

Citation: *Duplisea v. Wilson*, 2018 YKSM 3

Date: 20181019  
Docket: 17-DC010  
Registry: Dawson City

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

JEREMY DUPLISEA

Plaintiff

v.

CHERYLE RUTH WILSON

Defendant

Appearances:  
Jeremy Duplisea  
Cheryle Ruth Wilson

Appearing on his own behalf  
Appearing on her own behalf

**REASONS FOR JUDGMENT**

**Introduction**

[1] Jeremy Duplisea has filed a claim against Chere Wilson, seeking \$25,000 for work he carried out on a cabin belonging to Ms. Wilson on her property in West Dawson (the "Cabin"), in addition to other services provided to Ms. Wilson. The Claim names "Chere Wilson", however the Defendant is actually named "Cheryle Wilson" as seen in the Reply. In my opinion, this is not a distinction that is prejudicial to the Claim advancing, or to either party. The Claim will therefore be amended to reflect Ms. Wilson's proper name and, in the event that there is judgment rendered in any amount against her, it will be accordingly in the correct name.

[2] Ms. Wilson disputes that she owes any money to Mr. Duplisea and states that any work done by him was in exchange for Mr. Duplisea being able to reside in her residence and in the Cabin rent-free for a lengthy period of time.

[3] The trial of this matter took place over several days in Dawson City and judgment was reserved. This is my judgment.

[4] I heard considerable evidence and I will not repeat it in detail in this judgment, referencing only that evidence that I consider necessary or beneficial to understanding the rationale for my decision. I have based my decision upon a consideration of all of the evidence and the applicable jurisprudence in this area.

[5] It is clear to me that the relationship between the parties was not a standard contractor/homeowner business relationship. There was a friendship between the two that made the trial, at times, somewhat emotional. The testimony of Mr. Duplisea and Ms. Wilson was often given with attention to detail about matters that are not of particular significance or probative value to the fundamental issues at trial, but were nonetheless important to them. In some ways, the dispute became, in form and nature, somewhat akin to what one would expect to see in a family relationship breakdown.

[6] There is no question in my mind that both of the parties have been significantly impacted by what they consider to be personal attacks by each against the other, and that both have had their feelings hurt. In saying this, I am not in any way criticizing either party or minimizing the emotional impact each has felt. I understand the human side of the conflict between the parties.

[7] However, I am not, in this decision, going to attempt to comment on or resolve what I consider to be the ancillary disputes and issues between the parties. As I stated, this is not, in my opinion, necessary in order to render my decision.

[8] In brief, I have concluded that there was no contract between the parties that covered the work on the Cabin. There was, to a certain extent, an enforceable agreement with respect to portions of the time that Mr. Duplisea was residing in Ms. Wilson's residence.

[9] As a result, Mr. Duplisea's Claim in respect of his work on the Cabin is governed by the principle of *quantum meruit*, and his Claim for non-Cabin related work is to be resolved by enforcing, to the extent possible, the terms and/or spirit of the accommodation for services agreement the parties had originally reached, notwithstanding that, as events unfolded, the circumstances differed considerably from what the parties had originally contemplated, with some component of *quantum meruit* still applicable. There will be a set-off allowed against the amount claimed for benefits Mr. Duplisea received arising out of the relationship between the parties, and costs incurred.

[10] I also find that it is next to impossible to resolve with the requisite certainty many of the smaller disputes between the parties. In the interests of providing this decision, I have tried my best to reach a just and fair compromise.

## Synopsis of Evidence

### *Plaintiff and Defendant*

[11] Mr. Duplisea and Ms. Wilson were friends. In the winter of 2013/14, Mr. Duplisea was temporarily residing in New Brunswick. He wished to return to the Yukon.

[12] Ms. Wilson's husband had died that winter. Mr. Duplisea and Ms. Wilson were in contact with each other and made an arrangement for Mr. Duplisea to do some renovation work on her home when he returned to the Yukon.

[13] On January 25, 2014, the following excerpt of correspondence from Ms. Wilson to Mr. Duplisea reads:

LOL. You could come back tomorrow and live here in Sunnyvale for nothing in exchange for helping me to do a few things around here. This house was never finished. Do you have carpentry skills? I forget.

[14] On February 11, 2014, Mr. Duplisea and Ms. Wilson corresponded as follows:

I maybe headed up north again sooner than later. Cher I have to get back on my feet again and this place is not going to work for me. If you are serious on your offer I would probably take you up on it. I would have to bring to dogs with me but they are lovely and you know I will help as much as I can. I would like to talk more on this sometime soon, so please let me know what you think. Be good, in the proverbial sense, J

LOL. Come on up. You can stay here until you find a place of your own. I would like to be able to rent these back bedrooms out by the beginning of June, though. And you should be prepared for the long haul through breakup.

...

Well, you can stay here for nothing until you get your shit lined up again.

...and I'll pay for any work you do around here, so you will have a jingle in your jeans anyhow.

