

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *King v. Urquhart*, 2023 NSSM 92

Date: 20231212

Docket: 524174

Registry: Truro

Between:

Ian Douglas King

Claimant

v.

Walter Stewart Urquhart

Respondent

Adjudicator: Julien S. Matte

Heard: November 27, 2023 via teleconference

Decision: December 12, 2023

Counsel: Ian Douglas King, self-represented
Walter Stewart Urquhart, self-represented

By the Court:

[1] The law with respect to purchasing a used vehicle from a private seller is well settled in Nova Scotia. While each set of circumstances must be considered on their own, by and large, the buyer of a used vehicle does so at his own risk. The circumstances here, leave little doubt, that the Claimant has no recourse against the Defendant for the vehicle that now sits unused in his driveway.

Facts

[2] After a brief online search for a car that would be reliable for their intended use as a work vehicle, the Claimant contacted the Defendant and soon negotiated a price, down \$400 from the initial amount of \$3,200 contingent on their satisfaction after the viewing. The Claimant, his wife and their daughter took the ferry from Prince Edward Island where they live to inspect and purchase the vehicle located near Truro, N.S. The Claimant's daughter traveled with them so she could drive their car back once the vehicle was purchased. The inspection of the vehicle was brief with no test drive as the Claimant was in a hurry to catch the ferry to get back to the flock of 140 sheep waiting to be fed back on PEI. The Claimant sat in the vehicle, looked under the hood, did a walk around and checked the information on fuel efficiency which he noticed wasn't very good.

[3] The parties agreed that the Defendant disclosed the presence of two holes in the rocker panels that would need to be repaired before inspection. In the Defendant's opinion the vehicle was road worthy and had a valid N.S. inspection for another year. The Defendant advised the Claimants that the vehicle was being sold "as is where is" just prior to sale being finalized.

[4] The Claimants say that the Defendant told them repeatedly that the vehicle would pass inspection while the Claimant did not recall whether he did or not. The Claimant says that the Defendant told him on the phone that the vehicle was undercoated. After he got home, the Claimant got underneath the vehicle and found that there was either no undercoating or it was old and dried. After taking the vehicle to get inspected, he was told the body rust was too extensive to be repaired. The vehicle has not been driven since.

[5] The Defendant testified that he purchased the vehicle in 2021 and had it undercoated at that time. He advised the Claimants that they would have to repair the rocker panels to pass inspection but was not aware of any other body rust. He notes that he put new tires, brakes, a wheel bearing and a drive shaft and regular oil changes but had not used the vehicle since April of 2023.

Findings

[6] The starting point to any used car sale between two private parties is the adage “buyer beware”. Buyer beware means that it is the buyer’s responsibility to ensure that what they are purchasing is suitable for them. The seller, absent clear representations about aspects of the vehicle not readily apparent, does not offer any implied warranties about the vehicle or its road worthiness (See *Jackson v. Purdy*, 2023 NSSM 9 at paras. 7-9). As between two private individuals, the term “as is, where is” reflects the buyer beware adage and adds little to the terms of the agreement beyond an express acknowledgment of this principle.

[7] The seller is not responsible for pointing out apparent defects but may bear some responsibility for disclosing defects that are known to the seller but not otherwise apparent. For example, an intermittently malfunctioning transmission may need to be disclosed while body damage may not. Every situation is different.

[8] The Claimant alleges that the Defendant was not forthcoming about the undercoating of the vehicle or the extent of the rust. There is no allegation that undercoating was used to cover up rust or that the Defendant failed to disclose the rust issue during their initial call.

[9] The Defendant undercoated the vehicle in 2021 and may have disclosed during the initial call between the parties that the vehicle was undercoated without

specifying when. Upon inspection of the vehicle, the Claimant looked under the hood and assumed that a substance found was recently applied undercoating. The Claimant never asked when the undercoating was applied and did not look under the car to confirm whether the car was undercoated or not.

[10] Once the Claimant returned home and looked under the car, he immediately discovered that the car was either not undercoated or not recently undercoated. It is clear that even if the Defendant failed to disclose the year of the undercoating, the presence of undercoating is not a hidden defect given the Claimant's immediate discovery upon looking under the car.

[11] Further there is no connection between the presence of old undercoating and rust. Undercoating is not a guarantee that the vehicle is rust free. The Claimant's initial disclosure of rust issues makes the presence of inadequate uncoating somewhat of a moot point. The Claimant had all the information he needed to make an informed decision about the purchase and simply took a risk based on feeling an oily substance under the hood.

[12] The Claimant also believed that the paperwork demonstrated that the odometer had been tampered with therefore putting into question the Defendant's honesty. However, after the documents were more closely scrutinized by the

Court, the Claimant accepted that this was not the case and the mileage increased over time as would be expected. Unfortunately, it appears that the damage was done, and the Claimant had already concluded that he had been duped into purchasing a rusty vehicle by what he believed to be partially applied undercoating designed to deceive him.

[13] The Court finds that if there was a misunderstanding about the year of undercoating application, it was incumbent on the Claimant to inspect the vehicle before purchase and satisfy himself of its condition. It appears that the Claimant made assumptions about a substance he felt was fresh undercoating under the hood without asking the Defendant any questions at the time of the sale.

[14] The Claimant's assumption about the undercoating also appeared to lead him into error that the rust was not significant. The Court finds that the Defendant brought the issue to the attention of the Claimant by explicitly telling them that the rust needed to be addressed before an inspection could be passed. This evidence was uncontradicted.

[15] Although unfortunate that the rust was more extensive than what they were told by the Defendant, there was no evidence to suggest that the Defendant was in any better position to know the extent of the rust involved given that the vehicle

had passed inspection a year before and not used since April 2023. The disclosure, during the initial phone call, of the presence of rust sufficient to affect a future inspection should have alerted the Claimant either to find another vehicle or have the vehicle inspected by a mechanic before purchase. There is little else that the Defendant could have disclosed. As noted, the Defendant had invested significant sums of money into the vehicle, sums he says the Claimant could now recover if the vehicle is parted out.

[16] The Claimant repeated, several times, that he did not have time to properly inspect or test drive the vehicle as he had to catch the ferry back to the island. Considering the Claimant's evidence of the importance of the vehicle for work and the requirement to borrow funds to purchase it, the Claimant failed to exercise any due diligence to ensure that the vehicle met his needs.

[17] The Claim is dismissed.

Julien S. Matte, Small Claims Court Adjudicator