

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

YELLOWKNIFE MOTORS LTD.

Plaintiff

- and -

TRUE NORTH SAFARIS LTD.

Defendant

REASONS FOR JUDGMENT

of the

HONOURABLE JUDGE B. E. SCHMALTZ

Heard at:	Yellowknife, Northwest Territories
Trial Date:	June 12, 2007
Judgment Filed:	July 13, 2007
For the Plaintiff:	Anthony Vane
For the Defendant:	Gary Jaeb

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I. INTRODUCTION:

[1] The Plaintiff seeks judgment against the Defendant in the amount of \$2,519.40. The Defendant rented a vehicle from the Plaintiff. The vehicle broke down on an ice-road near McKay Lake some distance from Yellowknife. The vehicle had to be towed back to the Plaintiff's garage in Yellowknife to be repaired. The Plaintiff claims that it was due to the Defendant's actions that the vehicle broke down, and claims that the Defendant is responsible for the cost of towing the vehicle back to Yellowknife and for repairing the vehicle. The Defendant claims that it was not due to its actions that the vehicle broke down, but malfunction of the vehicle, and that the towing should have been covered by the roadside assistance provided by the Plaintiff, and the repair should have been covered by warranty on the vehicle.

[2] This trial was heard in Yellowknife on June 12, 2007. Jim Peters, Eleanor Plante, and Anthony Vane testified on behalf of the Plaintiff company; Gary Jaeb testified on behalf of the Defendant company. Five photographs of the vehicle were entered as Exhibit 1; a faxed rate sheet from Yellowknife Motors Ltd. was entered as Exhibit 2; a Rental Agreement between True North Safaris and Yellowknife Motors Ltd. was entered as Exhibit 3; and an invoice from Yellowknife Motors Ltd. was entered as Exhibit 4.

II. FACTS:

[3] Prior to January 23, 2007, Gary Jaeb, representing the Defendant company contacted Eleanor Plante at Yellowknife Motors Ltd. to inquire about renting a vehicle. After the telephone discussion, wherein Mr. Jaeb explained that he would require a vehicle for 2 to 3 months, or longer. Ms. Plante faxed information to Mr. Jaeb setting out the Plaintiff's rental rates (Exhibit 2), with "8 Passenger Van All Wheel Drive" at a rate of \$600.00 per week, and \$2,200.00 per month underlined. Following the Plaintiff's name, and the heading **Rentals**, the first thing it says on Exhibit 2 is:

*Be safe, rent a new vehicle
No vehicle is older than one year
Roadside assistance 24 hours a day
7 days a week*

[4] Gary Jaeb testifying on behalf of the Defendant said that roadside assistance was very important in any vehicle rented by the Defendant.

[5] On January 23, 2007, the Defendant, through Gary Jaeb, rented a vehicle from the Plaintiff, through Eleanor Plante. At the time Mr. Jaeb gave Ms. Plante his credit card number, and told Ms. Plante to put the charges on the credit card.

[6] At some point before January 31, 2007, after driving on the ice road near McKay Lake, Mr. Jaeb parked the vehicle in front of McKay Lake Lodge. Mr. Jaeb testified that the vehicle was running fine when he parked it. For two days then there was a blizzard, and the vehicle was not driven. After the blizzard, a belt had come off the engine. Mr. Jaeb could not get the belt back on, and he contacted the Plaintiff advising Ms. Plante of the situation. Sometime later, Ms. Plante contacted Mr. Jaeb and told him that "Tony and Jim" [Anthony Vane and Jim Peters] were going to get the vehicle.

[7] Mr. Vane and Mr. Peters did attend at McKay Lake Lodge and attempted to repair the vehicle, but could not. On the trip back to Yellowknife, Mr. Vane saw

someone whom he believed was Mr. Jaeb's son and advised him that the vehicle would have to be towed. Mr. Jaeb testified that it likely was his son that Mr. Vane had spoken to as Mr. Jaeb recalled that his son had told him that Yellowknife Motors was going to take care of it. After Mr. Vane and Mr. Peters returned to Yellowknife, arrangements were made to have the vehicle towed back.

[8] No one advised Mr. Jaeb, or anyone else at the Defendant company, that the towing would not be covered by roadside assistance. Indeed I find that Ms. Plante herself was initially not aware that roadside assistance did not cover towing on the ice-road. From her testimony it appeared to me that she originally was going to call, or have someone call, the company that does the towing for roadside assistance to tow the vehicle. She then became aware that roadside assistance was not available on the ice-road. Another towing company was contacted and on February 8, 2007, the vehicle was towed back to the Plaintiff's shop, to be repaired.

