

SCCH 356702

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Jacklin v. Used Car Factory 21, 2012 NSSM 39

BETWEEN

Rachel Jacklin

Claimant

-and-

2117335 Nova Scotia Limited, carrying on business as Used Car Factory 21

Defendant

Heard: January 4, 2012

Decision: March 8, 2012

Adjudicator: David TR Parker

Counsel Lianne M Jacklin represented the claimant

The defendant was self represented

DECISION and ORDER

This is a claim for \$2429.76 resulting from purchase of a motor vehicle by the claimant from the defendant on April 21, 2011.

This vehicle that was purchased by the claimant was advertised in Kijiji. The advertisement stated:

"What a great by at \$2195.00 six passengers beautifully designed in good condition. Fully loaded and just inspected. Price with a two-year warranty is \$2695.00. Attention buyer this will be our biggest selling month in our 22 year history so to celebrate included in the price is a big two-year warranty now that's a deal!! Purchase must be completed by 30 April. We cannot take a trade in or finance this vehicle."

The vehicle was a 2000 Mazda MPV with 219,694 km and it sold for \$2195.00 plus HST. The Purchase Sale Agreement stated in part:

"I acknowledge having the opportunity to participate in the extended warranty plan offered by this dealership designed to protect my investment and resale value. After due consideration I knowledge I have declined to do so and have had the opportunity to inspect the vehicle and accept it in its present condition without representation of warranty."

Below this was a place for the purchaser, in this case the claimant to sign. There was no signature in this case.

Under the conditions of sale clause 5 the purchaser did sign the following acknowledgment of condition:

"The purchaser acknowledges having read the conditions printed on the reverse side here of and (continued on back)... the said purchase to be for the price as hereinafter set forth and shall include the transfer to you of my used vehicle if any as described above, which said used vehicle I warrant to be free of all encumbrances except as herein disclosed."

Below this was a signature of the purchaser which in this case was apparently the claimant's grandmother.

There is no evidence before me what was on the back of the purchase sale agreement.

Claimant said that she was told it was newly inspected and in good condition except for a few dents that didn't affect our inspection. The claimant said she couldn't test drive the vehicle as she had no insurance. The claimant said her grandmother drove the car home and it stalled. It stalled every day a few times a day and sometimes it wouldn't start. The claimant said she had trouble going up hills and inside the car smelled. The claimant stated that one day it wouldn't start so she had it towed to Canadian tire. The claimant produced an invoice from Canadian Tire listing a number of items that were placed on the vehicle and the amount of the invoice came to \$1595.25. The claimant said that the technician told her that the vehicle should never have passed inspection. The technician also told her that he would come and testify to it in court but as it turned out that did not

happen. The claimant said two weeks later something fell off and she lost control of the vehicle claimant said that the control arm fell off and as result she was charged or paid another \$400.00 for that but had no receipt. There was a towing invoice for \$86.25. The claimant said that one month later there was a leak in the power steering fluid. One month later the brakes failed. The claimant said she called the mechanic and he picked it up and fix it for \$150.00. The claimant stated it still had trouble going up hills.

The Claimant said she didn't take it back to the defendant to work on it as she was worried it wouldn't be fixed properly.

Ruth Colbon, the claimant's grandmother said she objected to the extended warranty as it was more money. She said that she drove the car home and he kept stalling. She said that she was not going to take the vehicle back there as they put a safety sticker on it and so "we are not taking it back." She said she took the car to Canadian tire and talk to them. The claimant's grandmother gave a great deal of evidence of what the mechanic said and ultimately she followed his advice apparently and decided to go to the Small Claims Court. Much of the information she provided the court was hearsay.

The defendant's mechanic with some 25 years experience went over the car before it was sold by the defendant. The defendant owner Mr. Sapp's main contention during the trial was that the claimant should have returned the vehicle and they would have dealt with it.

This vehicle was a use vehicle with a considerable number of kilometers on its odometer. There is no information before this court that the motor vehicle inspection was not valid. There is some information that a number of repairs were done to the vehicle. This would not be unexpected for a vehicle that was a 2000 year vehicle with over 219,000 km on it. There is no information before the court that this vehicle should have been more durable than it was or that the vehicle was not in a good condition for that year and for that number of kilometers on that type of vehicle. Further the claimant decided not to get a two-year warranty on the vehicle at an additional cost of \$500.00. Further the claimant did not proceed to have the vehicle, a used vehicle, inspected. There is no evidence

before me on that Canadian Tire had to replace the items it did because this vehicle should have been in a better condition or state that it was in for the year and kilometers on the vehicle.

For all the reasons stated above the claimant will not succeed in this case.

It Is Therefore Ordered That the claim against the defendant be dismissed with no order as to costs.

Dated at Halifax March 8, 2012