[15] Upon his return in April 2014, Mr. Duplisea was residing with friends in West Dawson. He began working on Ms. Wilson's home in mid-June. This work was substantially completed by mid-August.

[16] Mr. Duplisea was paid \$25 per hour for his work on Ms. Wilson's home. There is no dispute between the parties as to the work that was done and the monies paid in respect of the renovation work Mr. Duplisea performed on Ms. Wilson's residence.

[17] In the fall of 2014, Ms. Wilson purchased the Cabin. It was located approximately two km from her residence. The 20' x 24' Cabin was essentially an empty shell.

[18] Ms. Wilson asked Mr. Duplisea to perform the renovation work on the Cabin. He would be allowed to live in her residence while he was doing this work. She felt that there would be less travel and wear and tear on the vehicles while he was working on the Cabin if he was able to reside on site. In September 2014 Mr. Duplisea agreed with this arrangement.

[19] The Cabin was moved to Ms. Wilson's property in December 2014. Mr. Duplisea built wooden skids to facilitate moving the Cabin.

[20] Mr. Duplisea testified that in mid-September 2014, Ms. Wilson had approached him several times and told him that, in exchange for Mr. Duplisea doing work on the Cabin and otherwise assisting her, she would leave him her entire property when she

passed away. Mr. Duplisea stated that the last conversation between them as to this arrangement was in March 2015, when his mother was visiting.

[21] Mr. Duplisea said that, after thinking about Ms. Wilson's proposal for a while, he agreed.

[22] Mr. Duplisea started renovation work on the Cabin in mid-December 2014. He worked on and off through the winter and spring before moving into the Cabin with his girlfriend ("Gemma") in mid-May 2015. Gemma stayed there for several months in 2015 before returning to her job in England.

[23] Mr. Duplisea continued to perform work on the Cabin until about November 2016. He was not paid any monies for his work on the cabin. He was also not charged any rent for living in the Cabin and in Ms. Wilson's residence.

[24] Mr. Duplisea resided in the Cabin until approximately November 8, 2016, after which he returned to reside in Ms. Wilson's main residence for several months just prior to and while she was out of the country on a holiday. Ms. Wilson paid for the utilities, internet etc., and Mr. Duplisea paid no rent. During the months that Ms. Wilson was out of the country, the Cabin was rented out from November 2016 for \$500 per month to another couple. These monies, in the amount of \$2,350, were retained by Mr. Duplisea. There is a dispute between the parties as to whether this money was to be transferred to Ms. Wilson for her use or whether Mr. Duplisea was able to retain it for his own use.

[25] It was while Ms. Wilson was in Mexico that Mr. Duplisea stated that he began to hear rumours that Ms. Wilson was unhappy with him, and was intending to end the status of the current working/living situation.

[26] On April 1, 2016, in large part due to the relationship breakdown, Mr. Duplisea moved out of Ms. Wilson's residence, and moved into a cabin and then a wall tent on the property of Catheryne Wylie.

[27] Ms. Wilson alleges that Mr. Duplisea, contrary to her wishes, used her Sierra vehicle while she was gone. Mr. Duplisea denied having driven Ms. Wilson's Sierra while she was out of the country.

[28] Mr. Duplisea stated that in total he lived in the Cabin for 17 months and Ms. Wilson's residence for 14 months.

[29] In April/May 2016, Mr. Duplisea removed items from the Cabin that he believed he was entitled to retain possession of.

[30] Mr. Duplisea testified that, in addition to performing renovation work on the cabin, he performed a number of tasks to assist Ms. Wilson. These included:

- Mowing the lawn;
- Cleaning chimneys;
- Cutting wood;
- Hauling water;
- Maintaining the generators; and
- Taking care of her animals.

[31] Ms. Wilson testified that when Mr. Duplisea moved into her residence in the fall of 2014, there were four priorities that she wanted him to deal with:

- Cutting and stacking wood for the winter;
- Hauling water for the house;
- Keeping the field mowed; and
- Generally keeping things tidy.

[32] She testified that there was never an agreement for her to pay Mr. Duplisea an hourly rate for the work that he did on the house, Cabin, or her property, other than the original work on the house for which Mr. Duplisea has been fully compensated.

[33] Ms. Wilson also denied that there was ever any agreement between herself and Mr. Duplisea that in exchange for the work that he performed on the Cabin and her property, she would leave everything to him in her will. She said that while she may have mentioned leaving everything to him in her will, this was a possibility only and not a promise. She recalled a conversation with Mr. Duplisea in the summer of 2015, in discussing the importance of having a will, where she said “jokingly” that if he wasn’t careful, she might leave everything to him. She said this was in the context of all the responsibilities associated with home ownership.

[34] She stated that as a result of Mr. Duplisea deciding to stay at the Cabin, including with Gemma from approximately May until September 2015 and 2016, he used more wood than if he had stayed at her house. She requested Mr. Duplisea to obtain more wood as a result and he used her vehicle, fuel and equipment to do so, damaging her chainsaw in the process which had to be repaired at a cost of \$96.92.



