

Citation: *7573 Yukon Ltd. v. Divago Resources Ltd.*,
2017 YKSM 3

Date: 20170217
Docket: 15-S0087
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Lilles

7573 YUKON LTD., o/a MOBILE MAINTENANCE
SERVICES and JAMES VERVILLE

Plaintiffs

v.

DIVAGO RESOURCES LTD. and
DICK GLEASON

Defendants

Appearances:
James Verville
Dick Gleason

Appearing on behalf of the Plaintiffs
Appearing on behalf of the Defendants

REASONS FOR JUDGMENT

Overview

[1] In the early Spring of 2015, Dick Gleason (hereinafter referred to as “Gleason”) approached James Verville (hereinafter referred to as “Verville”) to do some work on a second-hand truck Gleason had purchased. Verville is a senior employee of Mobile Maintenance Services (hereinafter referred to as “MMS”) and some of the work was done by Verville in his personal capacity and some was done at MMS’s shop by MMS’s

employees. Gleason refused to pay MMS's bill of \$2,239.67 and as a result, this Small claims action was initiated on November 19, 2015. Gleason filed a perfunctory reply on December 7, 2015.

[2] As a result of a pretrial conference held on September 22, 2016, Verville was added as plaintiff and Divago Resources Ltd. as defendant. In addition, the defendants were allowed to file a counterclaim for \$14,998.93. The counterclaim is based on the premise that as a result of the work done by MMS, Gleason's truck was damaged and could no longer be licensed and operated on the road. Gleason claims as damages the purchase price of the truck, previous maintenance and repair costs, and gasoline purchased in order to drive the vehicle from Burnaby, B.C. to Whitehorse.

[3] To be clear, neither the claim nor counterclaim in this proceeding involves the work done by Verville in his personal capacity.

The Claim and Counterclaim

[4] MMS's claim states that Gleason contracted through its employee, Verville, for MMS to extend the frame of Gleason's truck. The work done is detailed in a statement with a transaction date of June 8, 2015 and an invoice dated November 18, 2015 in the amount of \$2,239.67.

[5] In his reply, Gleason asserts that the work and repairs on the truck were never authorized as claimed by the plaintiffs. Further, the defendant asserts in the counterclaim that the work was done improperly, damaging the truck. In particular,

Gleason states that MMS drilled holes in the frame of the truck to attach brackets and as a result, it is no longer roadworthy and cannot be registered or licensed.

Facts

[6] Verville had done work for Gleason in the past in his personal capacity and was prepared to do so again when Gleason needed some modifications to a truck he had purchased. But he told Gleason that as some of the work involved extending the frame of the truck, it had to be done in MMS's shop. Verville explained the hourly rates that would be charged; \$80 per hour for his personal work and \$110 per hour for work done at MMS's shop by its employees.

[7] The personal work was done by Verville in a separate yard and included the removal of parts from another vehicle which were to be installed in Gleason's recently purchased vehicle. Although Verville has not been fully paid for his personal work, the plaintiff's claim deals only with work done by MMS at its shop on extending the frame of Gleason's truck.

[8] Was the work done by MMS authorized by the defendant? Gleason claims it was not authorized by him.

[9] The evidence indicates that Gleason personally brought his truck to MMS's yard where it sat for several weeks before it was brought into the shop. According to Verville, the truck deck was brought into the shop with Gleason's help. These facts were not denied or contradicted by Gleason.

[10] Moreover, Verville stated that when the truck was in the shop, Gleason attended almost daily. Gleason's witness, Tyler Morin, said that Gleason came into the shop four to six times to inspect the truck. Although Gleason stated that he did not attend at the shop daily, and also suggested that he had never been in the shop, I have no hesitation in finding that he did attend on several occasions, that he was aware of the work being done by the employees of MMS, and that he had ample opportunity to object to the work as it progressed but did not do so. By his conduct, Gleason implicitly authorized the work to be done and is now estopped from claiming otherwise.

[11] Finally, in his counterclaim, Gleason appears to acknowledge that he had authorized MMS to work on his truck. He states: "the plaintiff to this claim improperly carried out the work that I requested from them".

[12] It is possible that when Gleason said that he did not authorize the work done, he meant that he did not authorize the drilling of the holes. At one point, in his evidence, he said that he told Verville to use U bolts to attach the deck to the frame. When Verville replied that the regulations do not allow the use of U bolts for that purpose, Gleason stated: "I didn't know that".

[13] The work on Gleason's truck was finished on June 3, 2015. Gleason picked up the invoice on June 5, 2015 and it was not until payment became overdue a month later and MMS's bookkeeper called Gleason that Gleason advised for the first time that he was not going to pay the bill.

[14] Was the work done improperly by MMS resulting in damage to Gleason's truck such that it is now not roadworthy?

[15] Gleason's counterclaim is entirely based on his assertion that MMS drilled new holes into the metal frame of the truck in order to attach the brackets which were then welded to the frame. He further asserts that as a result of the holes drilled in the frame, the vehicle is no longer roadworthy and cannot be licensed.

[16] Gleason relies on a letter from General Motors of Canada, the manufacturer of the truck to establish that the truck is no longer roadworthy. That letter merely states that "General Motors of Canada does not recommend any deviation from the factory design and construction of its products, since these changes may adversely affect the safety and performance of the vehicle and the terms of the warranty". This is merely a general and broad statement from which it is not possible to infer that drilling holes in the metal frame would prevent the truck from being licensed and roadworthy.

