

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Valley Gate Mini and Mobile Home Park Ltd. v. Wilson,*
2023 NSSM 100

Date: 20231119
Docket: 536680
Registry: Halifax

Between:

Valley Gate Mini and Mobile Home Park Ltd

Claimant

v.

Patricia Wilson

Defendant

Adjudicator: Eric K. Slone

Heard: November 16, 2023

Counsel: Claimant – self-represented
Defendant – self-represented

By the Court:

[1] This matter proceeded via zoom on November 16, 2023.

[2] The Claimant owns and operates a mobile home park in which the Defendant lives. In this claim it seeks to recover \$174.75, which was incurred when the Defendant experienced a water pipe freeze on February 24, 2023, necessitating an emergency call to a third party technician. The Claimant also seeks the cost of filing the claim as well as a substantial bill for having it served.

[3] Although \$174.75 is a very modest amount of money to go to court over, I think it is fair to say that the parties are here on principle.

[4] The parties do not disagree that the responsibility for frozen water lines depends on whether the lines freeze somewhere under the ground and up to the point of a particular valve, or above the valve where there is a hookup to the home. If the former, the park is responsible for the cost, and if the latter the homeowner is responsible.

[5] The above ground pipe is covered by an electrical heat tape which it is the homeowner's responsibility to maintain.

[6] The owners of the park are relying entirely on a handwritten note of the technician on his Maintenance & Repair Report, which states:

“No water - claimed heat tape worked. Heat tape did not work. Poured hot water on pipe in ground to below the valve. Homeowner was told to get new heat tape.”

[7] The technician, identified by the Claimant as Matthew Scott, was not called as a witness.

[8] The homeowner relied primarily on the testimony of her adult son, Jeremy Purvis, who lives with the Defendant and was present throughout the event.

[9] Mr. Purvis testified that they first experienced the disruption to their water supply at about 8:00 p.m. on February 24th. They called the hotline to arrange for a technician, who eventually arrived about 14 hours later.

[10] In the meanwhile, not knowing when a technician might respond, he called a friend, Andrew Hindy, a member of the Armed Forces who has some plumbing and other trade experience. Mr. Hindy provided a statement to the court, but did not testify.

[11] The text of his statement is this:

I received a call from my friends on the 24th February 2023 due to not having any water available in their house. I received this call as I have trade experience and a general understanding of plumbing, as well as being a home owner myself.

I brought a couple heaters with me to place on the line. however after inspection it was determined the line had frozen below ground level. The home owners had plumbing tape that was working installed on the line. travelling the length of the pipe from just below ground level to where it enters there home. As well. they had other heaters in place prior to my arrival, and it was very obvious due to no broken water lines, no broken flow meter, and an isolation Valve that cycled open and close without restriction, that again this line was frozen below ground level.

To the best of my knowledge after this time they had a technician arrive. I do not know the details of the visit, however, I arrived the next day to help again, to find the plumbers tape had been shorted out and no longer working. After a quick inspection it was seen that the plumbers tape had been broken/cut below the line where it penetrates the ground. You could visually see someone had done some basic excavation around the line at ground level which in my opinion is how the line was cut. I was then told a slurry of hot water and other things had been poured in the excavation hole while the technician was on scene which is how I think the plumbers tape was shorted out due to again being exposed to the elements after damage.

[12] Mr. Purvis testified that with Mr. Hindy's help they inspected the heat tape and determined that it was working properly. Mr. Hindy had brought some portable heaters to try to warm up the line but determined that this would not help as the heat tape was working, which they knew from the indicator light.

[13] Together they concluded that the frozen pipe had to be below the ground.

[14] Mr. Purvis seemed to have an excellent grasp of the events and confirmed everything that Mr. Hindy wrote in his statement.

[15] Court cases are decided on the basis of the evidence, and how it fits with the inherent probabilities of a situation.

[16] Both Mr. Hindy's statement and the handwritten notations of Mr. Scott are hearsay, in the sense that the authors were not present to testify. Even so, Mr. Hindy's statement was much more detailed than that of the technician, and thus has a bit more value to the court. Mr. Purvis's evidence was firsthand and quite detailed. I found him to be credible. The Claimant did not call any witness who was present at the relevant time.

[17] While the truth cannot be known with scientific certainty, on a balance of probabilities, I find that the frozen pipe was below ground level. This is consistent with the technician's approach of pouring hot water into the ground. Logically, this would have had no effect on the valve itself or on the piping above the valve.

[18] I find that the financial responsibility for the technician's visit falls on the Claimant, and the claim accordingly must be dismissed.

ORDER

[19] Accordingly, for all of the above reasons the claim is dismissed.

Eric K. Slone, Small Claims Court Adjudicator