

Claim No: 314741

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Miller v. Sackville Fine Cars, 2009 NSSM 56

BETWEEN:

MAXWELL STANLEY MILLER

Claimant

- and -

3039108 NOVA SCOTIA LTD., c.o.b. as Sackville Fine Cars
and ALL 4 U AUTOMOTIVE REPAIR

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 3, 2009

Decision rendered on November 4, 2009

APPEARANCES

For the Claimant self-represented

For the Defendant
Sackville Fine Cars Darren Blumenthal, General Manager

BY THE COURT:

- [1] The Claimant sues for the cost of certain repairs that he had done to the vehicle that he had recently purchased from the Defendant 3039108 Nova Scotia Ltd., c.o.b. as Sackville Fine Cars (hereafter "Sackville").
- [2] The Defendant All 4 U Automotive Repair ("All For U") could not be served with the claim as it is a defunct business with no legal status.
- [3] The Defendant Sackville has counterclaimed for certain repairs that it had performed on the vehicle which the Claimant traded in.
- [4] The Claimant purchased a 2001 Nissan Frontier from Sackville on June 3, 2009, trading in his 1999 Ford F10 for a \$5,000 credit on the purchase. Although the bill of sale states that there is no warranty and the vehicle is sold "as is," the Claimant was told by Mr. Blumenthal of the Defendant Sackville that he warranted his vehicles for 30 days. This is not denied by the Defendant Sackville.
- [5] On day 2, the Claimant noticed that the "check engine" light came on and took the vehicle back to Sackville, which in turn had the business next door (All For U) perform some diagnosis and repair. Over the next several weeks, the Claimant experienced a cascade of problems - all of which appeared to have been caused by the previous repair, or attempt at repair. This reached the point of exasperation, and eventually the Claimant took the vehicle to an authorized Nissan dealer which found the source problem and fixed it.

- [6] The Claimant seeks \$458.17 representing the cost of the last repair done by All For U (which Sackville refused to cover) plus the cost of the repairs by O'Regan's Nissan.
- [7] The counterclaim is for \$1,356.01, which was spent on transmission work on the F10 which the Claimant had traded in. Mr. Blumenthal based this counterclaim on the fact that the Claimant had verbally represented that the vehicle was in good condition.
- [8] The defence to the claim was to the effect that the Claimant was simply a demanding customer who was never satisfied, and that some of the repairs claimed occurred outside the 30-day warranty period.
- [9] I find as follows:
- A. The Defendant Sackville gave a 30-day warranty.
 - B. All of the problems that the Claimant experienced were identified within the 30 days, or were the consequence of poorly done repairs by All For U.
 - C. Sackville is responsible for everything done by All For U, as it was acting as Sackville's agent performing warranty work. The Claimant had no control over who worked on his car.

- [10] The defence that the Claimant was demanding is not supported by the evidence. Every one of the problems described was serious or alarming, and it was the responsibility of Sackville to look after them under warranty.
- [11] I find that the damages claimed are legitimately owing as damages for breach of warranty.
- [12] As for the counterclaim, the notion that the Claimant implicitly warranted his trade-in vehicle to the dealer is absurd. There was no warranty, express or implied. Moreover, the Defendant Sackville had every opportunity to have the vehicle checked out before deciding what amount to allow as a trade in. Normally the price on the trade in would reflect the condition of the vehicle. This counterclaim is entirely without merit.
- [13] The Claimant also sought \$100 in general damages. I decline to award any general damages, as I do not believe that they are justified by the mere inconvenience of having to perform car repairs. I further believe that despite its responsibility under the warranty, Sackville was not really the source of the frustration. That was more likely the result of poor workmanship by the repair facility.
- [14] In the result, the Claimant will have judgment against Sackville for \$458.17, plus \$89.68 costs, for a total of \$547.85.

Eric K. Slone, Adjudicator