

Claim No: 426013

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Zinck v. Day, 2014 NSSM 62

BETWEEN:

WILLIAM THOMAS ZINCK

Claimant

- and -

KEVIN DAY and WRECKS R US AUTO SALVAGE INCORPORATED

Defendants

SUPPLEMENTARY REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearings held at Dartmouth, Nova Scotia on May 20, 2014 and September 16, 2014

Supplementary Decision rendered on September 17, 2014

APPEARANCES

For the Claimant David Grant
 Counsel

For the Defendant self-represented

BY THE COURT:

[1] The Claimant has returned to court as a result of what he alleges is the Defendant, Mr. Day's attempt to frustrate the intent of my order dated May 21, 2014, which required the Defendants to "deliver up" certain large fibreglass tanks to the Claimant. The order further provided that "if the tanks are not delivered up on demand, the Claimant may return to the court to ask for a monetary remedy."

[2] The Claimant says that he attended the Defendants' salvage yard and noted that there were a number of derelict vehicles blocking access to the area where the tanks sit, plus a truck blocking access to the yard altogether. His intention was to return later with a boom truck. He says that he asked the Defendant if the vehicles would be moved so he could get at the tanks, and says that the Defendant, Mr. Day, said words to the effect "I am not moving anything." The Claimant reported this to his lawyer, who brought the matter back asking for the alternative, monetary remedy.

[3] Mr. Day admits that there is a truck which blocks access to the yard, but says that this is just for security purposes, and that this truck can be moved when necessary. He also admits that there are vehicles near the tanks, but insists that there is room for a boom truck to get close enough to lift the tanks and carry them away. He says that he explained that to the Claimant, and informed him that he would have to do this within normal business hours when he is present at the yard. Mr. Day speculated that the Claimant really does not want the tanks, and has neither access to a boom truck nor any place to store

the tanks. He accuses the Claimant of essentially fabricating a pretext to obtain money rather than the tanks.

[4] The Claimant says the opposite, namely that he has a place to take them and access to a boom truck when he needs it, and that he is only seeking the monetary remedy because Mr. Day left him no choice.

[5] This is a straight issue of credibility. Both at the original hearing, and at this brief return, I found the Claimant to be much more credible than the Defendant, Mr. Day. His evidence was given in a straightforward manner, without evasion. Mr. Day, on the other hand, appeared hostile and failed to impress me as honest and well-meaning.

[6] I find as a fact that Mr. Day reacted in a hostile manner to the original order, and took a stance that he was not going to do anything to help the Claimant retrieve his property. While he may later have regretted this position, the fact remains that he frustrated the order and must accept the consequences.

[7] This brings up the question: what was the price actually paid for the tanks? Was it \$2,800.00 plus lobsters, or \$1,800.00 plus lobsters? Again, this is a straight credibility issue. I have already stated that I prefer the evidence of the Claimant, whose memory seemed sharp. Simply put, I believe him. I find it more probable than not that the amount paid was \$2,800.00, plus a "feed" of lobsters that both parties agree was worth \$200.00.

[8] There will accordingly be an Amending Order that provides that the Claimant shall recover against the Defendant, Kevin Day, the sum of \$3,000.00

plus his costs of \$96.80, as originally ordered. I make this order against Mr. Day only because there was no indication that the corporate Defendant was a party to the monetary transaction.

Eric K. Slone, Adjudicator