legal aid

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My vehicle has been damaged

You leave your automobile with a garage owner for repairs. Your car is damaged while in the garage's parking area. Is the garage owner responsible for the damages to your car?

THE FACTS

In May 2003, a woman drives her car to a garage to have some repair work done. She parks it properly in the appropriate space and leaves the keys with the attendant. During the day, someone from the garage calls to inform her that the left rear side of her car has been damaged. The client indicates that the damage was not there at the time she parked her car and handed over the keys. It would seem that the damage was caused during the time the garage had custody and control of the vehicle. The cause of the damage, however, is unknown. The client claims the sum of $465 from the garage, which is the cost of repairing the damage. The garage owner claims that the client should take the matter up with her insurer. Further, he points to the exclusion of liability clause which appears on the back of the work sheet and which was signed by the client.

THE ISSUE

Is the garage owner responsible for the damages to the vehicle?

THE DECISION

The claimant's claim is granted. The garage owner must pay the client for the cost of the repairs in the sum of $465.

THE GROUNDS

The Tribunal dismisses the garage owner's argument which is based on the exclusion of liability clause on the back of the work sheet signed by the client. The judge considers that the clause is abusive because it departs from the essential obligations of the automobile repair contract and puts the consumer at a disadvantage in a way that is excessive and unreasonable. Further, the clause is printed in very small type. It is "illegible" within the meaning of the law because one must make a concerted effort to locate and read it. The Tribunal also rejects the argument related to the obligation of the client to contact her insurer. The damages were caused to the car while in the garage parking area. The cause of the damage cannot be ascertained on the basis of the evidence, however. The judge indicates that because it cannot be concluded that two vehicles were involved, it is not possible to apply the Québec *Automobile Insurance Act*. The client is not therefore required to make a claim with her automobile insurer. Finally, the judge declares that the Québec *Automobile Insurance Act* obliges the owner of an automobile to have liability insurance for damages caused to others, not for damages that he or she might experience. The garage owner was obliged to return the vehicle in the same condition that he received it in, that is, without damage to the left rear side. He would not have been held responsible had the damages been caused by an Act of God, an unpredictable or unavoidable event, which was not demonstrated.

References

Brunelle v. 9124-5704 Québec inc., Court of Québec, Small Claims Division (C.Q.) 505-32-016287-030, February 26, 2004, Judge: C. Chicoine (J.E. 2004-812; www.jugements.qc.ca)

Automobile Insurance Act, (R.S.Q., Chapter A-25), sections 115, 116, 173.

Civil Code of Québec, (L.Q. 1991, c. 64), sections 1436, 1437.

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The jugement 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.

Contact us

Community legal centre
of Montréal region
425, boul. de
Maisonneuve Ouest
Bureau 600
Montréal (Québec)
H3A 3K5

Phone : 514 864-2111
Fax : 514 864-1515
www.ccjm.qc.ca