

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Fiddes v. Elliott*, 2023 NSSM 52

Date: 20230922

Docket: SCT524997

Registry: Truro

Between:

Brad Fiddes and Margaret Baird-Fiddes

Claimant

v.

Marilyn and Graham Elliott

Defendant

Adjudicator: Julien S. Matte

Heard: 09/18/2023 (via teleconference)

Decision: 09/22/2023

Appearances: Ms. Baird-Fiddes self-represented for the Claimants
Ms. Elliot, self-represented for the Defendants

By the Court:

[1] The law is settled with respect to preventing dangerous things from escaping to the property of a neighbour, whether it is oil from a leaking tank or as in this case, cows, liability flows from the escaping danger. This matter comes before the Court after the Defendant's cows escaped from their enclosure and found their way to the Claimant's neighbouring property. These repeat offenders caused damage to the lawn by leaving behind hoofprints as deep as six inches creating a hazard for the Claimants. All the cows are accounted for and now reside in greener pastures away from the parties with only the damage left behind to be sorted.

[2] The Defendants do not deny liability, having already paid the Claimants for damages from the cows' previous escapade the year before. The issue before this Court is the quantum of reasonable damages for the hoofprints littering the Claimant's lawn. The Claimants seek \$2530 plus costs, an amount paid to a landscaper to repair the damage. The Defendant's question the bill presented in light of the significantly lower costs incurred the previous year and the lack of consultation with them prior to the work having been undertaken.

[3] At the hearing, the Claimant testified that in 2022 the Defendants' cows escaped causing damage to their lawn. At the time they obtained a quote from a landscaping company who gave an estimate of \$1500 - \$2000 which included 6-8 cubic feet of topsoil and an estimated 1.5 to two days of labour from two workers. In the end the landscaper only completed half the work after he was denied payment for the first day in advance of the job completion. The Claimants and ultimately the Defendants paid \$750+HST for the damage done by the cows in 2022.

[4] In 2023, the cows once again escaped and left deep footprints behind. By this time however, the neighbourly relations between the parties had soured. The Claimants did not feel comfortable approaching the Defendants based on earlier confrontations and instead decided to hire their relative Dave Fiddes, a local landscaper. Dave Fiddes testified at the hearing that after assessing the damage, he decided it would be faster to rototill the lawn instead of trying to fill every hole with topsoil. He also testified that the work took 12 hours to complete and that he spent \$210 on fertilizer and \$360 on lawn seed. In addition, he charged a \$75 fee per day for a total of \$225 to attend at the property. The bill presented to the

Claimants was for \$2200+HST, leaving \$1405 for labour or approximately \$117/hour of work done. The Claimants presented no other estimates to the Court.

[5] In contrast, the landscaper who charged for one day's work in 2022 charged \$750 for 2 workers for one day resulting in an approximate rate of \$50/hour work including topsoil.

[6] In trying to assess damages, the apparent difference in the landscapers' rates is concerning given the similar skill set needed to affect the repairs of similar unwanted footprints. The Court acknowledged that the work in 2022 differed from the work of 2023 with the latter involving rototilling rather than filing holes by hand. While the comparison is a rough measure, it compares hourly rates rather than the overall costs giving some indication of the difference. Dave Fiddes testified that he specifically chose rototilling the lawn because doing the repairs in the manner that was done in 2022 would have taken longer and presumably cost more. While the evidence confirms Dave Fiddes' assessment of a more efficient method, the cost does not reflect any savings.

[7] The Court acknowledges the Claimants' struggle in obtaining quotes but given that the Claimants opted for a family member who charged significantly more per hour, it would have been prudent to obtain a second quote from a disinterested party to confirm the amount required to repair the hoofprints left in the lawn. While providing another quote is not required to advance a claim and prove damages, the measure of damages does not automatically equate to the cost incurred by the Claimants. The assessment of damages is objective and is done by reviewing the evidence to determine what the reasonable cost of fixing the hoofprints in the lawn might be. Without more evidence of what may be reasonable, the Court is left with only the noted comparison between the rates charged by two different contractors in 2022 and 2023. The Court finds that the evidence provided by the Claimants is not sufficient to prove on a balance of probabilities that the requested amount of \$2530 reflects a reasonable cost to repair the footprints left by the Defendants' cows.

[8] Based on the above, the Court finds that the cost for fertilizer and grass seed for a total of \$570 is reasonable based on Dave Fiddes' testimony. While no receipts or additional evidence was provided to prove these amounts, on a balance of probabilities these amounts were incurred by the landscaper Dave Fiddes to complete the needed work and are therefore reasonable. The \$75 per day charge is difficult to reconcile with any reasonable mileage charge that could be ascribed to

attending at the location. Given the distance between the Claimants' and the landscaper's addresses, the Court finds that \$75 for all three days is a more reasonable measure of what might be charged in like circumstances. Taking into account the estimated hourly rate of Dave Fiddes at \$117/hr and the approximate rate of the 2022 landscaper at \$50/hr (including the cost of topsoil) and recognizing that the approach of each landscaper was different and involved different costs, the Court finds that a reasonable rate to be \$75/hr.

[9] As a result, the Court finds that given all of the above, damages for the repair of the hoofprints made by the escaped cows in 2023 are, \$570 for fertilizer and grass seed, \$75 for mileage/travel fee and \$900 for labour equaling \$1545 plus HST for a total of \$1776.75.

[10] As both parties have been successful, the Court exercises its discretion and declines to award any costs.

Order

[11] The Claim is allowed in part.

[12] The Defendants are ordered to pay the Claimants \$1,776.75.

Julien S. Matte

Small Claims Court Adjudicator