IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Jackson v. Purdy*, 2023 NSSM 9

Date: 20230217
Claim: No. SCT 516100
Registry: Truro

Between:

Vernon Roland Jackson

CLAIMANT

And

Ken Purdy

DEFENDANT

Adjudicator: Julien S. Matte, Adjudicator

Heard: February 10, 2023

Counsel: Vernon Roland Jackson, self-represented Claimant
Ken Purdy, self-represented on behalf of Defendant

Matte, Adjudicator,

1. The Claimant operates a small appliance repair business and relies on his vehicles to get to and from his customers. The Defendant is a license car dealer who at the relevant time sold the Claimant a 2008 Subaru Tribeca with over 150,000 miles (approx. 250,000 kms) on the odometer. The Defendant testified that he had purchased the vehicle in 2020 and drove it for personal use until selling it to the Claimant. He described having no issues with the vehicle and noted it was the best vehicle he had ever owned for winter driving. The Claimant paid the Defendant just under $3800.00 plus tax. Based on a short test drive, the Claimant described the vehicle as in decent shape and running well. Neither party claims that the Defendant made any other representations about the vehicle.

2. After the sale, the Claimant drove the vehicle for about one week before encountering problems while driving on the highway when it began stalling and running poorly. The mechanic who worked on the vehicle testified that he had nearly 40 years of experience and was accepted by both parties as an excellent mechanic. The mechanic testified that the issues experienced by the Defendant were traced to the camshaft and the timing chain. He noted that all of the relevant components are lubricated and therefore covered and cannot be seen when opening the hood. The mechanic presented the various components to the Court pointing out the wear. The mechanic testified that he estimated that while timing belts are frequently replaced, a timing chain would not usually be replaced until the vehicle reached between 200-300K kms on the odometer. The mechanic also noted that the wear of the relevant components would be gradual and not noticeable until they reached a point where the components failed.

3. The Claimant asserted that the Defendant must have been aware of a problem with the vehicle before he sold it to him. He noted that had the vehicle failed 6-8 months after he purchased it, he could more easily accept the costs of the repairs to the vehicle as his own responsibility. However, he did not accept that he should be responsible for a nearly $5000.00 repair bill on a $3,800.00 vehicle after only one week of use. The claimant testified

that he has had bad luck with used vehicles and now purchases his business vehicles new.

4. The Defendant focused his arguments on questioning the Claimant's decision to repair the engine rather than approach another person whom he suggested was more knowledgeable about Subaru vehicles. The Defendant tendered a letter without calling the witness, a letter explaining that a cheaper option was possible. The Court puts no weight on the letter as it is hearsay and not germane to the issue before the Court.

Findings

5. The law with respect to the purchase and sale of used vehicles is well settled. Absent misrepresentations by the seller, a buyer purchasing a used vehicle does so at their own risk. The Claimant paid nearly $3,800.00 for a vehicle with over 250,000kms on it. While the Claimant says that the Defendant must have known of the defects with the timing chain and related components, he offers no evidence. In fact both parties agree that the vehicle ran well during the test drive and the Claimant drove it for 3500km before having it repaired.

6. The mechanic testified that timing chains are generally replaced at around the 250,000 km mark, the same as the mileage on the vehicle sold. Further, until the parts involved are worn past a certain point, there is little indication of a problem, a problem that would be hidden beneath the engine covers. Until the chain failed, there would be little indication of its impending failure. This means that for the Defendant to have known of the problem, he would have had to have a mechanic look under the covers to inspect the chain and components prior to the sale and then conceal that fact to the Claimant all the while ensuring the vehicle continued to work for long enough to sell the vehicle. There is simply no evidence in support of such a theory.

7. As explained by Adjudicator Slone in *MacLean v. LeBlanc*, 2014 NSSM 77, the legal principle of "buyer beware" is very much alive in Nova Scotia:

> This phrase is shorthand for the cold truth that a buyer of any type of property has very limited protection available in the event that something goes wrong. While this may seem harsh, from a policy perspective it could be seen as equally or even

> harsher that someone might sell property in good faith and yet have a potentially ruinous claim come back to haunt him or her, years later, because of a problem that no one knew about. For better or worse, the law has provided only very limited recourse in such situations.

8. Where a defect is patent, one that can easily be known by a buyer on inspection, the buyer takes the risk associated with the defect. Further, unless a buyer can show that a seller has misrepresented a latent defect, that is a defect that cannot easily be known on inspection, it is also the buyer who takes the risk.

9. The Defendant testified that he is a licensed dealer. Although he no longer sells vehicles full time, he still maintains his license. As a licensed dealer, the Defendant meets the definition of "seller" at s.2(n) of the *Consumer Protection Act*, RSNS 1989, c-92, as someone "who is in the business of selling goods or services to buyers". Under s.26 of the *Act*, a buyer is protected by a number of implied conditions or warranties. Of particular relevance here is at subclause 3(j) which reads:

> a condition that the goods shall be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

10. As complained by the Claimant, the vehicle was only used for one week before it had to undergo major repairs. Even a used vehicle's normal use would be expected to be longer than a week. However, the durability of the vehicle has to be evaluated with all the "surrounding circumstances of the sale" to determine if there is a breach of the statutory condition. Here a 14 year old vehicle with over 250,000 kms on the odometer was offered for sale at less than $3,800.00. There was no pressure applied by the Defendant for the sale nor were there any representations made to the Claimant. The latent defect of a worn timing chain could not have easily been known by the Defendant nor is there any evidence to suggest that it was. The Claimant could have researched or had a discussion with a mechanic about possible issues for a vehicle of this age and mileage and possibly obtained a comprehensive mechanical inspection prior to purchasing the vehicle. Instead, the Claimant took the vehicle for a short test drive and purchased it. The Court finds that having regards

to the circumstances, there was no period warranted for the use. As noted by the mechanic, now that the vehicle is repaired it should be good for another 250,000 kms insofar as the issues of the timing chain is concerned.

11. Likewise the *Sales of Goods Act* RSNS 1989, c-408, provides limited protection from the buyer beware adage. As noted by Adjudicator Sampson in *Lachapelle v. Smith 2021* NSSM 39, s.17 of the *Sales of Goods Act* confirms that there are no implied warranties unless they fall under the noted exception. Under s.17(a) an exception exists where a buyer makes it known they are purchasing the product for a specific purpose and the seller represents that it is fit for that purpose. For example here, if the Claimant had expressed a need for a winter vehicle and, as the Defendant did, the Defendant represented that it was an excellent winter vehicle, s.17(a) would operate to recognize an implied warranty that the vehicle was superior for winter use. However, whether the vehicle is a superior winter vehicle is not the issue that is before the Court. No relevant representations were made by either party to engage s.17(a) or any exceptions under s.17.

12. The coincidental timing of the failure shortly after the sale of the vehicle is just that, coincidence. It was up to the Claimant, before purchasing the vehicle, to take whatever steps the Claimant thought were appropriate to mitigate the risk of this type of failure. As it turns out, only a comprehensive inspection would have detected the problem. As a result, even the statutory protections, as applied to these facts, do not provide relief from the old adage of "buyer beware".

Order

13. The Claim is dismissed.

Julien S. Matte, Adjudicator