

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Mosher v. Benson, 2008 NSSM 72

2008

Claim No. 299290

Date:20081020

BETWEEN:

Name: **Glen and Dale Mosher (on behalf of minor son Kyle Mosher)** **Claimant**

- and -

Name: **Peter Leonard Benson**

Editorial Note

Phone numbers and addresses have been removed from this unofficial electronic version of the judgment.

Appearances:

Claimant: Glen Mosher and Dale Mosher

Defendant: Peter Benson

DECISION

- [1] This is a claim arising from the sale of a used motor vehicle from the Defendant, Peter Benson, to Kyle Mosher, a minor. The claim is brought by the parents of Kyle Mosher on his behalf seeking, in effect, to reverse the transaction and as well, seeking out of pocket expenses arising from the transaction.
- [2] As I mentioned at the hearing, it seems to me that this case can be considered as raising two major issues. First, there is the issue of the sale of what allegedly was an inflated price for a vehicle that was not road-worthy. Secondly, there is the potential legal issue arising from the fact that Kyle Mosher is a minor.

[3] I do not intend to consider at length the first issue. I will say that the general rule in private sales of used motor vehicles is that there are no **implied** warranties regarding the physical condition of the vehicle. There can be, of course, **express** warranties but that entirely depends on the evidence.

[4] I turn to the second issue, that of the law relating to a contract with a minor.

[5] The Nova Scotia *Age of Majority Act*, R.S.N.S. 1989, c. 4, states in Section 2:

2(1) Every person attains the age of majority and ceases to be a minor, on attaining the age of 19 years.

[6] The evidence in this case makes it clear that Kyle Mosher was 17 at the time of this transaction which took place on May 26, 2008. His birthday is in October and he will not turn 19 until October 2009. Clearly, therefore he was a “minor” at the time of the transaction in May of 2008.

[7] In *The Law of Contract in Canada*, (5th), Fridman, Thompson Carswell, states (p. 141):

The attitude and effect of the law were explained thus by Laidlaw J.A. in the leading case of McBride v. Appleton:

The contract of an infant is considered in law as different from the contracts of other persons. The law exercises as it were a guardianship of the infant, using its power in some cases to nullify completely contractual transactions with an infant, and in other cases giving the privilege to the infant of saying during his infancy and for a reasonable time thereafter that he could not be bound by a contract to which he was a party.

[8] The author further states (pp. 141-142):

However, this account of the law is not entirely accurate. In the first place, there are undoubtedly some contracts which at common law were binding on a minor and could not be treated as voidable at the option of the minor either during minority or within a reasonable time after the minor attained majority...

- (ii) *Enforceable contracts*
- (A) *Necessaries*

A contract for necessaries is binding upon a minor, to the extent that he may be made liable to pay for any necessaries which he purchases...

*Meanwhile, it becomes important to determine what are necessaries. In the Sale of Goods Act of the various provinces they are defined as “goods suitable to the condition of life... (the) infant ...and to his actual requirements at the time of sale and delivery.” Everything depends upon the social and economic position of the minor as well as upon what would be regarded as essential for life. Curiously enough, **a car has been held not a necessary, even in these days, even, as in *Pysett v. Lampman* where the car was used by the minor in the business of selling fish by which he earned a living.***

[Emphasis Supplied]

[9] The Nova Scotia *Sale of Goods Act*, R.S.N.S. 1989, c. 408, reads:

5(1) *In this Section, “necessaries” means goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.*

(2) *Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property, provided that where necessaries are sold and delivered to an infant or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.*

[10] In the present case, there was no evidence to suggest that Kyle Mosher required the vehicle for some significant purpose which might support a finding that it is a “necessary”. I note in this regard the finding in the *Pysett* case, referenced above, where it was found that a car used in the business of selling fish by a minor was not a “necessary”.

[11] I conclude on the basis of the facts before me and my understanding of the law that the motor vehicle in this case was not a necessary of life. It follows from that that the contract between Kyle Mosher and Peter Benson was a voidable contract and voidable at the instance of Kyle Mosher.

[12] I turn to the legal consequences of repudiating a voidable contract. I again refer to the Fridman text (p. 152):

Recovery of money paid or property transferred by the minor under such a contract has been said to depend on either total failure of consideration or the possibility of restitutio in integrum. Cases may be cited in support of both propositions. Perhaps both maybe involved, as was suggested in Sturgeon v. Starr in 1911:

*If an infant pay money without valuable consideration he can get it back; and if he pay money for valuable consideration he may also recover it; but **subject to the condition that he can restore the other party to his former position.***

[Emphasis Supplied]

[13] The question then is whether Mr. Benson can be restored to his former position. It seems to me that based on the evidence here Mr. Benson can be restored to his former position by return of the subject vehicle. While it has been sitting for some three or more months at this point I do not think that alone is sufficient to find that Mr. Benson cannot be substantially restored to his former position. There was no specific evidence of deterioration of the vehicle in that time period and, it is to be remembered that it is an eight year old vehicle. I conclude that that Mr. Benson can be restored to his former position and therefore that the sale price of \$2,000.00 should be returned by Mr. Benson to the Claimants and the Claimants deliver possession of the 2000 Ford Focus to the Defendant.

[14] There remains the issue of the other incidental items such as the tax, recording fees, registration fees, towing charge, and insurance premiums. All of these were paid to third

parties and not to the Defendant. While I recognize that they were occasioned by the sale transaction, I conclude that it is not appropriate to order Mr. Benson to pay these back to the Claimants. In terms of the towing charge and the insurance premiums, these are contracts made with third parties and potentially subject to the same legal principle that I have referred to above in dealing with contracts with infants. It may be that the same principles could be referenced with the governmental fees. I cannot rule on that in this proceeding but make these observations to point out that these items are outside of the Defendant's control and certainly he did not have the benefit of these funds. I would also emphasize that this ruling is not based on any wrong-doing, at least in the normal sense of wrong-doing on the part of the Defendant. Rather, the basis for this finding is common law of contracts between adults and minors which, one would not expect the average person to have knowledge of. In all events, I am not allowing anything for these items in the claim.

[15] The filing fee of \$87.06 is allowed.

Order

[16] It is hereby ordered that the Defendant pay to the Claimants:

Debt:	\$ 2,000.00
Costs:	<u>87.06</u>
Total:	\$ 2,087.06

[17] It is further ordered that the Claimants deliver to the Defendant the 2000 Ford Focus, Vehicle Identification Number 3FAFP313XYR256311.

DATED at Halifax, Nova Scotia, this 20th day of October, 2008.

Michael J. O'Hara
Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)