She testified that Mr. Duplisea also caused damage to her Sierra in the amount of \$1,187.30, in part when she was on holiday in 2016, despite him being told not to drive it while she was gone. She noted that Sierra had been driven a total of 1,889 km while she was out of town.

[35] Ms. Wilson disputes the charges for water delivery as she contributed to the costs, and some of the water was for Mr. Duplisea's use in the Cabin. This chore was also one of the priority tasks Ms. Wilson expected Mr. Duplisea to perform in exchange for living in her residence.

[36] Ms. Wilson also disputes the "arbitrary" figure of \$500 per month rent that Mr. Duplisea states that he is willing to pay, testifying that it should be more like \$800 per month.

[37] Ms. Wilson stated that it was when she became concerned that Mr. Duplisea and Gemma were planning on creating a farm on her property, and were treating the Cabin as their home, making unilateral decisions without her consent and approval, that she felt it was time for the arrangement to end. She stated that in the summer of 2016, due to her concerns about Mr. Duplisea not "pulling his weight", she told him things needed to change or he would have to start paying rent or leave. She stated that this conversation had little impact on his work.

[38] Ms. Wilson also feels that she left an adequate supply of dog and cat food, as well as cat litter, when she left the Yukon. She expressed concerns that Mr. Duplisea may have been feeding his dogs food from the supply that she left.

[39] Ms. Wilson noted that while Mr. Duplisea, with her agreement, rented the Cabin to another couple for \$500 per month while she was out of the country and he was living in her house, she received none of the \$2,350 in rental income, despite her having provided Mr. Duplisea her bank account information so that he could make deposits of these monies. Ms. Wilson stated that she agreed to rent out the Cabin for less than the \$800 she thought it was worth in order to give the family, as new Canadians, a break.

[40] Ms. Wilson also expressed her concern that the \$1,000 in fuel for the house generator should not have been required, due to her experience that the solar panels do an effective job of powering the house, with the exception of approximately six weeks. In cross-examination she agreed that Mr. Duplisea “probably” installed the solar panels in the spring of 2016.

[41] She also stated that Mr. Duplisea used her new, stored Honda generator and the supply of gasoline she kept on hand.

[42] She disputes Mr. Duplisea’s charges for labour in moving the Cabin to its present location, noting that several others were involved in the move and none were monetarily compensated for their assistance.

[43] Ms. Wilson claims that she should be compensated for the propane she supplied for the Cabin in the fall of both 2015 and 2016. The 400 lb. propane tank was filled at her expense on both occasions, at a cost of approximately \$448.13.

[44] She claims that Mr. Duplisea, over her objections, purchased potting soil for the greenhouse he built on her account, and then took the greenhouse when he left. The soil costs were \$55.90.

[45] Ms. Wilson claims that Mr. Duplisea came to her Cabin on April 2, 2017 and told her, loudly, that he was leaving and taking his stuff from the Cabin. She stated that over the next month, Mr. Duplisea took a number of her items with him when he left the Cabin. She testified to these items being linens, blankets, pots, pans, dishes, mugs, glasses and silverware, subsequently stating that these were “odds and sods” from her residence that she sent to the Cabin. She was unable to describe any of these items in detail, other than a 10-inch cast iron skillet that was approximately 30 years old.

[46] She also states that Mr. Duplisea left the Cabin in an unfinished state such that it could not be rented, noting the missing stovepipe, cut or removed cord ends and water lines, and missing cupboard hinges. Ms. Wilson agreed in cross-examination that the faucet, taps, and cupboard hinges were items that belonged to Mr. Duplisea. Ms. Wilson stated that it took her approximately four months to have the Cabin restored to a state where she was then able to rent it out, thus costing her rental income.

[47] Ms. Wilson has provided bank documentation and invoices for costs she states she incurred and materials she purchased, either for her residence and/or for the Cabin.

[48] Ms. Wilson does not dispute that Mr. Duplisea did the work that he did on the Cabin, and that the work was done relatively competently. She also agreed that the work that Mr. Duplisea did on the Cabin increased its value. Ms. Wilson did not have the Cabin appraised in order to determine its value.

[49] Ms. Wilson states that Mr. Duplisea breached the terms of the agreement with her in the summer of 2015 by not completing the chores she had wanted to have done in exchange for him living in the Cabin with the associated benefits.

[50] Ms. Wilson is not claiming any monies from Mr. Duplisea. She states that she simply wishes for the two to go their separate ways.

[51] She states that, in exchange for the work that he performed for her, Mr. Duplisea received a roof over his head for almost three years, as well as the use of her trucks, quad, tools and generator.

