Hertz, “I don’t care if Hertz brands ban me from their services.” The new claim about being banned by Hertz is covered by the release.

[22] If the new claim of being banned by Hertz does not fall under the release in the Settlement Agreement, I find that there is still no genuine issue for trial. The Affidavit of Heather Hampshire, Manager of Fleet Services and Car Control at Hertz, sworn on August 2, 2024, states that the Plaintiff’s claim that he was banned from using the Hertz’ various brands is not accurate based on her review of the records relating to the Plaintiff. Hertz concedes that there was a brief suspension of rental privileges when the Plaintiff failed to return the car but the suspension, which was internal, was lifted immediately once the Plaintiff objected.

[23] I now turn to the allegation that Hertz made false statements to TD. There is conflicting evidence about communications between Hertz and TD but I find that the alleged false statements are covered by the release in the Settlement Agreement. Ms. Hampshire in her Affidavit states that she is not aware of any communications between Hertz and TD. The Plaintiff states that he told TD that he had obtained an extension of the rental but TD said, “Hertz is saying different.” The Plaintiff alleges that Hertz lied to TD. TD states that it did not earlier have the information about the extension but now has the full picture. TD plans to discuss the refund of the rental and overcharges with the Plaintiff.

[24] The Plaintiff makes no allegation in the Statement of Claim, and there is no evidence, that Hertz breached the obligation to deal in good faith. Section 17 of the Settlement Agreement provides that both [parties] agree to deal in good faith. The Settlement Agreement provides that “claims arising from any alleged breach of this Settlement Agreement are excluded from this release.” The Plaintiff explained during the hearing that he is ultimately seeking from Hertz tracking data for the rental car and a recording of his calls so that he may provide that information to TD. Hertz has now provided the location data and other information sought by the Plaintiff. The Plaintiff concedes that he can work with the data to create the map that he is seeking to prove that he did not overhold the car.

[25] Lastly, there is no evidence of any reputational damage or prejudice to the Plaintiff. TD submits that they consider the Plaintiff a “good customer”. The Plaintiff indicates that he has other rental car options.

IV. CONCLUSION

[26] I grant Hertz' motion for summary judgment and dismiss the Plaintiff's action against Hertz because there is no genuine issue for trial. The Plaintiff released the claims in this action when he entered into the Settlement Agreement with Hertz. Hertz has provided the data and information sought by the Plaintiff.

[27] Having reached this conclusion, it is not necessary to determine whether the Statement of Claim is frivolous, vexatious, or otherwise an abuse of process of the court.

[28] If the parties are unable to agree on costs, the parties may make written costs submissions of up to 5 pages. Hertz shall serve and file costs submissions within 15 days and the Plaintiff and TD may serve and file cost submissions within 30 days. Costs submissions should be uploaded to Case Centre and sent to my attention via gladys.gabbidon@ontario.ca.

Justice J. S. Shin Doi

Released: July 9, 2025