

SUPREME COURT OF YUKON
COUR SUPRÊME DU YUKON
OCT 28 2011
FILED / DÉPOSÉ

SUPREME COURT OF YUKON

Citation: *Dillabough v. MacLellan*, 2011 YKSC 77

Date: 20111014
Docket S.C. No.: 11-AP005
Registry: Whitehorse

BETWEEN:

JAMES DILLABOUGH

Appellant

AND:

RONALD MACLELLAN

Respondent

Before: Mr. Justice R. Foisy

Appearances:

James Dillabough
Ronald MacLellan

Appearing on his own behalf
Appearing on his own behalf

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] FOISY J. (Oral): This is an appeal from the trial, so I have to consider the evidence that the trial judge heard. Basically, this is not a new trial. I have to go back to the trial, I have to go back to the evidence, and I have. I have read the evidence carefully and the judgment of the trial judge, as well.

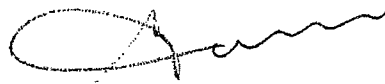
[2] It appears to me that the focus throughout was on getting the vehicles and other items that belonged to the respondent off of Mr. Dillabough's land. That is really what the essence of the evidence was, that Mr. Dillabough really wanted to get all of this equipment and all of these items off of his land. As was accepted by the trial judge, after a number of months, the Appellant, Mr. Dillabough, unilaterally started to charge the

Respondent for leaving these items on his land. There was no agreement with respect to this charge and, again, the focus was getting the items off of the Appellant's land.

[3] Indeed, at trial, the Respondent's evidence was that he was of the view that he had done some work for the Appellant, and that was going to look after any storage. The trial judge fashioned the judgment in order to encourage the Respondent to move these items by the 31st of July of this year, and in default the Respondent would have to pay the Appellant \$5,000. This was not by way of a rental arrear; this was more in the sense of damages. In my view, the trial judge's reasons correctly reflected the situation and he correctly refused to enforce the attempt by the Appellant to unilaterally charge rental or storage.

[4] That being the case, I find no reversible error by the trial judge on his assessment of the evidence, and in his conclusion. So, in my opinion, the appeal must be dismissed.

[5] With respect to costs, there is no doubt that the trial judge fashioned a somewhat unusual judgment, but then the situation was somewhat unusual, so I am not going to ask Mr. MacLellan or direct Mr. MacLellan to pay the costs. I am going to direct that each party pays his own costs in this appeal.



FOISY J.