

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation:** *Okagu v. Top Gear Automotive*, 2024 NSSM 12

**Date:** 20240207  
**Docket:** 528423  
**Registry:** Digby

**Between:**

Jude Ikechukwu Okagu

Claimant

v.

Top Gear Automotive Limited

Defendant

**Adjudicator:** Eric Slone

**Heard:** February 2, 2024

**Decision:** February 7, 2024

**Counsel:** Claimant, self-represented  
Defendant, Faisal Jaber, owner

**By the Court:**

[1] The Claimant is an international student with a young family.

[2] The Defendant is a limited company owned by Mr. Faisal Jaber. At times I may refer to Mr. Jaber as the Defendant, though I am mindful that the Defendant is the limited company.

[3] This case concerns a 2012 Honda CRV which the Claimant bought from the Defendant.

[4] The Defendant is in the business of selling and servicing used motor vehicles, from its premises in Upper Hammonds Plains. One of the ways that it obtains vehicles to sell is via auctions. This was the case with the subject vehicle, which had been purchased at auction several months earlier. The vehicle passed Motor Vehicle Inspection on September 19, 2023 and was issued a certificate.

[5] The sale price for the subject vehicle was \$12,700.00, inclusive of taxes. The bill of sale stipulates that there is no remaining warranty, nor any extended warranty. The vehicle had in excess of 180,000 km on the odometer but was represented to be in good condition.

[6] The vehicle changed hands on October 6, 2023. All but \$1,000.00 was paid as of that date, with the \$1,000.00 balance promised.

[7] Immediately upon driving away the Claimant noticed that the check engine light was on. The rear wiper motor was also not working properly. He brought these things to the attention of the Defendant's owner, Mr. Jaber, who had his mechanic perform some diagnostics. They determined that the engine problem may have been associated with a faulty camshaft sensor. He ordered the two parts on October 7.

[8] The Claimant kept checking with the Defendant to see if the parts had arrived. On about October 26, 2023 the parts had (supposedly) arrived so he took the vehicle in. It turns out that the wrong sensor had been delivered, so only the wiper motor could be fixed. Mr. Jaber offered to order the correct sensor.

[9] The Claimant became anxious and decided to get an outside opinion. He took the vehicle to Loop Auto in Bedford for an opinion. They removed the valve cover and looked at the timing chain. They noticed that it was misaligned and that the guides were broken. They had a concern that there were some broken parts

that had fallen into the engine, which could cause it to seize up. As such they recommended that the engine be replaced rather than attempt a repair.

[10] The Claimant informed the Defendant of this recommendation. Mr. Jaber insisted that he was no longer responsible as the engine had been opened by someone else.

[11] The Claimant believed he had no other recourse, so he took his vehicle to Cankurd Automotive Service in Harrietsfield who arrived at the same conclusion, and who performed the work at a cost to the Claimant of \$5,007.68. That same company had done some previous work for the Claimant.

[12] The Claimant seeks to recover this cost, as well as some other expenses.

[13] The Defendant does not entirely deny responsibility, but faults the Claimant for not allowing him to follow through with the camshaft sensor which he believes would have resolved the issue. He also faults the Claimant for allowing someone else to open up the engine.

[14] The Defendant counterclaims for the \$1,000.00 still owing on the vehicle, as well as for other damages which are not within the court's jurisdiction and which were not pressed by the Defendant.

[15] Unfortunately, the relationship between the parties has become toxic, as the Claimant has become convinced that the Defendant is dishonest and he has taken to social media to disparage him. Hopefully this decision will allow both parties to end this unfortunate chapter.

### **Used vehicles**

[16] While a seller such as the Defendant may believe that it can escape all legal liability by stating on the sales document that there is no express or implied warranty, that is not entirely true, as a matter of law. It can certainly disclaim express warranties. But the question of implied warranties is governed by the Nova Scotia *Consumer Protection Act*, which introduces some minimum level of protection for purchasers of goods from professional sellers - "notwithstanding any agreement to the contrary". The Defendant is a professional seller.

[17] It is worth mentioning that these implied warranties do not apply to sales between private individuals.

[18] The applicable sections of the *Consumer Protection Act* are:

### **Implied conditions or warranties**

26 (1) In this Section and Section 27, "consumer sale" means a contract of sale of goods or services including an agreement of sale as well as a sale and a conditional sale of goods made in the ordinary course of business to a purchaser for his consumption or use ....

(2) In this Section and Section 27, "purchaser" means a person who buys or agrees to buy goods or services.

(3) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

.....

(e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, a condition that the goods shall be reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose; .....

(h) a condition that the goods are of merchantable quality, except for such defects as are described; .....

(j) 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.

