

Claim No: 440351

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Scott v. Portland Street Rust Check, 2015 NSSM 34

BETWEEN:

HEATHER SCOTT

Claimant

- and -

PORTLAND STREET RUST CHECK

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 4, 2015

Decision rendered on August 20, 2015

**APPEARANCES**

For the Claimant

Self-represented

For the Defendant

Blake Friars, manager

**BY THE COURT:**

[1] The Claimant seeks \$918.95 in damages for repairs to her vehicle which, she says, were required because of negligent work done by the Defendant when it rust-proofed her car in September 2014.

[2] The Claimant bought a brand new 2014 Ford Escape and brought it to the Defendant for rust-proofing.

[3] In May 2015, the “check-engine” light came on and the Claimant took the car into a Ford dealer to have it checked out. The verdict was that there was a problem with the fuel tank pressure sensor, which was replaced for the amount claimed by the Claimant in this case.

[4] A letter from the service manager at the dealership - addressed to the Claimant but obviously for court purposes - stated the following:

“Our technician found that the fuel tank pressure sensor was contaminated with what appeared to be under coating. As the sensor could not be cleaned of contaminants, it had to be replaced. .... The sensor has a small orifice in it which measures outside air pressure and compares that to the pressure inside the tank. If the sensor is sprayed with undercoating, the small orifice can plug up causing the wrong readings and setting a warning light. I believe that it was the undercoating that damaged the sensor.”

[5] The author of this letter was not called to testify. His credentials are not known, and his statements were not tested by cross-examination. I will say more later about the weight that can be given to this evidence.

[6] The court heard the evidence of an expert called by the Defendant. Doug Bethune has been a certified auto technician for more than 45 years, and he has been recognized as an expert in automotive matters.

[7] Mr. Bethune did not have any access to the Claimant's vehicle, but has researched the problem and is familiar with this type of vehicle. He testified that Ford has had a well-recognized problem with this type of sensor. Unlike other manufacturers, for some reason Ford has not placed a protective shield to guard against sand, salt, road rubber and all other types of contaminants that can get to the sensor and possibly contaminate it. Mr. Bethune believes it is a design flaw that Ford is now, belatedly, addressing in its newer vehicles.

[8] Mr. Bethune also testified that if he were looking at a gummed up sensor, before pronouncing on what substance had actually contaminated it, he would take a swab and have it analysed. He would not assume that it was undercoating, since there are many other possibilities of things that can spray up from the road over time.

[9] There is no evidence that the Ford dealership here did any type of testing to see what had contaminated the sensor; rather it stuck with its view that it "appeared" to be rust-proofing material. I am not being critical of the Ford dealership, as their mandate was to resolve a problem and get the customer on her way.

[10] Mr. Bethune also testified that there are specialized compounds that could have been tried to clean the sensor, but it appears that the Ford dealership did not try this.

[11] Mr. Friars, the manager of the Defendant, stated that they do not routinely mask off any components when undercoating a vehicle - unless asked. He also stated that the sensor in question was not easily accessible, and it would have been a major job to get access to it. He denied that they have ever had a similar problem reported to them, despite having sprayed many vehicles of a similar make and model.

[12] In this case, as with all civil claims, there is an onus on the Claimant to establish that her theory is the more probable one, and that the Defendant more likely than not did something that was improper and outside of reasonable practice. I am unable to conclude that she has met the burden of proof.

[13] The evidence that the Claimant provided basically boils down to the stated (and unsworn) opinion of someone at the Ford dealership that the sensor was contaminated by undercoating material. The author of the letter is said to be Dave deCoste, Customer Service Manager. He attributes this conclusion to an unnamed technician. We know nothing about the credentials of either of these individuals, and they have not been brought to court and subjected to any questioning. This makes their conclusions essentially "untested." The right of a party to cross-examine contrary witnesses is an important right, even in a people's court such as the Small Claims Court. Untested evidence risks being given little weight.

[14] On the other side of the issue, we have the opinion of Mr. Bethune who is a recognized automotive expert and whose sworn opinion is that there are many

things that might have contaminated the sensor, and moreover, that the problem might have been repaired by cleaning, rather than replacing the sensor.

[15] I am also sceptical of the Claimant's theory, for another reason. Millions of cars are rust-proofed, especially in Canada. There was no evidence that the rust-proofing industry routinely masks off components - or that it should mask off components - that might be exposed to the undercoating spray. It seems improbable that this would be necessary, since the undercarriage of a vehicle is totally exposed to whatever might be thrown up from the road, including water, ice, gravel, asphalt, rubber residue and a thousand other things. Whatever the undercoating compound can get to, so can all of these other contaminants.

[16] In the end, I am not satisfied that the Claimant has proved that the Defendant was negligent in the way it performed its rust-proofing service, and the claim must be dismissed.

**Eric K. Slone, Adjudicator**