[52] Ms. Wilson provided a cost breakdown for various expenses she incurred in relation to projects Mr. Duplisea worked on and/or benefitted from:

- Gas for vehicles and generators	\$ 6,613.63
- Hardware	3,732.25
- Automotive	1,862.35
- House supplies	1,933.28
- Internet – Dynamic Systems	2,676.77
- Cell Phone – Mobility	829.99

[53] In her affidavit sworn January 31, 2018, Ms. Wilson, in some detail, separately takes issue with a number of the claims for compensation Mr. Duplisea has stated he is entitled to.

*Catheryne Wylie*

[54] Ms. Wylie testified that she met Mr. Duplisea at Ms. Wilson's residence.

[55] She testified that she was paying Mr. Duplisea for working at her place at the same time that he was working on Ms. Wilson's property.

[56] She stated that she would see Mr. Duplisea working several days a week at the Cabin, on and off.

[57] She noted him to also be doing chores at Ms. Wilson's residence, like cutting the grass. As well, Ms. Wylie stated that Ms. Wilson told her Mr. Duplisea was bringing in wood for her. She also stated that Ms. Wilson would comment to her about Mr. Duplisea "taking his own sweet time" about the work that he was doing.

[58] Ms. Wylie was not aware of the details of any agreement between Mr. Duplisea and Ms. Wilson.

[59] Ms. Wylie stated that Mr. Duplisea purchased some land from her to build a place for himself.

*Jason Biasetti*

[60] Mr. Biasetti testified that he was aware Mr. Duplisea was living on Ms. Wilson's property, performing certain chores for her and obtaining certain benefits from her.

[61] There is little in his testimony that is of probative value with respect to the details of the arrangement between Mr. Duplisea and Ms. Wilson. He understood them to be helping each other out.

[62] He testified that he saw Mr. Duplisea driving Ms. Wilson's Sierra while she was out of the country in 2016.

[63] Mr. Biasetti also testified to observing a deterioration in Mr. Duplisea's relationship with Ms. Wilson, referring to a somewhat negative comment made by Mr. Duplisea on October 31, 2016 in the presence of several witnesses at a house party.

*Matthew McHugh*

[64] Mr. McHugh testified that in the winter of 2016/2017, he saw Mr. Duplisea driving Ms. Wilson's Sierra frequently, providing several locations where he observed this.

[65] He stated that in a conversation Mr. Duplisea had with him in mid-spring 2016, Mr. Duplisea stated that he could: "hardly wait until the old bag croaks" so he could do what he wanted with the property.

*Miriam Havreman*

[66] Ms. Havreman testified that she was at the house party on October 31, 2016, when she heard Mr. Duplisea make a negative comment about Ms. Wilson that caused the room to fall silent.

[67] She also testified that she saw Mr. Duplisea driving Ms. Wilson's Sierra frequently in the winter of 2016/2017.

## **Analysis**

### *Amount Claimed*

[68] The invoice dated June 2, 2017 that Mr. Duplisea sent Ms. Wilson was for the amount of \$25,835.25, which includes an amount of \$1,230.25 for GST. The invoice was for work on the Cabin that occurred between September 2014 and March 2017.

[69] Within the detailed breakdown contained in his Claim (the “Breakdown”), Mr. Duplisea states that he provided 923 hours of work to Ms. Wilson. At a rate of \$35 per hour, he is therefore claiming \$32,305 for this hourly work.

[70] He also includes a figure of \$8,300 for “additional expenses”. These expenses are comprised of the cash amounts set out in the Breakdown.

[71] From this amount Mr. Duplisea has allowed a deduction for 32 months of rent at a rate of \$500 monthly for a total of \$16,000. I note that in his testimony he stated that in fact he lived in both places a total of 31 months, not 32.

[72] The total amount that Mr. Duplisea claims that he is entitled to be paid by Ms. Wilson therefore is \$24,605, plus \$1,230.25 GST, for the invoiced total of \$25,835.25.

[73] He has, however, reduced his claim to the allowable small claims limit of \$25,000.

### *Contract*

[74] Reduced to its simplest form, a contract is made when an offer is accepted. There must be an agreement between the parties on fundamental terms in order for a

contract to be made. The parties need to know what they are agreeing on and what services are to be provided in exchange for what consideration or value. There is not an enforceable contract if it cannot be determined with reasonable certainty what the terms are that the parties have agreed to. There must be certainty with respect to the fundamental terms of the contract in order for the contract to be enforceable. Whether the parties have reached an agreement that results in a contract being entered into, and as such imposing enforceable obligations on the parties, is to be viewed objectively. The question to be asked is, would an observer, acting reasonably, apprised of the relevant facts, conclude that the parties have agreed to enter into a legally binding relationship?

[75] A contract, with some exceptions, does not need to be in writing to be enforceable. While enforceable, a verbal contract can be more difficult to enforce, as the terms may not be entirely clear in the event that there is a dispute between the parties.

