

Citation: *Dillabough v. MacLellan*, 2011 YKSM 4

Date: 20110606
Docket: 10-S0134
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Faulkner

BETWEEN:

JAMES DILLABOUGH

Plaintiff

AND:

RONALD MACLELLAN

Defendant

Appearances:
James Dillabough
Ron MacLellan

Appearing on his own behalf
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): In this case, James Dillabough sues Ron MacLellan, ostensibly for rental. Mr. Dillabough owns some rural property outside of Whitehorse. For quite a number of years Mr. MacLellan has stored a substantial number of vehicles there.

[2] The original deal, essentially, was that the storage would be traded for mechanical work done by the defendant, but eventually, in early 2010, Mr. Dillabough wanted the vehicles removed. He gave notice to Mr. MacLellan that he wanted the vehicles out of there. The vehicles were not moved by the summer of 2010. Mr. Dillabough started sending Mr. MacLellan bills for rent for storing the vehicles. Over the

intervening period, I gather Mr. MacLellan has removed some of the vehicles, but there are still a substantial number, approximately 25 plus various parts, on Mr. Dillabough's property.

[3] Now, Mr. MacLellan has given a number of reasons why he could not move the vehicles, ranging from ice to mechanical breakdowns and so on, but it is to be noted that any reasonable period has now passed. It has now been almost a year and a half, and most of the vehicles are still there.

[4] Now, I heard quite a bit of argument back and forth as to what a reasonable rental would be, and I may say only this, that whatever one might want to argue about the rent claim, the fact is that the vehicles are still there. Mr. Dillabough is not required to provide storage of these vehicles for free in perpetuity, and if they are not going to be removed, which is what Mr. Dillabough really wants, he may well be put to some considerable expense to remove them, and he is entitled to be compensated for that. The fact that Mr. MacLellan could get rent somewhere else cheaper is irrelevant in the circumstances. The point is that the vehicles are there. If they are not moved, Mr. Dillabough will have to remove them, and that is going to cost him money.

[5] I am going to deal with the matter in this way: I will order that the vehicles be removed by July 31, 2011. If they have not been removed by that date, the plaintiff will be at liberty to enter judgment for \$5,000, which is the best roundabout figure I can come up with as to what his costs may be to deal with the problem himself, if Mr. MacLellan does not deal with it.

[6] Mr. Dillabough will also be entitled to his costs.

FAULKNER T.C.J.