

Claim No: SCBW 477766

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: 3312750 Nova Scotia Limited v. Merlyn Corkum's Auto Body & Towing Limited, 2018 NSSM 93

BETWEEN:

3312750 NOVA SCOTIA LIMITED

Claimant

- and -

MERLYN CORKUM'S AUTO BODY & TOWING LIMITED

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Bridgewater, Nova Scotia on November 15, 2018

Decision rendered on November 16, 2018

APPEARANCES

For the Claimant

Vince Neary
Keltic Collections

For the Defendant

Josh Corkum
Manager

BY THE COURT:

[1] The Claimant, 3312750 Nova Scotia Limited is a legal successor to Mailman's Truck-Pro Centre Limited. The underlying business operated by these companies is a truck service centre located in Hebbville, just outside of Bridgewater.

[2] The Defendant operates a towing business in the south shore area, with about ten trucks on the road at any given time.

[3] This claim concerns an unpaid bill for work done on one of the Defendant's vehicles in October 2017. The total of that bill (combined with a few random unpaid purchases) is \$6,358.14.

[4] The vehicle in question is a 2011 International DuraStar, a truck that comes in various configurations including as tow trucks.

[5] In October 2017, the truck simply would not start one day, so the Defendant had it towed into the Claimant's shop and gave instructions to them to try to diagnose and fix the problem.

[6] It is worth noting at this point that the Claimant had worked on a number of the Defendant's vehicles over the years, and it was not unusual for the Defendant to bring in a vehicle and leave it to the Claimant to determine what had to be done.

[7] The mechanics working for the Claimant began to try and get the engine running, which involved among other things removing and replacing the high-

pressure oil pump and the starter. Eventually, they got the motor running but it was exhibiting a “flutter” and it was clear that there was a problem in the engine.

[8] The service manager at the time, Neil Meisner, testified that the Claimant had some diagnostic software, but that it was not helpful with some of the more recent truck models. Only authorized International dealers had that software. He says that he told the Defendant to take the truck (which was now running) and see if it could be used; if not, he suggested that the Defendant take it to an International dealer to have the problem diagnosed. The Defendant was unwilling to do that, and brought the vehicle back to the Claimant’s yard where it stayed for a period of time.

[9] Eventually, the Defendant came and retrieved the truck and towed it to an individual in New Brunswick, who removed the engine and replaced it with a refurbished engine at a cost of almost \$25,000.00. That individual made some comments to the Defendant about the engine and the work that the Claimant had done, but I am not prepared to give those remarks any weight as:

- a. They are pure hearsay
- b. The individual’s name and qualifications are not before me
- c. The individual was not called as a witness

[10] The Defendant takes the position that the work done by the Claimant had no value, as it did not resolve the problem, and it resists paying the bill. It says that it has retained the old engine and is prepared to return to the Claimant all of the parts that the Claimant put on the engine, such as the oil pump.

[11] The claim is based on breach of contract. The Claimant is entitled to be paid if it can establish that the Defendant agreed to have it work on the vehicle in an open-ended way. It is clear that no estimate of charges was sought, and none was given, that would have limited the amount that the Claimant could charge.

[12] The Defendant's position is essentially that it would not have allowed the Claimant to go ahead had it known that there were limitations as to the diagnostic tests that the Claimant could do.

[13] I do not believe that the Claimant misrepresented its capabilities. The Defendant was quite familiar with the fact that the Claimant was a generalist, rather than a specialist in any particular type of vehicle. Obviously, the Claimant had decent qualifications. The Claimant had been successful in the past in serving the Defendant's needs, and it was reasonable for the Defendant to take this truck into the Claimant to "see what it could do."

[14] The fact that the engine would not start at all meant that the first obvious step was to try and get it started. Diagnostic tests to determine something like a faulty cylinder could not be run unless the engine was turning over. The Claimant rightly and reasonably attempted to get the engine running, and this was a major job involving many hours of labour and expensive parts. Although it was hoped that solving the starting problem might be the end of it, it turned out that there was something more seriously wrong in the interior of the engine, and it was at this point that the Claimant stated that it could not go any farther because it lacked diagnostic testing software.

[15] One could make the analogy that it is like presenting to one's general physician with a health problem, but that after exhausting their knowledge the physician recommends seeing a specialist. The work that the GP does is not wasted; it is a necessary part of the process that leads to a result.

[16] I do not believe the situation called for the Claimant to caution at the outset that it lacked diagnostic testing capability. It had good reason to believe that the problem would be within its expertise to repair, and I find as a fact that the Defendant instructed the Claimant to "do what you can" to diagnose and fix the problem. I also find that the work was done in good faith in the belief that it was authorized by the Defendant, and that no unreasonable work was done.

[17] It seems clear that the Defendant would not have been prepared to jump to an expensive repair without trying to have the problem fixed much less expensively, and that is what it hoped the Claimant could do. No one could have predicted at that time how this would end up.

[18] In the result, I find that the claim is established and the Claimant will have its judgment for \$6,358.14 plus costs of \$279.55, for a total of \$6,637.69.

Eric K. Slone, Adjudicator