

Claim No: 440446

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Campbell v. Mighty Auto Burnside, 2015 NSSM 57

BETWEEN:

GERALD CAMPBELL

Claimant

- and -

MIGHTY AUTO BURNSIDE

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 31, 2015

Decision rendered on September 9, 2015

APPEARANCES

For the Claimant

Self-represented

For the Defendant

George Jean, Operations Manager

BY THE COURT:

[1] The Claimant seeks a refund of \$1,737.30 which he paid to the Defendant for repairs to the exhaust system on his 2006 GMC Sierra 1500 truck. He has no quarrel with the quality of the work. Rather, he says that the work should not have been done at all once the vehicle was put on the hoist and the condition of the underside of the vehicle was seen.

[2] The Claimant does not dispute that he asked for a new exhaust system to be installed. What he contends is that, before the work was done, he indicated to the Defendant that he also wanted a Motor Vehicle Inspection (MVI) to be done at the same time.

[3] When he picked up his vehicle on May 5, 2015, he was told that the MVI could not be completed because there was rust and corrosion of the box ribs at the rear of the vehicle that compromised its structural integrity, and that it would require significant work - and possibly the installation of a new box.

[4] The Claimant says that it should have been obvious to the technician doing the exhaust repair that with this much additional work needing to be done to certify the vehicle, the Claimant might not have gone ahead with an expensive exhaust repair. The Claimant says that he still does not know whether it is worth his while to do the repairs that would allow the vehicle to be certified. If he decides against it, then the exhaust repair is simply a wasted expense.

[5] George Jean, the Operations Manager of the Defendant, testified that the technician who was doing the exhaust repair was not himself qualified to do an

MVI, and that there was no one so qualified in the shop at the precise time the exhaust work was starting. That work fell to someone such as himself, who is certified to do MVA's. As such, he argues, the exhaust technician could not have been expected to know that the vehicle might not pass inspection and therefore could not have been expected to abort the exhaust repair.

[6] Moreover, according to Mr. Jean, the vehicle actually had an inspection sticker affixed to it, indicating that the vehicle was good to drive until October 2016. He also stated that the kind of rust damage that this vehicle exhibited is a bit of a grey area in terms of certification. Not every MVI inspector would fail it, although he admits that he would not pass it himself. He said that the vehicle would pass with the purchase and installation of a new (used) box, which he estimates would cost between \$500.00 and \$1,000.00, plus labour.

[7] The Claimant disputed that the vehicle was good to drive until October 2016. He admits that there is a sticker on it, but that it is simply wrong. He could not explain how it got there; essentially, he says it is bogus. He says he would not have asked for an MVI unless it needed it. He says that, according to the paperwork he has, the most recent MVI expired at the end of May 2015.

[8] From a legal standpoint, the Claimant's case must meet the test of establishing either a breach of contract, or negligence. In either case, I would have to find that:

- a. it was unreasonable for the Defendant to go ahead and perform the exhaust repair, and that

- b. had it acted reasonably and alerted the Claimant to the other problems, that the Claimant would have put a stop to the work.

[9] I am having the most trouble with the first part of that question. I do accept that, had the Claimant known about the corrosion problems, he very well might have thought twice about doing the exhaust repair.

[10] But the threshold question is whether the technician acted unreasonably by failing to stop the exhaust work because of what was visible under the vehicle. I am far from convinced that it was unreasonable for him to go ahead and do the job he had been instructed to do. The evidence was that the technician doing the exhaust work was not qualified to do MVI's. He would have had no way of knowing how much the Claimant already knew about his vehicle. For all he knew, the Claimant might have been well aware of the condition of his vehicle. Nor would the technician have known that the Claimant might decide not to bring it up to roadworthy (certifiable) condition. In my view, the Claimant's theory assumes and asks too much of the Defendant.

[11] Furthermore, it is still speculative as to whether or not the Claimant has suffered any financial loss. If he decides to repair the truck, he will get full value for the exhaust work that he explicitly asked to be done. It strikes me as wrong to allow him to obtain a refund for work that was properly done, under his instructions, and for which he may yet receive full value. In the end, I do not believe that the Claimant has established that the Defendant was negligent or that it breached its contract, and the case should be dismissed.

Eric K. Slone, Adjudicator