

Claim No: 319079

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

Cite as: Miles v. Marcus, 2009 NSSM 60

BETWEEN:

RANDY MILES

Claimant

- and -

BILL MARCUS Jr. and R.V. WHEEL ESTATE

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 15, 2009  
Decision rendered on December 16, 2009

**APPEARANCES**

For the Claimant            self-represented

For the Defendants        self-represented

**BY THE COURT:**

[1] The Defendant R.V. Wheel Estate is a business operated by the company W. Marcus Enterprises Limited, which sells (among other things) Seadoo water craft manufactured by Bombardier. The Defendant Bill Marcus Jr. is the self-described owner of the business and was the individual that dealt directly with the Claimant when he attended on Saturday, July 25, 2009 and agreed to purchase a used Seadoo.

[2] The boat in question has a 4-stroke engine, which was a desired option for the Claimant. It had been in an accident of some type and was perhaps not quite ready to be operated, although the Defendant Marcus believed it was water worthy. As the Claimant viewed the boat the motor was started and allowed to run for just a few seconds, to establish that it was in running order.

[3] The Claimant was interested in the boat but wanted a warranty. After some negotiation, it was agreed by Mr. Marcus that the boat would be warranted for one week only. The sale was made on that day at a price of \$5,000, inclusive of HST. A bill of sale was drawn up that makes no mention of the warranty, but the fact of the verbal warranty is not disputed.

[4] Over the course of the next week the Claimant worked on the boat in his garage, doing minor fibreglass repairs to the hull. The following Saturday, the 1<sup>st</sup> of August, he took it out to Porters Lake with his daughter and a friend where the engine ran for less than three hours before giving out. Help had to be summoned and the Claimant and his passengers towed to shore. Within two days the boat was returned to the Defendants' premises to determine the problem.

[5] To make a long story short, the motor has been shown to be significantly damaged and the Defendants are not willing to perform repairs, although it took some months for the Claimant to understand that this was the position that they were taking.

[6] The Defendants take the position that the reason for the engine failure was human error. Mr. Marcus believes that the Claimant somehow “flipped” the boat over which may have caused the engine to become “hydrolocked,” a phenomenon which is described in Wikipedia as follows:

Hydrolock (short for either hydraulic lock or hydrostatic lock) is a condition of an internal combustion engine in which an incompressible liquid has been introduced into its cylinder(s), resulting in the immobilization of the engine's pistons. The liquid causing this malfunction is often water. Internal combustion engines must compress air to work efficiently and this works because gases can be compressed. Liquids do not compress so if a volume of liquid greater than the volume of the combustion chamber at its minimum (top of the piston's stroke) enters the combustion chamber then the piston cannot complete its travel. Either the engine must stop rotating or something must give. The result is often a bent connecting rod or sometimes a cracked cylinder head or block.

[7] One of the Defendant's mechanics testified that the damage to the engine was consistent with hydrolocking.

[8] The Defendants have no direct evidence that the Claimant did anything that would have invited this problem. Mr. Marcus testified that he believed that the Claimant had asked someone in the shop how to get water out of an engine. The Claimant denied that he had ever asked such a question.

[9] The major flaw with the Defendants' theory is that it does not explain how the engine could have operated for 2.8 hours and suddenly stopped in the water.

It was admitted by the Defendants that had water gotten into the engine, it would have seized up almost immediately upon being started. As such, had the Claimant improperly handled the craft while it was in his garage, which was the Defendants' theory, he should never have been able to start the motor when he launched it on August 1.

[10] It should be noted that hydrolocking can also occur if oil gets in the engine, but this craft has a sophisticated safety system that should prevent that from happening if the boat is accidentally inverted.

[11] On all of the evidence, I am not persuaded that there was any human error on the part of the Claimant. I was impressed with the quality of his evidence and found no reason to question his credibility.

[12] The defence theory is pure speculation without any facts to support it. The evidence of Mr. Marcus and the mechanic Scott Kaiser was vague and unconvincing.

[13] I find that the engine malfunctioned during the one-week warranty period and that the Defendants have utterly failed in their obligation to perform repairs under the warranty. I appreciate from the evidence that the cost of a new motor might exceed the initial \$5,000.00 purchase price, but the Claimant is not insisting that it be repaired; he is asking for a full refund.

[14] I believe it is an appropriate case to rescind the contract and order a complete refund. The Claimant received no value for his money, which amounts in law to a total failure of consideration. The Claimant's brief excursion on Porter's Lake is offset by the fact that he needed an emergency rescue. I find

that the Defendant fundamentally breached the contract by failing to honour the warranty.

[15] As such the Claimant will have judgment against both Defendants for \$5,000.00. I hold both Defendants liable because by giving his verbal warranty, Mr. Marcus became a personal party to this transaction and the Claimant should not have to assume any risk that the business might not make good on this claim.

[16] The Claimant is also entitled to his costs of issuing the claim in the amount of \$179.35, for a total judgment of \$5,179.35.

**Eric K. Slone, Adjudicator**