[9] No one from the Plaintiff company requested Mr. Jaeb, or anyone else from the Defendant company, to return the vehicle, or to make arrangements to get the vehicle back to the Plaintiff in Yellowknife.

[10] The Plaintiff was billed \$1,908.00 for the towing, and states the repairs cost \$239.35, including 6% GST (Exhibits 3 and 4).

[11] On February 27, 2007, the Plaintiff attempted to put a \$2,519.40 charge through on the credit card that Mr. Jaeb had supplied on behalf of the Defendant when the vehicle was rented. Mr. Jaeb stopped that charge being applied to the credit card, and called Ms. Plante advising her of same, as he believed the towing should be covered by roadside assistance. Ms. Plante then told Mr. Jaeb that roadside assistance did not cover towing on the ice road and the vehicle had to be put on a "low boy" [flat bed truck] to be brought back.

[12] The Plaintiff then brought this action to recover the cost of towing and repairing the vehicle, as well as an outstanding charge for kilometers driven.

[13] The Plaintiff's claim can be itemized as follows:

\$1,908.00 (\$1,800.00 plus \$108.00 GST) towing charges

\$239.35 (\$225.80 plus \$13.54 GST) repair charges

\$372.06 (\$351.00 plus \$21.06 GST) kilometerage charge

These amounts are taken from Exhibit 3 (the Rental Agreement) and Exhibit 4 (the invoice). Exhibit 3 also shows a charge of \$567.76 for 8 days rental of the vehicle, however Exhibit 3 also reflects a credit of \$601.83 as an "Interm [sic] Billing" which would be for the 8 days rental of the vehicle (\$567.76 plus \$34.07 GST); therefore the rental charges for the vehicle have been paid. Mr. Jaeb in his evidence on behalf of the Defendant acknowledged that the Defendant owed the \$351.00 for kilometers driven, as itemized on Exhibit 3.

[14] The bottom right hand box on Exhibit 3 relating to Rental Rates and Charges was not completed when the Rental Agreement was signed.

Exhibit 3 - The Agreement:

[15] In small print at the top of Exhibit 3 is printed:

In this Agreement, the words "you" and "y-----" refer to the customer signing this Agreement. The ----- "Lessor" refers to the corporation or person providing the Vehicle. This Agreement co----- your rental of the Vehicle(s) described below. Wh----- you sign this Agreement you agree to all the conditions on both sides of this Agreement. This Agreement will not exceed four (4) months.

The blanks in the above quote are due to two holes in the document, and therefore the words cannot be read. Common sense would lead one to conclude that the words affected by the holes in Exhibit 3 are: "*yours*", *word*, *covers*, and *When*, respectively.

[16] On the front of Exhibit 3, there is a box headed PHYSICAL DAMAGE INSURANCE DEDUCTIBLES. Other than the pre-printed wording in this box, there is

nothing in this box, though there are blanks in this box for the amount of collision deductible, comprehensive deductible, spaces for initials accepting the purchase of the collision damage waiver, spaces for initials declining the collision damage waiver. Ms. Plante, who signed the Agreement on behalf of the Plaintiff, testified that she knew which credit cards covered insurance, and which did not; she testified that she knew the Defendant's credit card did cover insurance and therefore she did not explain or offer any insurance to the Defendant.

[17] The bottom left hand box of Exhibit 3 has the Customer Signature (Gary Jaeb on behalf of the Defendant) and the Lessor Signature (Eleanor Plante on behalf of the Plaintiff). Other than the signatures, none of the other information that could be provided in this box has been completed, including the type of rental, or the date.

[18] The back of Exhibit 3 has 17 numbered paragraphs, along with a final paragraph that is not numbered but does have a border around it.

[19] The relevant parts of the paragraphs on the back of Exhibit 3 state as follows:

1. **Payment of charges:** You agree to pay all you owe under this agreement including time, kilometers, fuel and insurance charges. You are personally responsible for these charges as long as you have the Vehicle. ...

...

3. **Use:**

(b) You also agree that the Vehicle will not be used:

- (i) in any illegal manner;
- (ii) for hire;
- (iii) to push or pull any other Vehicle;
- (iv) outside Canada or the United States without permission of the Lessor.

...

10. **Indemnification:** You agree to reimburse the Lessor for any damages, liabilities, or costs caused by your use of the Vehicle which are not covered by insurance.

