

Citation: *Takhini River Ranch v. MacPherson Rentals*,  
2024 YKSM 1

Date: 20240510  
Docket: 23-S0039  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before His Honour Judge Lane

TAKHINI RIVER RANCH

Plaintiff

v.

MACPHERSON RENTALS

Defendant

Appearances:  
Scott Dickson and  
Darlene Romat as agent  
David Green

Appearing on behalf of the Plaintiff  
Appearing on behalf of the Defendant

**REASONS FOR JUDGMENT**

[1] The plaintiff is a partnership comprised of Scott Dickson and Jackie Dickson and is represented by a friend named Darlene Romat.

[2] The defendant is a body corporate and is represented by its owner, David Green.

[3] The plaintiff claims \$4,909.85, plus costs, alleging that the defendant was negligent in performing repairs on the plaintiff's Bobcat.

[4] Mr. Dickson testified that he purchased the Bobcat new for his farming operation on June 24, 2015, for \$51,969.03.

[5] Mr. Dickson regularly had his Bobcat serviced by the defendant and in January 2021, he brought his Bobcat in for some service work. After completion, he was advised that he needed injector covers and until those parts arrived and were installed, the plaintiff was to keep the engine compartment dry. At that point, the defendant ordered the necessary parts, which arrived and were paid for by the defendant within a week.

[6] Mr. Dickson claimed that he never did receive notification from the defendant that his parts had arrived and that he should bring his Bobcat in for servicing.

[7] Mr. Dickson made an appointment in March 2022 for servicing but ultimately cancelled that appointment. He then rescheduled an appointment for August 2022. He states that he told the employee of the defendant on both occasions that there was something about his injectors that needed to be done. Mr. Dickson never mentioned that he had been previously advised by the defendant that he must keep the engine compartment dry. The damage forming the basis of this claim occurred in August 2022 while the Bobcat was being serviced.

[8] Mr. Dickson also acknowledged that between January 2021 and September 2022, he changed cell phones and numbers, and that he did not notify the defendant of the change.

[9] The plaintiff's second witness was John Bragg, a former employee of the defendant. Mr. Bragg testified that he was currently working for another heavy equipment dealer and described his current business method for ordering parts, notifying customers, reminding customers, etc. This evidence was really only relevant

to the extent that Mr. Bragg's employer uses a different computer software system than the defendant.

[10] It did sound like the system used by Mr. Bragg allowed his technicians to access on their computer the entire servicing and work history performed at that dealership on any piece of equipment. Unfortunately, the defendant did not have such an advanced system.

[11] The plaintiff's final witness was Anna Sternbergh, who is also employed in this industry, however, she mostly only testified about employee safety issues that I did not consider to be on point in this case.

[12] The owner and President of the defendant is David Green and he testified on behalf of the defendant.

[13] The defendant denies that it was negligent. Mr. Green testified that 19 months had passed between the date that the defendant determined the Bobcat needed injector covers, and the same were ordered, and the date that the plaintiff finally brought the Bobcat in to be repaired.

[14] Mr. Green testified that he could not possibly have known, after 19 months, if Mr. Dickson had either repaired the injector covers himself or perhaps took the unit to another shop for repair. He stated that his shop performs the work that the customer asks to be done. Mr. Green testified that the computer software that would enable his technicians to bring up the maintenance history on a piece of equipment is too expensive for his business, and it costs between \$20,000.00 to \$40,000.00.

[15] Mr. Green acknowledged that on exhibit P3, the invoice from the defendant to the plaintiff from January 6, 2021, has in capital letters “KEEP ENGINE BAY CLEAN AND DRY THE UNIT NEEDS INJECTOR CAPS = ON ORDER”. He acknowledged that if his employee had seen that, this problem would never have arisen.

[16] Mr. Green also acknowledged that when the defendant did the work on the Bobcat in January 2021, one of the injectors had to be replaced (which the defendant did at no charge) because the engine compartment had been washed by the defendant.

[17] Mr. Green testified that the defendant’s protocol when parts have been ordered for a customer is that as soon as the parts arrive, the customer is called at his preferred contact number. He could not say for sure this was done in the present case but stated that since the defendant had paid for the parts, it is in the defendant’s best interest to get the machine in as soon as possible so the parts can be installed.

