

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Al Rafai v. Mackay's Transmission Limited*, 2024 NSSM 25

Date: 20240318

Docket: 528510

Registry: Halifax

Between:

Khaled Al Rafai

Claimant

-and-

Mackay's Transmission Limited c.o.b. as Cottman Transmission (Dartmouth)

Defendant

Adjudicator: Eric K. Slone

Heard: March 14, 2024

Counsel: Claimant, self-represented and (son) Waled Al Rafai
Defendant, Kelly MacKay, owner

By the Court:

[1] This is a claim by Mr. Al Rafai seeking damages in the amount of \$9,200.00 for an alleged breach of warranty by the Defendant.

[2] The originally named Defendant, Cottman Transmission, is not the precise legal name of the Defendant. In fact, it should be Mackay's Transmission Limited carrying on business as "Cottman Transmission - Dartmouth." However, nothing turns on this distinction, and the style of cause is amended to reflect the Defendant's proper corporate identity. For convenience the Defendant will be referred to as "Cottman."

[3] The claim as pleaded states (slightly edited):

I repaired the transmission of my car in June 2022 in the amount of \$5,000 and Cottman gave me a warranty for one year or 20,000 km. After four months my car broke down and I returned it to them in December 2022. It stayed with them until August 2023. And they gave it to me only after they took the price of the parts from me again. I took it to a mechanic to obtain a motor vehicle inspection who told me that the transmission was not repaired correctly.

[4] The case is very thin on documents, and the evidence of Mr. Al Rafai was lacking in many respects. I acknowledge that he is an Arabic speaker, who was speaking through the translation of his son Waled. I have no reason to doubt that Waled translated faithfully. The issue was not language, but substance.

[5] What does not seem in doubt is this. The vehicle in question is a 2011 Toyota Sienna, which developed serious transmission problems in or about June 2022. The odometer reading on the vehicle at the time was approximately 237,000 km. The Claimant was presented with an invoice for \$5,027.80 and paid \$5,000.00 on June 14, 2022. There was some controversy over whether \$27.80 was still owing on that bill, but I regard this as a petty difference that has no bearing on the case.

[6] There is no dispute that the vehicle experienced another transmission failure and was brought back to Cottman approximately four months later. There is no paperwork documenting this return visit.

[7] There is in evidence a further invoice from Cottman dated August 17, 2023, that recites that certain things were done including the replacement of a battery. On August 21, 2023, the Claimant paid this invoice in the amount of \$1,244.30. There is no notation on the invoice as to the odometer reading.

[8] According to Mr. Mackay, when the vehicle was first brought back to him in 2022, he discovered that the transmission had virtually no fluid left in it. He noticed that the vehicle had had its radiator replaced. He explained that when a radiator is removed, there is a risk that the transmission fluid may leak out at the same time. It is only when the vehicle is on a hoist that one can have access to the transmission and can replenish the fluid. With an inadequacy of fluid, a transmission will eventually burn out.

[9] Mr. Al Rafai testified that the radiator replacement occurred after the vehicle had been put back on the road by Cottman in the fall of 2022. He had no documentation to substantiate the timeline of this radiator replacement.

[10] I am left in considerable doubt as to the sequence of events here, which is simply one of the many doubts that I have.

[11] The Claimant also placed into evidence a document dated November 9, 2023, which purports to be an estimate by a company called M.A.R.S. Auto Repair Solutions on the Prospect Rd. in Halifax.

[12] One notable entry on that document is the odometer reading of 258,000 km. For what it is worth, the subject vehicle would have been driven in excess of 20,000 km since it had been initially serviced by the Defendant, and any warranty associated with the original work would have expired.

[13] The main purpose of this document was obviously to bolster the Claimant's case against Cottman. The author of the document, who is not identified by name, makes some bold statements:

Transmission needs to be replaced. It has an internal problem and cannot be fixed.

Transmission was replaced by another shop and job was not done correctly.

Internal transmission issue cannot be fixed. A whole new transmission assembly is required.

[14] I am asked to accept this document as proof that the original work done by Cottman was deficient. Further several reasons, I cannot give this document any weight. The author is not identified by name. The statement is not signed, let alone sworn. The author is not available to explain his conclusions, and be cross-examined by Mr. Mackay who is not only the party exposed to liability but also someone who is been in the transmission business for over four decades. The Claimant invited me to contact M.A.R.S. for more information. I explained that this is not my role. For better or worse, this is an adversary system, not an

inquisitory one.

[15] It is frustrating for the court to watch ordinary people struggle with trying to prove a case. Here, the Claimant provided very little by way of documentation and produced no witnesses to substantiate his claim that deficient work had been done. It is not the court's role to conduct the parties' case for them. Obviously we must be flexible and forgiving of people's unfamiliarity with legal matters and procedural issues, but in the end they cannot simply expect to be successful without admissible evidence and sufficient proof to make out a case.

[16] This is especially so when there are significant moneys at stake. The claimed amount of \$9,200.00 is not a small amount of money, which invites some rigour in terms of the evidence necessary to claim it.

[17] The evidence before me is unclear, to say the least. The Claimant has not shown that he is entitled to relief under the warranty. The evidence of the radiator replacement is uncertain. There is nothing in writing to substantiate when it was done. The Claimant admitted that it was not done at a professional shop, but was done on a cash basis by some unidentified individual.

[18] I consider it as likely as not that the radiator replacement caused the transmission fluid to leak out, and this led to the transmission failure that would have otherwise been covered under warranty. I agree with Mr. Mackay that he cannot be held responsible under the warranty when the transmission has been tampered with, however accidentally. It is the Claimant's onus to prove that the transmission work done in June 2022 did not last with normal usage. That onus has not been met.

[19] There is also something suspicious about the amount of kilometres that the vehicle was driven with the new transmission. The Claimant's evidence, as I understood it, was that the vehicle broke down very soon after the vehicle was released by the Defendant in August 2023. He says that it had to be towed to M.A.R.S., at which time the odometer had advanced by 21,000 km. since the initial work. I am not convinced that the warranty was breached.

[20] Although I am not inclined to award any damages, I will comment on the damages that the Claimant seeks. He seeks the return of his initial \$5,000.00 expenditure, as well as the second bill from Cottman in the amount of \$1,244.30. He also seeks reimbursement of his insurance premiums for one year during which time, or throughout most of which time, the car was not drivable. He seeks a further \$1,500.00 for other work done on the vehicle, unrelated to the transmission, that he does not expect to get the value of, because the vehicle is essentially derelict.

[21] Had I been inclined to find the Defendant in breach of warranty, some but not all of these damages might have been recoverable. The better measure of damages would be, however, the cost of replacing or repairing the transmission. There was no evidence of what that would cost. However, I need not elaborate further as I find that the Claimant has not established to any legal standard that the Defendant breached its warranty and accordingly the claim must be dismissed.

ORDER

[22] In the result, the Claimant is dismissed.

Eric K. Slone, Small Claims Court Adjudicator