

Claim No: 406056

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: D'Arcy v. Matheson, 2012 NSSM 45

BETWEEN:

MICHAEL D'ARCY

Claimant

- and -

PAUL MATHESON

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 2, 2012

Decision rendered on October 4, 2012

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        self-represented

**BY THE COURT:**

[1] The Claimant is suing the Defendant for damages arising from incidents during which his truck was vandalized. Specifically, on three occasions there were deep scratches made to the vehicle in what is colloquially known as “keying.” In other words, the vandal uses a key or other sharp object to cause malicious damage to a vehicle.

[2] There is no direct evidence that the Defendant caused the damage, in the sense that there is no witness or surveillance footage that shows him doing it. The case is based upon circumstantial evidence, which I will review below.

[3] The Defendant simply denies that he was the vandal, and puts the Claimant to the proof of his case.

[4] On the evidence, the Claimant was dating a woman, Tanya Baker, who was the ex-girlfriend of Mr. Matheson, the Defendant. On November 11, 2011 the Claimant had never met the Defendant but was aware of his existence. On that day, he was parked with his truck on Rainnie Drive not far from the Halifax Metro Centre where he was about to go and watch a hockey game with Ms. Baker and two other friends. According to the Claimant’s evidence, which is not denied and which I would have accepted anyway, the Defendant approached him while he was sitting innocently alone in his vehicle and began making aggressive statements and accusations about Ms. Baker. The incident was sufficiently alarming that the Claimant walked directly over to the police station, which is nearby, and made a police report alleging harassment. The Claimant made it to the hockey game, where he was sitting with Ms. Baker and other

individuals. According both to the Claimant and to Susan Gillis, who was one of the persons present, Mr. Matheson approached them in a aggressive manner that was sufficiently troubling for them to engage Security at the hockey facility and have Mr. Matheson ejected.

[5] The Claimant testified that he left the hockey game approximately halfway through, and drove the approximately 30 km to his home in Bayside. He noticed that he was being followed by a black Nissan vehicle. He had by then come to learn that the Defendant drove a black Nissan. The following morning, when he went out to his vehicle he discovered two things:

- a. There were deep scratches on the quarter panel and tailgate.
- b. In the back of the truck there was a garbage bag containing a dog bed and several dog toys.

[6] According to the Claimant, he later learned from Ms. Baker that these dog items were left over from her relationship with Mr. Matheson. By then she had also received a large number of text messages purporting to be from Mr. Matheson. A transcript of these text messages was filed as an exhibit. In these texts, the sender made a number of statements that would reasonably lead one to conclude that he had left the dog items in the Claimant's truck, and that he might have done something to the truck. It appears from these texts that Mr. Matheson and Ms. Baker had owned one or more dogs together, and the breakup of their relationship had included some dispute about who would look after the dogs.

[7] In his evidence, Mr. Matheson simply denied that he had sent these text messages, and suggested that they could have been fabricated.

[8] I say with no hesitation that I reject Mr. Matheson's evidence and find that he was indeed the author of these texts. They are lengthy and colourful, and it is improbable in the extreme that anyone could have fabricated them. Plus I will add that Ms. Baker was credible in her evidence. I also have serious doubts that either Ms. Baker or the Claimant would have been interested in concocting evidence that only put them into further conflict with the Defendant. My conclusion is that this is the last thing they would have wanted to do. It appears to be Mr. Matheson, and not they, who seeks out a form of negative engagement.

[9] The next incident occurred on November 17, 2011, when the Claimant and Ms. Baker were approached in a restaurant by Mr. Matheson, who was aggressive and threatening and only left them alone when staff were about to call the police. That night, when the Claimant's vehicle was parked outside Ms. Baker's condo, further damage was done. This was all reported to the police, who understandably had little to go on because there was no direct evidence of who had caused the damage. I note that the police generally are concerned with criminal conduct, and the criminal standard of proof is much higher than the civil standard that is applicable in a court such as the Small Claims Court.

[10] The third incident which involved further keying occurred on February 4, 2012 also outside Ms. Baker's condo. That evening, Ms. Baker was receiving numerous texts and calls from Mr. Matheson, which precipitated a further call to the police. The Claimant testified that at some point that evening, he had spotted

Mr. Matheson's car driving through the parking lot outside Ms. Baker's condominium.

[11] One last piece of evidence deserves comment. Ms. Baker produced an e-mail from an e-mail address which Mr. Matheson agrees is his own, but which he denies having written. His only explanation for how this e-mail could have come into existence is his hypothesis that Ms. Baker still has the passwords to this e-mail account and was able to go into the e-mail account and send this e-mail to herself to make it look bad for him.

[12] The text of the e-mail reads as follows:

“Yet another sucker is born. Forced him to sell his home too. Now you can begin to ruin him. All I can say is THE POOR FUCKING GUY!!!! Run man, run. P.S. Hope he likes my handiwork”

[13] The date of the e-mail is June 11, 2012. The likelihood that Ms. Baker would still have access to Mr. Matheson's e-mail passwords some two years after an acrimonious breakup, is extremely low. Also, I consider it unlikely in the extreme that Ms. Baker would have engaged in this kind of a provocative act that would only put her into further conflict with an individual who she is trying to avoid.

[14] The circumstantial evidence implicating Mr. Matheson as the person who vandalized the Claimant's vehicle is utterly convincing. Mr. Matheson's denials and explanations are without any credibility whatsoever. While I am not purporting to psychoanalyse Mr. Matheson, the only conclusion one can draw

from all the evidence is that Mr. Matheson was in an emotional state, with elements of jealousy and anger and possibly other emotions, which he directed both at his former girlfriend and at the individual who had taken up with her. This emotional condition appears to have led him to commit acts of vandalism that are childish and malicious, and which will cost money to repair.

[15] I accept without hesitation the evidence of the Claimant that the repair cost for the damage will be, as quoted by a reputable company, \$1,236 plus HST of \$185.40. In addition, there will be a period of time when the vehicle is out of commission and when he will need to rent a car. No written quotes for the car rental were provided, but he estimated approximately \$77 per day for the three-day rental and additional amounts for tax and insurance. I am going to round off the car rental amount at a flat \$300. The Claimant is also entitled to his costs of issuing this claim in the amount of \$91.47.

[16] The total judgment amount is accordingly as follows:

<b>Damages</b>	
Cost to repair	\$1,236.00
HST	\$185.40
Car rental	\$300.00
<b>Costs</b>	\$91.47
Total	\$1,812.87

**Eric K. Slone, Adjudicator**