[17] Gleason also relied on a conversation he had with an unidentified employee at the Weigh Scales who told him that "it was confirmed that a vehicle with a frame that had been modified, included being welded, modified or repaired in any way does not meet OEM (Original Equipment Manufacturer) standard, and would be rejected in an inspection" according to National Safety Code Standards. Gleason included the relevant portion of that Safety Code Standard in his materials filed with his counterclaim. That Safety Code Standard does not support Gleason's statement. It does not state that any weld or modification to the frame will not meet OEM standard. Rather, it is a reference to frames that are "welded, modified or repaired in a way that does not meet OEM standard". In other words, it presupposes that a frame could be modified and still meet OEM standard. Presumably, if there is any doubt, further inspection by a qualified inspector may be necessary.

[18] In fact, MMS arranged to have the truck inspected by a Compliance Officer from Yukon Highways and Public Works. In a letter, the Compliance Officer stated:

Based on my Inspection and using the National Safety Code Standard (NSCS) 11 and the Commercial Vehicle Safety Alliance (CVSA) Out-Of-Service Standard (April 2016 Edition) there is no vehicle restrictions or failures. The vehicle meets the criteria for a Periodic Motor Vehicle Inspection (PMVI) for the portion of the frame that I inspected.

The inspection I performed was just on the Frame and related components. As a CVSA Inspector, CVSA Instructor, CVSA Motor coach Inspector and Canadian Welding Bureau Level One Welding Inspector, I believe that there is no structural failure in the components that Mobile Maintenance is using to mount the fabricated Deck.

[19] The Compliance Officer also observed that “no holes in the frame appear to be new. Rust and patina in the holes and surrounding frame look well aged”. This observation supports MMS’s position that no new holes were drilled and existing holes in the frame were used to attach the brackets.

[20] MMS also contracted with RGA Engineering Ltd. to examine the truck. That company’s report was filed and contained the following observations:

1. The condition of the holes in the frame has led me to believe these holes were pre-existing, the rust comparison between the frame holes and mounting plate holes indicate the frame holes were pre-existing – this of course difficult to prove.
2. It is my professional opinion that the location and size of the holes in the frame rails in no way compromises the structural integrity of the frame rails. It is industry standard to attach decks and equipment to cab and chassis by drilling the web of frame rails to bolt and attach items to a truck frame.

[21] Gleason filed a letter from Rightway Sanitation Services, the owner of the truck before it was sold to Richie Brothers. It stated: "In regards to the 2005 GMC Top Kick...there were no holes drilled into the frame when sold through Richie Brothers on December 11, 2014". Admittedly, this statement is somewhat ambiguous. It leaves open the possibility that no new holes were drilled into the frame at the time the truck was sold to Richie Brothers, as opposed to no holes being drilled at any point previously.

[22] This ambiguity is clarified by Rightway Sanitation in subsequent email from Jonathan Farley, Operations Manager, dated September 22, 2016.

Rightway Sanitation of Wainwright Alberta, purchased the truck in question brand new [in the] summer of 2005. Work was done to this truck in Edmonton Alberta to properly mount vac system to cab and chassis vehicle. In order to have correctly mounted vac system installed, holes where [sic] to be drilled into frame rails to allow bolting of sub frame which the vac system is welded to. Prior to releasing said truck to Richie Brothers Auctions, for the sale on December 11th 2014. The vac system was removed from frame. Attached are pictures provided by Richie Brothers.

[23] This evidence establishes conclusively that the holes in the frame were pre-existing when the truck was purchased by Gleason.

[24] Gleason also filed a Carfax Vehicle History Report that states that there was no structural damage or any other issue reported as of the date of the report. This document only discloses reported accidents or problems. In any event, it does not assist Gleason in establishing that MMS in any way damaged his truck.

[25] The evidence clearly and unequivocally establishes that the work done by MMS on Gleason's truck did not render it unroadworthy, nor did it damage the truck in any way.

[26] Moreover, there is no evidence that suggests that the work done by MMS did not meet professional standards.

Conclusion

[27] The plaintiff is entitled to recover that portion of its claim that relates to work done on the defendant's truck, court costs, and payments made to third parties that were necessary to establish the claim. The \$204.75 paid to RGA Engineering falls into the third party category. Time spent by employees of MMS in preparing for court and writing reports shown on the February 6, 2017 invoice are not recoverable pursuant to the *Small Claims Court Act*, RSY 2002, c.204 (the "*Act*"). MMS is also entitled to claim interest on the amount outstanding as specified on its invoice to Gleason.

[28] Although the plaintiff did not retain counsel, MMS went to considerable effort to respond to Gleason's counterclaim. In the circumstances, MMS is entitled to the maximum preparation fees of \$500 allowed pursuant to s. 57 of the *Act*.

[29] Further, I find Gleason's defence and counterclaim to be entirely and obviously without merit. MMS is also entitled to an award of \$500 pursuant to s. 59(c) of the *Act*.

[30] Judgment for 7573 Yukon Ltd. o/a Mobile Maintenance Services as follows:

November 18, 2015 Statement:	\$2,239.67
Interest from November 15, 2015	69.42
RGA Engineering	204.75
Court Costs	177.50
Preparation Fees (s.57)	500.00
Award (s. 59(c))	500.00
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TOTAL:	\$3,691.34

LILLES T.C.J.