...

12. **Repairs:** The Lessor must approve any repairs to the Vehicle. You will pay for any unauthorized repairs.

13. **Return of Vehicle:** You agree to return the Vehicle to the Lessor on the agreed date or sooner if the Lessor tells you to. If you do not return the Vehicle to the Lessor's address, you will pay return kilometers at the stated rate. The Vehicle must be returned in the same condition in which you receive it except for reasonable wear.

III. **ISSUES:**

[20] The issues in this case are:

- i. Is the Defendant responsible for payment of the towing charge for towing the vehicle back to Yellowknife Motors Ltd.; and
- ii. Is the Defendant responsible for the cost of the repairs done to the vehicle?

IV. **ANALYSIS**

A. The Towing Charge

[21] The written Agreement entered into by the Plaintiff and the Defendant is silent with respect to towing charges. Paragraph 10 on the back of the Agreement states: "You [the Defendant] agree to reimburse the Lessor for any damages, liabilities, or costs caused by your use of the Vehicle which are not covered by insurance." The towing charge was a cost to the Lessor [the Plaintiff], but was the cost caused by the Defendant's use of the vehicle?

[22] I accept that the vehicle had to be towed to the Plaintiff's shop because the belt came off and could not be put back on at the site where the vehicle was. I do not know why the belt came off. I accept Mr. Jaeb's evidence that the vehicle was running properly until it was parked before the blizzard. I accept that there was a lot of snow and ice under the hood of the vehicle, and in the parts – all of which is depicted in the photographs (Exhibit 1). The effect of the ice and snow under the hood was not

explained, and nor was the relationship between having snow and ice under the hood and the belt coming off.

[23] In reading paragraph 10 on the back of the Agreement, it is only reasonable to infer that “your use of the vehicle” has to mean something more than the mere fact that a lessee is driving the vehicle. Otherwise, a lessee would be responsible for any costs, including depreciation, cleaning, reasonable wear and tear, or repairs that might arise from the lessor’s neglect or abuse of a vehicle prior to a lessee renting it.

[24] There is no evidence that the vehicle was driven in a manner, or in a place, that it should not have been. The Defendant was not told that the vehicle could not be driven on the ice road, and considering the number of ice-roads in and around this area, if such was the case, then the Plaintiff should have advised the Defendant of such.

[25] I am not convinced that the belt coming off was caused by the Defendant’s use of the vehicle. Therefore I find that the Plaintiff cannot rely on Paragraph 10 to require the Defendant to pay for the towing charge.

[26] Paragraph 13 on the back of the Agreement states: “You [the Defendant] agree to return the Vehicle to the Lessor on the agreed date or sooner if the Lessor tells you to. If you do not return the Vehicle to the Lessor’s address, you will pay return kilometers at the stated rate. The Vehicle must be returned in the same condition in which you receive it except for reasonable wear.” When the Defendant rented the vehicle it was for a period of 2 to 3 months or possibly longer; there is no evidence that the Plaintiff at any time told the Defendant to return the vehicle.

[27] The vehicle broke down, and I would accept that the Defendant would not want to keep a vehicle that was not working. However, I also find that the Plaintiff had to tell the Defendant to make arrangements to have the vehicle returned to the Plaintiff, and only if the Defendant refused or neglected to do so, would the Plaintiff be able to rely on paragraph 13 to recover the cost of having the vehicle returned. But having made no

request for the return of the vehicle, the Plaintiff cannot rely on paragraph 13 to recover the cost of the towing.

[28] Further I also find that the Defendant was reasonably under the impression that the vehicle was covered by roadside assistance. I find the Plaintiff made representations to the Defendant with respect to roadside assistance in the information the Plaintiff faxed to the Defendant, i.e. *Be safe, rent a new vehicle -- No vehicle is older than one year -- Roadside assistance 24 hours a day -- 7 days a week*. The availability of roadside assistance is either an implied term of the Agreement between the Plaintiff and the Defendant, or in the alternative is a collateral agreement arising from the negotiations between Ms. Plante on behalf of the Plaintiff and Mr. Jaeb on behalf of the Defendant. If such a service was not available in the circumstances, i.e. if the vehicle was driven on the ice-road, or is subject to a maximum towing charge, such limitations should have been pointed out to the Defendant. The Defendant having relied on the representation made by the Plaintiff, the Plaintiff cannot now be heard to attempt to place limits on such representation. If the Plaintiff sought to limit the service or benefit implied by this representation, then such limit should have been communicated to the Defendant when the vehicle was rented by the Defendant, or at the very latest before the Plaintiff had the vehicle towed.