[19] I had occasion to comment upon these sections in *Randolph v. Tibbs*, 2012 NSSM 19, a case where a 6 or 7 year old used car, already having been driven about 100,000 kilometres, developed serious transmission problems after being driven a further approximately 600 km by the Claimant. I found the Defendant responsible, and commented:

15 The extent, if any, of the obligations of a vendor of used cars has been a thorny issue for courts everywhere. There are cases that appear to apply the principle of *caveat emptor* (buyer beware) with great strictness, while other courts have been more forgiving and allowed relief in favour of consumers. Cases in other provinces are of limited value without looking closely at their statutory framework. In Nova Scotia, there is an implied warranty in relation to consumer goods or services provided for under the *Consumer Protection Act* of Nova Scotia. That Act is specifically addressed to professional sellers of goods, like the Defendant. This distinction is important, as it places legal responsibilities upon dealers that are not placed on private sellers. ....

17 What this all means is that a professional seller implicitly warrants that

consumer goods are “merchantable” and free of any hidden defects, and “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.” .....

18 There is no question that this Act applies to the sale of motor vehicles, as well as other manufactured goods, which fact may surprise some sellers who believe erroneously that the existence of a manufacturer’s warranty excuses them from any direct responsibility for what they sell. ....

19 All of this begs what is perhaps the bigger question, namely how far does the warranty extend? What kind of promise is actually being made with respect to a clutch and manual transmission that, as far as we know, had been driven almost 100,000 km? And given the evidence that bad driving can cause a manual transmission to fail in a very short period of time, how much do we really know about the state of the transmission at the time of sale?

20 There is good reason to restrict the application of the implied warranty in the case of used vehicles that are older models with considerable mileage. This vehicle was between six and seven years old, and had been driven almost 100,000 km. ....

23 Nevertheless, it is difficult to say that this vehicle proved itself to be reasonably durable. I believe that most objective observers would say that a vehicle should not suffer this serious a transmission problem in such a short time. According to the sales contract, the kilometres on the vehicle at the time of sale totalled 97,517. The repair invoice dated February 10, 2012 shows an odometer reading of 98,129, which means that the vehicle had been driven all of 612 km in the time that the Claimant had owned it. While the Claimant had not driven a manual transmission for some time, she did have prior experience on a manual transmission and most people would say that this is a skill that one can easily recover, like riding a bicycle. Mastering a manual transmission is not rocket science.

24 Accordingly, I am prepared to make finding that there has been a breach of the implied warranty of reasonable durability, and that some amount is recoverable as damages.

[20] In a subsequent case, *Theriault v. Mobility Auto Sales Inc.*, 2014 NSSM 40, I also applied the Act to a situation where a used vehicle developed a problem the day after it was sold to the Claimant.

[21] Notwithstanding the occasional success under the Act experienced by claimants, I am also mindful that the Nova Scotia Supreme Court in *Robertson v. Seddon*, 1997 CanLII 9845 (NS SC) had earlier cautioned that the protection of the Act was “minimal” in a situation where the dealer extended no warranties and the purchaser had every opportunity to have it inspected.

## Findings

[22] This vehicle was not reasonably durable or fit for the intended purpose, and under any standard did not meet the implied warranty under the *Consumer Protection Act*.

[23] The Defendant did not research the history of the vehicle, which is something that the Claimant did for purposes of this case. He discovered that in February 2023 a service facility in the Annapolis Valley had detected a problem with the timing chain. Had the Defendant shown some initiative, it could have discovered the problem and rectified it (on its own terms) before selling it to the Claimant.

[24] The Defendant appeared to have been willing to assist, to a degree, but in my opinion unreasonably disclaimed all responsibility after the Claimant had the vehicle assessed by an outside party. There is nothing in the *Consumer Protection Act* that entitles a Defendant to perform the remedial work, or that disentitles a Claimant to any recourse if he allows someone else to inspect the vehicle. There is no reason to suspect that Loop Auto did anything to damage the engine when they opened it up to have a look. In fact, I believe that they would have been remiss had they not looked closely at the problem, and just relied on codes to diagnose the problem.

[25] The Defendant had a chance to mitigate the damage by undertaking the repair when he became aware of Loop Auto's diagnosis.

[26] I find that the Defendant is liable to the Claimant for \$5,007.68. The Defendant is entitled to a credit for the \$1,000.00 not paid.

[27] I do not find that the Claimant has proved any other special damages.

[28] There is no jurisdiction to award general damages beyond \$100.00 to compensate him for all of the stress and inconvenience he says he has suffered, which is what I will allow.

[29] The Claimant is also entitled to his reasonable costs which I will fix at \$500.00, as I find some of the subpoenas to have been unnecessary.

## ORDER

[30] The Claimant will accordingly have judgment against the Defendant for the

following amounts:

Special damages	\$5,007.68
General damages	\$100.00
Costs	\$500.00
Less counterclaim	(\$1,000.00)
Total	\$4,607.68

Eric K. Slone, Small Claims Court Adjudicator