[76] In this case, I conclude that there was no legally binding contract entered into between the parties with respect to the work Mr. Duplisea performed renovating the Cabin. Ms. Wilson's comments about possibly leaving everything to Mr. Duplisea, whether in September 2014 or the summer of 2015, were not made with any intent to form the basis of an offer in order to enter into a legally binding agreement. Mr. Duplisea's subjective interpretation of these comments as being the basis for a contract does not transform them into a formal offer.



[77] By the same token, I also find that there was no contract between the parties that all the work that Mr. Duplisea did in renovating the Cabin was solely in exchange for him being allowed to live there rent-free. While Ms. Wilson may have viewed this as being the case, I am satisfied that Mr. Duplisea did not see things the same way. The parties did not have a common agreement on this point.

[78] In my opinion, at the outset there was an informal agreement that Mr. Duplisea could live at Ms. Wilson's residence rent-free while assisting her with some work and chores at her residence and property. He would be paid for some of this work. Mr. Duplisea ended up living elsewhere at first and was paid \$25 an hour for his work on the residence. Subsequently, Mr. Duplisea ended up at times living in Ms. Wilson's residence and performing some work and chores in exchange for not having to pay rent. I am also satisfied that there were times when Mr. Duplisea was residing in and renovating the Cabin that he also provided some assistance to Ms. Wilson in regard to chores and work that needed to be done on her property. I am satisfied that there was, as demonstrated by conduct, an informal agreement between the two that this was the arrangement.

[79] However, once the renovation work began in earnest on the Cabin, the parties were not in agreement as to what the terms were or what the arrangement was. It is clear to me that the original arrangement for Mr. Duplisea to perform specific work and chores for Ms. Wilson in exchange for accommodation, did not encompass the work he was doing on the Cabin.

[80] It appears to me that each had their own idea of what the arrangement was but these ideas were not clearly or adequately discussed and were not mutually shared.

[81] I note the following email exchange from mid-June 2015:

Ms. Wilson: K. Keep track of the costs on this. Since the cabin is technically mine, you shouldn't be putting too much into the materials cost on this project. It would be nice to see it completed.

Mr. Duplisea: I am going to figure out what the cost is for batton after, may try to see how many large board we have and may cut some down, don't worry about how much we are putting into it

[82] There was clearly no agreement in place, albeit the use of the word "technically" by Ms. Wilson, certainly conveys with it the possibility of an inference being drawn that there was at least a discussion or suggestion of some sort as to the potential for a change in the ownership of the Cabin to Mr. Duplisea. This exchange is emblematic of the ambiguity that existed in the relationship and understanding of the parties.

[83] It is clear to me from the evidence that the work on the Cabin was, until the deterioration of the relationship, done with relatively positive communication between the parties. There was discussion with respect to many of the details regarding design and construction materials, and who would be picking up and paying for these. During the trial it became apparent that there were concerns about the work that was done, and concerns about the communication between the parties. However, I am satisfied that these disputes were less apparent during the time that the work was being done. It seemed as though both parties proceeded without sitting down with each other and ensuring both shared the same understanding as to what the expectations of each other were.

[84] It is also apparent to me that some of the work that Mr. Duplisea was doing, and is now claiming compensation for, such as landscaping work in relation to a garden plot, were more in accord with his plans for the property for his and his partner's benefit, than work done at the request of Ms. Wilson. Unlike the work on the Cabin, the quantifiable increase in the value of Ms. Wilson's property, to her benefit, as a result of this work is much more difficult to ascertain.

*Cabin*

[85] I find that the work that Mr. Duplisea performed in renovating the Cabin increased its value and that Ms. Wilson has benefited from this increase in value. Mr. Duplisea should be compensated for this work on the basis of unjust enrichment and *quantum meruit*.

[86] Unfortunately, I have no independent evidence as to what the value of the Cabin was after Mr. Duplisea completed the work on it, and which resulted from his efforts. Such evidence would have been of great assistance. Either party could have adduced this evidence, however, neither chose to do so. As the Plaintiff in this case, the burden rests on Mr. Duplisea to prove his Claim on the balance of probabilities. I appreciate that it may have been difficult in the circumstances for Mr. Duplisea to have arranged for someone to come view the Cabin in order to provide an accurate estimate, although I am fairly confident that with the photographs he possessed a fairly accurate estimate could have been obtained. At the same time, Ms. Wilson could also have obtained an estimate in support of her defence against the Claim.

[87] I also note that when Mr. Duplisea left the Cabin after the breakdown in the relationship, he took some of the fixtures with him, such as the stovepipe, water faucets, and cupboard hinges. These were items that belonged to him originally. Ms. Wilson states that as a result of these items being taken she was unable to rent out the Cabin until August 2017. I have some concerns about these items having been removed and the Cabin therefore being left in an “unusable” condition.

[88] I also, however, have concerns about the reasonableness of the four months Ms. Wilson states she was unable to rent out the Cabin. It would appear to me that the amount of cost and work the replacement of these items would require would be fairly minimal. No detailed and reliable evidence has been proffered to support a loss such as is claimed by Ms. Wilson.

