



My coat is missing

After you have been seated at a restaurant, the waiter asks you to check your coat. At the end of the evening, your coat is missing. Can you make a claim against the restaurant for the value of your coat?

THE FACTS

In December 2001, a woman and her friends got together at a restaurant for a Christmas celebration. At first, the woman kept her coat with her, draping it over the back of her chair. During the meal however, the waitress asked the woman to hang her coat up in the cloakroom because it was interfering with her ability to serve the patrons. The customer agreed and hung her coat in the cloakroom herself since there was no attendant on hand. When the woman went to get her coat at the end of the meal, it was gone. The customer made a claim against the restaurant for \$530 plus tax, or the estimated value of the coat. The restaurant owner alleges that he is not responsible for the loss of the coat because a notice posted in the restaurant's cloakroom absolves him of responsibility in the case of theft.

THE ISSUE

Is the restaurant owner responsible for the loss of the coat?

THE DECISION

The claim is granted. The restaurant owner must pay the customer the sum of \$530 plus tax, or the value of the coat.

THE GROUNDS

On occasion, Tribunals have compared the fact of leaving one's coat in a cloakroom to a "contract of deposit" within the meaning of the Civil Code of Québec. The contract of deposit is a contract by which a person hands over a property to another person who agrees to keep it for a certain time and to restore it to the person. The law provides that

where the deposit is gratuitous, the person who holds the property is liable for the loss of that property if the loss is his fault. On the other hand, where the deposit is not free, or where it was required by the person holding the property, that person is always liable for the loss of the property, unless he proves superior force. In the case in question, the waitress asked that the coat be checked in the cloakroom because it was interfering with service. The Tribunal considered that because the restaurant owner demanded that the customer check her coat, he was automatically liable for the loss of the item, unless he could prove superior force. In the eyes of the law, superior force is an event that is unpredictable and unavoidable. The Judge considered that the theft of the customer's property was not a case of superior force in the eyes of the law. In fact, the restaurant owner would have had to demonstrate that measures had been taken to prevent such thefts such as surveillance or claim tags. Because such measures were not taken, the restaurant owner is liable for the loss of the coat. As for the notice disclaiming the restaurant owner's responsibility, it was posted to the side of the cloakroom. The customer claimed not to have seen the notice because it was hidden by a Christmas tree. In order for the disclaimer to apply, the restaurant owner must prove that the customer was aware of the notice before she hung her coat up, which was not the case. As a result, the restaurant owner is liable and must compensate the customer.

References

Gariépy c. 9057-9673 Québec inc., Court of Québec, Small Claims Division (C.Q.) Joliette, 730-32-003610-024, January 24, 2003, Judge: R. Landry, ((2003) R.L. 136; www.jugements.qc.ca)

Civil Code of Québec, (S.Q. 1991, c. 64), sections 1470, 1475, 2289.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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