

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER BETWEEN:**

Ben SOOLEY

Plaintiff

- and -

Peter DEMPSTER

Defendant

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**REASONS FOR JUDGMENT  
of the  
HONOURABLE JUDGE B. E. SCHMALTZ**

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Heard at: Yellowknife, Northwest Territories  
Trial Date: April 18, 2012  
Judgment Filed: April 20, 2012  
For the Plaintiff: Ben Sooley on his own behalf  
Counsel for the Defendant: Sandra Dempster

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**BEN SOOLEY**

Plaintiff

- and -

**PETER DEMPSTER**

Defendant

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[1] The Plaintiff seeks judgment against the Defendant in the amount of \$6,701.00. The Plaintiff claims that the Defendant damaged the Plaintiff's camper-trailer when the Defendant backed his truck into the Plaintiff's camper-trailer. The Plaintiff claims that the cost to repair his camper-trailer is \$5,701.40, and his cost for fuel to get his trailer to the location where it can be repaired will be \$999.60.

[2] The Defendant admits backing his truck into the Plaintiff's camper-trailer and damaging it. The Defendant initially agreed to pay \$686.00, as per the estimate provided by the Plaintiff to the Defendant and agreed to reimburse the Plaintiff for the cost of fuel to take the camper-trailer to La Crete, Alberta where the repairs would be done.

[3] This trial took place in Yellowknife on April 18, 2012. The Plaintiff, Ben Sooley testified; and the Defendant, Peter Dempster (17 years old) and his mother, Sandra

Dempster testified. Several documents were also tendered as exhibits, all on the consent of both the Plaintiff and the Defendant.

## **EVIDENCE**

[4] The Plaintiff's camper-trailer has not been repaired; the Plaintiff has not been able to find anyone in Yellowknife who can repair his camper-trailer. Quality Motors, based in La Crete, Alberta, provided two estimates to repair the camper-trailer: one dated August 16, 2011, for \$686.12 to do the repairs, and one dated August 23, 2011, for \$5,701.40 to do the repairs. No one from Quality Motors has personally looked at the damage to the camper-trailer; the estimates were based on pictures e-mailed to Quality Motors by the Plaintiff, and as I understand the evidence, both estimates were based on viewing the same pictures. Wendy Peters of Quality Motors, in a letter dated March 2, 2012 (Exhibit No. 2) states:

From the initial photos it appeared that the bottom damaged panel, would be the only repair needed on this RV ... However, with more details photos and an extensive discussion with our trained RV Technician, it was determined that in order for the repair to be done effectively, that the entire corner and upright panel would have to be replaced and repainted in addition to what was originally estimated. As well, with extensive repairs such as this, an adjustment would be required in order to maintain proper operation of the slide. ...

[5] No additional photos were provided to Quality Motors after receiving the August 16, 2011 estimate.

[6] The Plaintiff provided the Defendant with a copy of the August 16, 2011 estimate sometime after August 22, 2011; Sandra Dempster testified that this estimate was provided sometime around August 23 or 24, 2011. Sandra Dempster had a discussion with the Plaintiff and testified that she told the Plaintiff that she would pay the \$686.00 directly to the Plaintiff rather than claim that amount on her insurance; Sandra Dempster testified that she also agreed to reimburse the Plaintiff for the cost of fuel to take his camper-trailer to La Crete, Alberta to be repaired which was estimated to be \$660.00. Sandra Dempster testified that arrangements were made to meet with the Plaintiff to pay the \$686.00. Sandra Dempster believed that this would have been the weekend of August 27/28 or later. Sandra Dempster testified that before this arrangement could be

concluded the Plaintiff told her he wanted \$1,000.00 for fuel instead of being reimbursed for the cost of his actual fuel. It appears that at this point negotiations between the parties broke down.

[7] The Plaintiff testified that Sandra Dempster told him she would only pay for half his fuel cost to take his camper-trailer to La Crete for repairs, being approximately \$330.00.

[8] The Defendant became aware of the August 23, 2011, estimate from Quality Motors when the Defendant was served with the Plaintiff's claim, i.e. sometime after January 3, 2012.

[9] The Defendant testified that he did back his truck into the Plaintiff's camper-trailer, and that the photographs accurately reflect the damage caused to the Plaintiff's camper-trailer.