[89] Mr. Duplisea’s actions in removing these items and leaving the Cabin less immediately livable, is indicative of the breakdown in the parties’ relationship and the resultant emotional responses to this breakdown.

[90] In my opinion, however, nothing turns on this in regard to impacting the monetary amount of compensation required to be provided by each party to the other.

[91] The only evidence I have with respect to the value of the Cabin once renovated, is the value of the work that Mr. Duplisea states that he provided in renovating it. This work performed and the hours involved in doing this work were detailed in the Breakdown, and further explained and supplemented by his testimony in court.

[92] I note that there is no evidence Mr. Duplisea was keeping daily time sheets of the work as he was providing it, and therefore did not have such a daily record available to prepare the Breakdown from.

[93] Rather, the Breakdown appears to be an after-the-fact retrospective assessment of the hours that he spent on certain tasks. I also note that the hours are rounded to whole hours, which Mr. Duplisea stated was a result of him rounding down the hours he felt each item of work required.

[94] As such, I find that there is some question as to how much I am able to rely on the accuracy of the information provided in the Breakdown. I am not saying this in a pejorative way; the simple reality is that a daily time sheet prepared at the time that the work is done is more likely to be accurate than attempting to correctly recall what was done and how long it took to do it after-the-fact.

[95] Against this *quantum meruit* payment will be a set-off for rent for those months that I find Mr. Duplisea should have been paying rent, based upon him receiving payment for the work he performed on the Cabin, as well as for such other amounts I find Mr. Duplisea to be liable to Ms. Wilson for.

[96] Within this apportionment, I will also deal with any claims Mr. Duplisea has made in respect of goods and services he provided to Ms. Wilson that were not related to the work on the Cabin.

[97] With respect to a number of the issues Ms. Wilson testified to in regard to Mr. Duplisea's actions, either in her testimony in court or in her documentation filed, I find

that the explanations provided by Mr. Duplisea generally addressed these concerns and provided a reasonable explanation for his actions. I do not consider that dealing with these on a case-by-case basis is necessary in this decision as the rationale for my decision and judgment on compensation does not turn on a determination of these concerns and issues. One example is the dispute between the parties as to whether Mr. Duplisea took certain of Ms. Wilson's small personal items, such as glassware, linens, and pots and pans when he left the Cabin. Other than the sawhorses, which Mr. Duplisea agrees that he took, I am simply unable to decide one way or the other as to whether this in fact occurred, and thus will not factor this into my decision. The same is true of a number of other points of contention.

*Invoice for Hours Worked*

[98] There is conflicting evidence as to when Ms. Wilson first mentioned the possibility of her leaving everything to Mr. Duplisea in her will. He states that this occurred as early as September 2014, and Ms. Wilson states that it was in the summer of 2015. Obviously, any hours that Mr. Duplisea worked on the Cabin prior to such a discussion, could not be said to have been in contemplation of him inheriting the Cabin. However, by Mr. Duplisea's evidence there was no work on the Cabin prior to such a discussion. By Ms. Wilson's evidence there would have been several months of work before the summer of 2015.

[99] Given that the Cabin was purchased in September 2014 and placed on the property in December, this would somewhat lend support to Mr. Duplisea's version of events. There was certainly considerable work performed on the Cabin prior to the

summer of 2015, and the work on the Cabin far exceeded the expectation of free accommodation in exchange for assisting Ms. Wilson with her four priorities and any other chores or tasks she wanted performed. I also consider Mr. Duplisea, in his testimony, to have a somewhat more detailed and specific recollection of events than that of Ms. Wilson, although I have some concerns in regard to the objective accuracy of some of these recollections. For example, Mr. Duplisea's denial of using the Sierra and of making negative comments about Ms. Wilson were directly contradicted by other witnesses. It appeared to me that Mr. Duplisea was, at times, tendering his evidence in a manner designed to portray himself in the best light.

[100] I do, however, find that it would have been unusual for Mr. Duplisea to do as much work on the Cabin as he did from September onward as per the original accommodation for services arrangement originally discussed. I expect that Mr. Duplisea believed he would be otherwise compensated, although how that would occur was not at all specified as between the parties, never clearly discussed, and without terms being set out.

[101] I am satisfied that an informal discussion such as that testified to by Mr. Duplisea more probably than not occurred in September 2014. However, I find that it was likely more of a general nature without complete specificity as to the property involved, and Mr. Duplisea subsequently assumed this to include the Cabin.

[102] I find that the appropriate way to resolve this issue is to begin compensating Mr. Duplisea on a *quantum meruit* basis for his work on the Cabin beginning in December

2014, as well as providing some amount of compensation for other services rendered, again, with some set-off against these amounts.

