

Claim No: 440605

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Brown v. The Used Car Factory-Factory 21, 2015 NSSM 36

BETWEEN:

STEPHANY BROWN

Claimant

- and -

THE USED CAR FACTORY - FACTORY 21

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 18, 2015

Decision rendered on August 24, 2015

APPEARANCES

For the Claimant

Self-represented

For the Defendant

Joel Sapp, manager and owner

BY THE COURT:

[1] The Claimant purchased a 2003 Subaru Forester from the Defendant on December 22, 2014, for approximately \$4,500.00 including tax and a so-called “50-50 bumper-to-bumper” warranty for 6 months. The vehicle had 211,106 kilometres on it at the time of purchase.

[2] The sales contract was explicit that there were no warranties other than the 50-50 warranty, which (as its name suggests) divides the cost of any needed repairs equally between the dealer and the customer.

[3] The Claimant has experienced a considerable amount of trouble with the vehicle since she purchased it, and is suing the Defendant for what appears to be the original cost of the vehicle and the cost of some or all of the repairs done since. The vehicle is currently sitting on the Defendant’s lot, having had some repairs done for which the Claimant has not paid. She does not appear too interested in picking up the vehicle, as she does not feel safe in it, and she has placed her hopes in this court case.

[4] Almost immediately after the car was purchased, problems surfaced. A strong smell of gasoline turned out to be a small hole in the gas tank. A loud noise turned out to be some worn out bearings. More seriously, the vehicle started stalling out while driving at speed on the highway, a problem that would spook anyone.

[5] The evidence satisfies me that the Defendant was always responsive to the Claimant’s problems, and did its best to correct whatever problem was

presenting itself. It has also continued to honour the warranty well after it would have expired in June 2015.

[6] The underlying problem that caused the stalling appears to have been a defective O2 sensor, which has now been replaced. The Defendant says that the vehicle is operating properly now, and that the Claimant is free to pick it up upon paying the outstanding repair invoices totalling \$606.90, which amount is counterclaimed in this case.

[7] The Claimant appears not entirely to appreciate that she bought an 11-year-old car with significant kilometres on it. That purchase carried a significant risk that things would go wrong. The 50-50 warranty was her only protection, and it showed that the Defendant was willing to invest time and money into keeping the vehicle on the road.

[8] In order for the Claimant to succeed, she would have to establish that the Defendant breached the contract. On the evidence, I am unable to find that it did. There is no question that the Claimant has had a less than happy experience with the vehicle, but that is the risk one takes buying an older vehicle for a small fraction of its original sticker price.

[9] The Defendant's obligation was to honour the warranty, which I find that it has done. There was not a single instance shown of the Defendant being slow to react or otherwise indifferent to the concerns of the Claimant. Despite suggestions that it may have mis-diagnosed the problem that led to the vehicle stalling, this allegation has not been proved by any credible evidence.

[10] In the end, the Claimant has a choice. She can pay the outstanding invoices and pick up her vehicle, after which she can do whatever she wants with it. Or if she leaves it for any further significant amount of time, the Defendant would be at liberty to exercise its lien rights.

[11] In the result, the Claimant is dismissed, and the counterclaim is allowed in the amount of the outstanding repairs, namely \$606.90.

[12] Under all of the circumstances, I allow no costs to either party.

Eric K. Slone, Adjudicator