

Claim No: 285930

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Beckwith v. Edmonds Landscape and Construction, 2007 NSSM 70

BETWEEN:

WILFRED BECKWITH

Claimant

- and -

EDMONDS LANDSCAPE AND CONSTRUCTION

Defendant,

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 6, 2007

Decision rendered on November 8, 2007.

APPEARANCES

For the Claimant: self-represented

For the Defendant: Gil Irwin, Safety Officer

BY THE COURT:

- [1] This is a Claim for damage done to the Claimant's car while it was parked near an area where the Defendant's employees were cutting grass using powerful "whipper-snippers."
- [2] The Claimant owns a white 1998 Buick Regal which he keeps in pristine condition. While attending a meeting on July 17, 2007 in Dartmouth, he parked his car in a proper spot close to grassy areas that the Defendant looks after. When he came out of his meeting, parts of the car were covered with grass clippings and there were about a dozen nicks to the paint obviously caused by flying bits of gravel.
- [3] The Claimant produced photos which show the nicks. He also produced photos which show piles of grass clippings on the nearby pavement, mixed with gravel, indicating that the snipping process there evidently kicks up dirt and stones along with grass clippings. While that picture was taken weeks later after a later bout of snipping, it does support his position that the process there produces dirt and stone debris.
- [4] The Defendant did not produce any evidence to contradict the account of the Claimant. The Defendant's position was to cast doubt on whether it was the sole cause of damage, given that there was damage on both sides of the vehicle, and to question the amount claimed.
- [5] On a balance of probabilities, I find that the damage occurred because of the activities of the employees of the Defendant. I find that the Defendant failed to take reasonable precautions to protect private property. The

representative of the Defendant testified that it would be virtually impossible for the company to do its jobs around the city if it had to wait until there were no cars around, but that only speaks to the need to be more careful in the way they do their job. It is no justification for damaging people's cars.

- [6] The Claimant produced one estimate for repair, totalling \$1,231.20, including HST. I am hesitant to accept this one estimate as conclusive evidence of the loss. The repair facility in question apparently intends to spend 20 hours repairing the chip marks and painting almost the whole vehicle. I am not convinced that a nine year old vehicle warrants that extent of treatment, nor that a reasonable repair could not be done for less if the Claimant shopped around, or even if he bargained with the same facility.
- [7] An injured party owes a duty to mitigate his damages, which in this case includes getting the best possible deal to restore his vehicle. I am prepared to allow him the sum of \$500 plus HST for a total of \$570 in damages. I believe this is a reasonable allowance to have his car repaired.
- [8] The Claimant is also entitled to his filing fee of \$85.44. No other costs were claimed or proved. The total judgment will therefore be for \$655.44.

Eric K. Slone, Adjudicator