[18] Mr. Green acknowledged that his employee likely just left a voice mail for Mr. Dickson that his parts were in and he should bring the equipment in for repair. He stated that it was unlikely that the employee called the secondary cell number provided by the plaintiff.

[19] The bill submitted by the defendant to the plaintiff, dated September 22, 2022, for the repair work on the injectors forms the basis of this claim (P4 in these proceedings). Mr. Green testified, and I accept his testimony, that the bill was reduced significantly both on parts and labour.

## **The Plaintiff's Position**

[20] Mr. Dickson purchased the Bobcat brand new from the defendant in 2015 and other than minor repairs and maintenance had all of his servicing done by the defendant.

[21] In January 2021, the defendant did some repair work on the Bobcat and discovered that the injector caps, which keep water out of the engine, needed to be replaced. In fact, the defendant damaged, and had to replace, one injector at that time because of washing the engine compartment. It did so at no charge to the plaintiff. The defendant ordered and paid for the parts necessary for the Bobcat.

[22] I find as a fact that the defendant, at a minimum, tried to call the plaintiff in order to get the plaintiff to bring the Bobcat in for repair. I am also satisfied that for whatever reason, the plaintiff never received the message. I also find that the plaintiff never once in 19 months called the defendant to ask about the injector covers.

[23] I am satisfied that the plaintiff made and subsequently cancelled an appointment for repair and servicing of the Bobcat in March 2022.

[24] I am satisfied that at some point, Mr. Dickson told an employee of the defendant that some work needed to be done with the injectors but he said nothing further about the caution of keeping the engine compartment dry.

[25] I am satisfied that on January 6, 2021, an employee of the defendant washed the engine compartment of the Bobcat and damaged at least one of the injectors necessitating its replacement.

[26] The plaintiff argues that the defendant is negligent for the following reasons:

1. The defendant's employee should have checked the maintenance history for the Bobcat. If they had done so, they would have seen the warning and prevented the damage.
2. This is especially so given the defendant already had to pay for the replacement of an injector on this very unit in January 2021 for the same reason.
3. He warned some employee of the defendant that there was "something about the injectors".
4. He testified that the injectors were relatively easy to see by looking into the engine compartment and the employee should have noticed their absence.

### **The Defendant's Position**

[27] The defendant argues that the plaintiff is the one to blame for the damage to the Bobcat due to his own negligence:

1. Notwithstanding that the defendant ordered, received, and paid for the injector covers and parts in January 2021 for the plaintiff, Mr. Dickson did not come in to have them installed until some 19 months later. With the passage of time, the defendant would likely forget what parts

it had ordered and for what work. That is what the defendant testified to.

2. The plaintiff never warned the defendant's employee of the need to keep the engine compartment dry. With a mundane comment like "there's something about the injectors", a wash bay employee who is not a mechanic, could never have known of the significance of that comment, nor would that employee know what an injector cap looks like or where they are supposed to be found in an engine.

[28] In my view, the fault in this case falls on both parties.

### **The Plaintiff**

[29] Mr. Dickson did not act as though he was concerned about getting his injector covers installed. He never once called to ask if the parts had come in over a span of 19 months. In my view, this contributed to both parties almost forgetting of the very existence of the injector covers problem.

[30] Mr. Dickson cannot recall telling the defendant that he had a new phone number, contributing to their communication problem.

[31] Mr. Dickson knew, or should have known, that as of the January 2021 appointment with the defendant, that injector caps had to be installed and while waiting for this, the engine compartment had to be kept clean and dry. In my view, he assumed that the defendant knew what had to be done and he never highlighted the injector

problem in a meaningful way so the defendant would know not to wash the engine compartment until the injector covers were installed.

### **The Defendant**

[32] In the absence of the appropriate computer software, the defendant should have had the Bobcat's maintenance history on a paper file that his mechanics could see. That would have likely prevented the damage here.

[33] It should have been an even more obvious problem for the defendant given that the defendant had already destroyed one of the injectors on this Bobcat in January 2021, and had to pay likely in excess of \$1,500 to repair it.

[34] I find each party 50% liable for this incident. Therefore, I award judgment in favour of the plaintiff in the amount of \$2,454.77. There will be no costs awarded.

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LANE T.C.J.