[29] In the circumstances I find that the Defendant is not responsible for the towing charges that the Plaintiff incurred in having the vehicle returned to Yellowknife.

B. The Repairs

[30] The Plaintiff claims that the Defendant is responsible for the cost of repairing the vehicle. To find that the Defendant is responsible for the repairs to the vehicle, I would have to be satisfied that the Defendant damaged the vehicle, or that in some way the Defendant's use of the vehicle resulted in the need for the repairs to be done.

[31] Mr. Jaeb testified that the vehicle had been running properly up until he parked the vehicle at McKay Lake Lodge, after which there was a 2 day blizzard. After the blizzard the belt was off, and the vehicle could not be driven for any distance. Mr. Peters testified that he could not put the fan belt back on the vehicle out at the lodge due to the amount of snow and ice under the hood of the vehicle.

[32] Mr. Peters further testified that when he put the new fan belt on, he found that the "belt tensioner" was stripped, and he had to replace the belt tensioner. In Mr. Peters's opinion the stripping of the belt tensioner was caused by over-tightening, and the bolt was stripped. In Mr. Peters's opinion the over-tightened bolt on the belt tensioner would not have caused the belt to come off. Mr. Peters believed that the belt came off due to the crank shaft pulley having ice in or on it. Mr. Peters could not say when the belt would have come off.

[33] I have considered Mr. Peters's evidence, but still I do not know how the belt came off. I suspect that it had to do with the cold weather, and possibly the blizzard, or perhaps even the vehicle sitting for two days in the blizzard. I accept Mr. Jaeb's evidence that the vehicle was running properly when he parked it before the blizzard. There is no evidence before me that the vehicle was being driven in a manner that it should not have been or at a place where it should not have been. The only evidence I have is that the belt came off due to the crank shaft pulley having ice in or on it. Such was likely caused by the time of year, and the blizzard.

[34] I have carefully reviewed the agreement, and find the only reference to repairs being Paragraph 12 on the back of the Agreement which states:

12. **Repairs:** The Lessor must approve any repairs to the Vehicle. You will pay for any unauthorized repairs.

The repair done to the vehicle was not an unauthorized repair, the Plaintiff having done the repair. A reasonable implication arising from Paragraph 12, which states that the

lessee will pay for any unauthorized repairs, would be that the lessee is not responsible for authorized repairs.

[35] When Paragraph 12 is read in light of paragraph 11, which states that the lessee [the Defendant] is responsible for any costs arising from his [its] use of the vehicle which are not covered by insurance, then it is reasonable to infer that the lessee [the Defendant] would be responsible for repairs arising from his [its] use of the vehicle. Again, for the reasons set out above in Paragraph 33, I am not satisfied that the need for repair was caused by the Defendant's use of the vehicle. Consequently, I find nothing in the Agreement that would result in the Defendant being liable for the cost of repair to the vehicle.

[36] Not being satisfied that the repair was due to the Defendant's use of the vehicle, I find that the Defendant is not responsible for the repair of the vehicle.

[37] The Defendant concedes that he is responsible for the charge for kilometers, being \$351.00, plus \$21.06 GST, for a total of \$372.06.

V. CONCLUSION

[38] The Plaintiff's claim is allowed in part. The parts of the Plaintiff's claim against the Defendant arising from charges incurred for towing the vehicle and for repairing the vehicle are dismissed. The charge for kilometers driven by the Defendant, that being for \$372.06 is allowed. Judgment shall be entered for Plaintiff against the Defendant in the amount of \$372.06.

[39] The issue of costs and reasonable disbursements may be addressed in Court upon written notice by either party to the other and to this Court. Notice of the Hearing into the issue of costs and reasonable disbursements is to be given to the other party and to the Court no later than 30 days from the filing of this judgment, though the

Hearing may be held later than 30 days from the filing of this judgment. The Hearing shall be on a Monday, at 9:30 a.m. or as soon thereafter as the Court may hear the matter, and shall be scheduled for a date when I am presiding. If neither the Plaintiff nor the Defendant gives notice on the issue of costs, then in the circumstances, each party shall bear their own costs, and there will be no order for costs, fees, or disbursements on this matter.

Bernadette E. Schmaltz
Territorial Court Judge

Dated at Yellowknife, Northwest Territories
this 13th day of July, 2007

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