### *Calculation*

[103] I am disallowing all, or in some instances, a portion, of Mr. Duplisea's claim for work which was either in accord with the original accommodation for services agreement, and/or which includes work performed from which Mr. Duplisea also acquired a benefit, and which, given the change in circumstances, was at times outside of the original accommodation for services agreement, and also outside of the *quantum meruit* work associated with the Cabin. I believe that this accords with the spirit of the agreement and the relationship of the parties, including an accepted element of *quid pro quo* in their communications and actions. In balance, I am not imposing an obligation on Mr. Duplisea to pay rent for the majority of the time that he was living in Ms. Wilson's house.

[104] As such, I will not allow for the following hours claimed:

- 16 hours for landscaping;
- 90 hours for lawn mowing;
- 10 hours for after reno house touch up; and
- 5 hours for stair sanding and painting.

[105] I will allow only a portion of the following costs to be claimed:

- \$1,250 of the \$4,500 for wood;
- \$250 of the \$1,250 for water delivery; and



- \$50 for driveway plowing, kitty litter, cat food and dog food.

[106] I accept that much of this wood, water and driveway plowing was also used for the benefit of Mr. Duplisea, as well as also being within the general contemplation of the original services for accommodation agreement and other benefits Ms. Duplisea received through his relationship with Ms. Wilson.

[107] While allowing for some of the hours claimed, I have applied a reduction to the following hours claimed and allow Mr. Duplisea to claim for the hours as follows:

- 30 of 45 claimed hours for moving the Cabin. There were concerns expressed by Ms. Wilson as to the amount of hours claimed and she also noted that there were several others who provided assistance without compensation;
- 6 of 8 hours claimed for Cabin lift and level. This would have been a necessary part of placing the Cabin and I am satisfied that it was done, notwithstanding the concerns expressed by Ms. Wilson;
- 5 of 8 hours claimed for stove installation and refinish. By removing the stovepipe when he left Mr. Duplisea diminished the value of the work performed;
- 45 of 60 hours claimed for kitchen cupboards. By removing some of the cupboard and plumbing materials when he left, Mr. Duplisea diminished the value of the work performed;
- 7 of 10 hours claimed for shower tub install. By removing some of the plumbing materials Mr. Duplisea diminished the value of the work performed;
- 4 of 6 hours claimed for living room painting. Some concerns were raised with respect to the quality of the painting work; and
- 28 of 39 hours claimed for solar installation. There were concerns raised with respect to compliance with Ms. Wilson's wishes for the installation. I am also concerned about the extent of the research claimed for hours of work performed.

[108] I will allow, subject to a final revised figure for the entirety of the hours for all remaining claims, the 626 hours Mr. Duplisea has claimed.

[109] When this 626 hours is added to the 125 hours above for work for which I am allowing partial compensation, the total hours are 751 hours.

[110] I will reduce the 751 hours by approximately 15% to account for the lack of detailed timekeeping contemporaneous to the work being performed and lack of independent valuation of the property. As stated earlier, the burden of proving his Claim rests on Mr. Duplisea and the accuracy and reasonableness of his hours claimed for must be proven by him. As I stated prior, the accuracy of these hours, as determined retrospectively, and without independent, objective evidence, is questionable.

[111] Therefore, Mr. Duplisea will be compensated for a total of 638 hours.

[112] Mr. Duplisea is seeking to be compensated at the rate of \$35 per hour. This is a figure that he states reflects the going hourly rate for the type of work that he was performing. I find, however, that it is more appropriate to apply the rate of \$25 per hour for such work that I find he is entitled to be compensated for having performed.

[113] I choose the \$25 per hour rate over that of \$35 per hour Mr. Duplisea is seeking, based upon the agreed-upon hourly rate that Mr. Duplisea was paid for his work on Ms. Wilson's residence prior to starting the work on the Cabin. That is the best evidence as to what rate Ms. Wilson would have agreed to pay, had there been any agreement on an hourly rate of pay.

[114] I also note that Mr. Duplisea is not a certified construction worker. I am not saying this in a pejorative way; but I believe this places him in a different position regarding determining a compensable rate of pay than if he had been properly certified. I note, however, that Ms. Wilson testified that she was generally satisfied with the quality of the construction work Mr. Duplisea provided.

[115] The total amount for labour is therefore \$15,950.

[116] With respect to the invoiced costs for materials or services purchased I will allow the following to be credited to Mr. Duplisea:

- \$41.99 for composting toilet fan;
- \$200 for composting toilet contribution;
- \$26.10 for miscellaneous;
- \$18.84 for sanding belt;
- \$272 for cabin paint; and
- \$163.75 for Typar (The e-mail in which Mr. Duplisea said he would “take care of this” does not disentitle him from a *quantum meruit* claim).

[117] I will not allow for the Claim for \$1,000 for gas as Mr. Duplisea abandoned this portion of his Claim during his cross-examination.