[10] Sandra Dempster testified that she attended the Department of Motor Vehicles and attempted to get a copy of the accident report with respect to the accident where the Plaintiff's camper-trailer was damaged by the Defendant (her son). Sandra Dempster testified that she was told that there was no accident report available or in the Department of Motor Vehicle's system. Sandra Dempster was told that if the damage from an accident is under \$1,000.00, then the accident report is not filed with the Department of Motor Vehicles.

[11] The Plaintiff testified that his camper-trailer was damaged on July 4, 2011; documentary evidence was presented indicating that the Defendant did not have his truck before July 11, 2011. Someone is mistaken about the date of the incident. The Defendant has candidly and honestly admitted that he did back his truck into the Plaintiff's camper-trailer, and again has candidly and honestly admitted that the damage shown in the photographs accurately depicts the damage he caused. The exact date that this incident occurred is not material.

## **CONCLUSION**

[12] I am satisfied by the testimony and the documents filed on this matter, that the camper-trailer that was damaged by the Defendant was owned by the Plaintiff.

[13] I cannot find on the balance of probabilities what the damage caused will cost to be repaired. No one who can do the repair has looked at the camper-trailer. I do find that the repair will cost *at least* \$686.00 as per the first estimate. But the second estimate, given one week later which is over eight times higher and based on the same photographs is both speculative and vague; there are several amounts on the estimate that are not clear to me or are duplicated. In short I do not understand it, or why that second estimate is so vastly different than the first. It may be that if anyone had actually looked at the camper-trailer then a more definite estimate could be made, or if the Plaintiff had the repairs completed then the actual cost of the repairs and the loss to the Plaintiff would be known. It may be that the Plaintiff filed this action prematurely, or did not present sufficient evidence to support the claim.

[14] I accept that the Plaintiff will have to take his camper-trailer to La Crete, Alberta, to have it repaired and that the Plaintiff is entitled to the cost of his fuel to get his camper-trailer to La Crete. I find that the Plaintiff's statement to Sandra Dempster that fuel would cost \$660.00 is reasonable and, is the only reliable evidence on which to find the cost of the fuel. I am not satisfied that the "GNWT per kilometre" figure obtained from "the internet" is the figure that should be used – I do not know what the figure is based on or how the GNWT arrived at that figure. In the circumstances I find that the Plaintiff is entitled to \$660.00 to cover the cost of his fuel based on his statement to Sandra Dempster.

[15] Sandra Dempster testified that in August 2011 she offered to pay the Plaintiff \$686.12 and reimburse the Plaintiff for the cost of his fuel to take his camper-trailer to La Crete, Alberta. The Plaintiff testified that Sandra Dempster told him she would only

pay for half of his fuel. I accept the evidence of Sandra Dempster that she was willing to reimburse the Plaintiff for the cost of fuel to get the camper-trailer to La Crete, Alberta and back to Yellowknife. It does not seem likely that Sandra Dempster would offer to pay for only half the fuel being less than the Plaintiff wanted, and the Plaintiff would then request that she pay even more than the \$660.00 that he had initially requested and expect her to pay that. That does not make sense.

[16] It is unfortunate that this matter did not settle earlier, as I believe it could have. It is unfortunate that the Plaintiff did not provide a copy of the second estimate that he received to Defendant well before he filed his action.

[17] I find in favour of the Plaintiff in the amount of \$1,346.00. The Defendant in his Defence filed on January 12, 2012, offered to pay the “original invoice” of \$686.12. Back in August 2011, Sandra Dempster, on behalf of the Defendant, offered to pay \$686.12 and to reimburse the Plaintiff for the cost of fuel, which is essentially the amount that I have found in favour of the Plaintiff.

[18] Taking into account the fact that the Defendant offered to settle this matter in August 2011, for the amount that I have found the Plaintiff is entitled to, there will be no costs awarded to the Plaintiff. In the circumstances, costs will be awarded to the Defendant in the amount of \$200.00, thereby reducing the amount owed to the Plaintiff by the Defendant to \$1,146.00.

B. E. Schmaltz  
Territorial Court Judge

Dated at Yellowknife, Northwest Territories  
this 20<sup>th</sup> day of April, 2012

*Ben SOOLEY v. Peter DEMPSTER, 2012 NWTTC 06*

*Date: 2012 04 020*  
*File: T-1-CV-2012000001*

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