[118] Mr. Duplisea is seeking an amount for GST on the services provided. He testified, as I understand it, that he does not have a GST registration number but would apply for one in the event that he receives compensation in this case for services for which GST is payable. In the circumstances, I find that I have insufficient evidence

before me to justify an order for an additional amount of monies for GST to be payable to Mr. Duplisea. As such, I will not make an order in this regard.

[119] Therefore the total amount of Mr. Duplisea's Claim, prior to set-off, is as follows:

- \$15,950.00
  - \$ 1,550.00
  - \$ 722.68
- \$18,222.68

*Rent*

[120] I am satisfied that Mr. Duplisea is liable to Ms. Wilson for rent for that period of time that he was residing in the Cabin. I am setting the value of this rent at \$500 per month. In deciding on this amount, I note that this was the amount that the Cabin was rented out for to the family that resided there in the fall of 2016. I also note that during the time that Mr. Duplisea was living in the Cabin, it was in a progressive state of renovation. In addition, Mr. Duplisea continued to perform certain chores which were also to the benefit of Ms. Wilson. Therefore, any potential rental value, such as the \$800 per month Ms. Wilson testified the Cabin could have been rented for, should be reduced accordingly.

[121] I am further satisfied, notwithstanding any concessions by Mr. Duplisea otherwise, that he should not be liable to Ms. Wilson for any rent for those months from September 2014 to December 2014 and from November 2016 to March 2017 that he was residing in her residence and taking care of the residence, of Ms. Wilson's animals and performing other chores. I recognize that there were disputes between the parties

as to whether Mr. Duplisea was or was not performing the expected chores throughout the entire time frame to Ms. Wilson's satisfaction and expectations, but I am not prepared to give such weight to these concerns that it would alter my finding in this regard.

[122] I simply cannot, with any of the requisite degree of certainty, determine whether Mr. Duplisea was or was not doing what he was expected to do. I am satisfied that he was certainly doing some of what was asked of him. I am satisfied that to the extent that there was agreement between the parties, the time that Mr. Duplisea was living in Ms. Wilson's house and taking care of some of the required responsibilities, was in exchange for him being able to live there rent-free.

[123] I am satisfied, given as Mr. Duplisea has been compensated for his work on the Cabin from mid-December 2014 through to mid-April 2015 when he moved into the Cabin, that he should make a partial rental payment for the approximately four months he was residing in Ms. Wilson's house. I expect that he was also doing chores for her during this period of time. This partial rental payment shall be at the rate of \$200 per month for a total of \$800.

[124] I am assessing the value of the \$500 monthly rental from approximately mid-April 2015 until early November 2016 as being \$9,000. This is a total of approximately 18 - 19 months and I have chosen 18 months. From what I understand of the evidence, Mr. Duplisea was residing in Ms. Wilson's residence for the remaining months.

[125] In addition, I find Ms. Wilson is entitled to receive the rental amount of \$2,350 that Mr. Duplisea retained, without authority to do so, for his own use.

[126] Therefore, the set-off amount for Ms. Wilson in regard to rental income is a total of \$12,150.

*Other*

[127] I am crediting Ms. Wilson the amount of \$569 for the repairs to the Sierra truck that were associated with Mr. Duplisea's unauthorized use of it. I note that prior to his using the truck when Ms. Wilson was out of the Yukon, there was already a repair estimate of \$618.20. Ms. Wilson states that this was as a result of Mr. Duplisea's use of the truck to obtain wood. I am satisfied that this repair work was done at this cost.

[128] I find that the evidence of the other witnesses who testified that they saw Mr. Duplisea using the Sierra on several occasions is preferable to the evidence of Mr. Duplisea that he was not using it. While, generally speaking, I found Mr. Duplisea's overall testimony to be reasonably credible and reliable, there were times that I was less satisfied with these aspects of his testimony. While my concerns in this regard do not serve to undermine the entirety or even the majority of his testimony, there are times, such as this, where I find that my concerns serve to either deny an aspect of his testimony and/or his Claim. I do so in this case.

[129] While I do not have clear and cogent evidence that Mr. Duplisea's use of the Sierra was the reason that these repairs were required, I find that he used it more than he was authorized to do and more than he testified he was using it and, as such, must bear the costs. I consider these costs to be the entirety of the \$569. I do not, however, consider him to be responsible for the entirety of the repairs to the Sierra while he was

using the truck prior to Ms. Wilson leaving the Yukon. I apportion his share of these repair costs as being approximately 50% of this amount, therefore \$309.

[130] I will also include a portion of the chainsaw repairs in the amount of \$50.

[131] Therefore, the total amount for miscellaneous repairs will be \$928.

[132] The total amount of the set-off is \$13,078.

[133] Therefore, the total amount of the judgment in favour of Mr. Duplisea is \$5,144.68.

[134] Each party will bear their own costs in this proceeding.

[135] There will be post-judgment interest pursuant to the *Judicature Act*.

[136] Mr. Duplisea will arrange for the sawhorses to be returned to Ms. Wilson.

---

COZENS T.C.J.