

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

BRIAN PUTMAN

Plaintiff

- and -

RON'S AUTO SERVICE LTD. and
RONALD GIBEAULT and JOAN GIBEAULT

Defendants

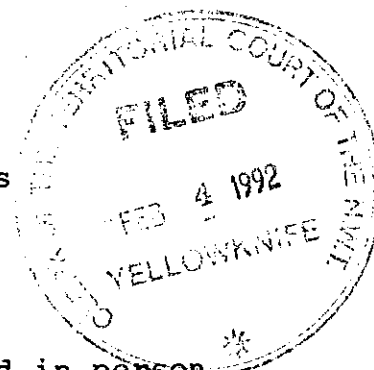
Heard at Yellowknife, N.W.T.

Reasons filed: February 4, 1992

REASONS FOR JUDGMENT

of

His Honour Judge T.B. Davis



Counsel for the Plaintiff: Plaintiff appeared in person
Counsel for the Defendants: Ronald Gibeault appeared in person

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REASONS FOR JUDGMENT

The Plaintiff, Brian Putman, claims that Ronald Gibeault, the Defendant, who operates as a motor vehicle mechanic in his shop known as Ron's Auto Service Ltd., had damaged one of the valves in the 1959 Dodge pick-up truck when he had installed a Healey coil in cylinder #4.

FACTS

The Plaintiff had recently purchased the vehicle in the United States and had driven it 3,400 miles to Yellowknife. Within two weeks he noticed that it was stalling. He checked around to find a garage that would perform a tune-up at the cheapest price in July, 1991.

At the repair shop chosen by the Plaintiff, difficulties were encountered when the mechanical work being done stripped the threads in the aluminum head of the engine of #4 cylinder so that a spark plug would no longer screw in and remain in place. As the first repair shop did not have the ability to repair this problem, the repairman and the Plaintiff arranged to have the vehicle taken to the Defendant's shop for the insertion of a sleeve, threaded on both the outside where it screws into the engine block, and on the

inside where a spark plug can be screwed into the sleeve, known as a Healey coil.

Although the #4 plug would not screw securely into the cylinder, the vehicle was driven to the Defendant's shop where, after accepting delivery of the vehicle, it was pushed into the shop and the "Healey coil" was inserted.

The Defendant explained how he had cut new threads in the engine head into which he inserted the Healey coil. A process called "tapping" is done. During this tapping of new threads, grease is used to both act as a lubricant for the cutting blades of the tap and to collect any aluminum or metal filings. The Defendant explained the procedure for tapping. He said that, after a maximum of only one or one and one-half turns at a time when cutting the new threads with the tap, he would unscrew and remove the grease and any filings before putting in fresh grease and again tapping another thread in sequence until the sleeve could be inserted far enough to hold the spark plug in its proper location.

The spark plug, the hole into which it fits, and the Healey coil do not touch the valves in the engine, but all of these are located near the head of the cylinder.

The Defendant had observed that the coil he was using to begin the repair work had become tight. He chose to use a new, and therefore a second, Healey coil on which he could be sure the threads were not stressed and would therefore screw into place without the possibility of stripping the new threads that he had cut into the aluminum engine head. He took this precaution because aluminum is a softer material than some of the other forms of steel used in other engines.

After the Plaintiff picked up his vehicle from the Defendant's shop, he noticed that the engine was running roughly but continued to drive it for a number of days before reporting this condition to the Defendant. The condition did not improve and the Plaintiff presumed that the "timing was out of kilter".

The Plaintiff learned that a valve in cylinder #4 was slightly bent, resulting in decreased or zero compression.

The same lack of compression would have occurred when no spark plug was in cylinder #4 while the vehicle was driven from the first repair shop to that of the Defendant's.

The Plaintiff incurred expenses for the replacement of the bent valve which he claims from the Defendant.

QUESTION FOR THE COURT

Was there a link between the installation of the Healey coil by the Defendant and the damage to the valve? Is there any legal basis on which to find the Defendant liable for the claim of the Plaintiff?

The Plaintiff says that the engine was running roughly when he picked it up from the Defendant and therefore the Defendant must have damaged the valve.

The Defendant, who was the only other person to give evidence to the Court, and who is a registered and qualified mechanic, states that aluminum filings, even if left in the cylinder from the tapping of new threads, would not be hard enough material to cause the valve to bend.

The Defendant also states that he did not tune up the engine and therefore did not turn over the crank shaft or align the valve timing shaft which might have resulted in force being applied of sufficient stress to damage the valve, whether applied by hand or improperly by battery power, assuming an error had been made in adjusting the timing during the tune-up. If the shaft is turned out of time when replacing a timing belt, the piston could bend a valve. The evidence of the Defendant indicates that this is not an uncommon result or occurrence and that at no time could his work, the installation of the Healey coil, have caused the bending of the valve.

The Plaintiff acknowledged that the tune-up was done by a person identified as Ivan at the first repair shop referred to herein.

I cannot accept the evidence of the Plaintiff who states that the engine was running smoothly until he received it back from the Defendant, since the engine at least between the first shop and the Defendant's shop was running without the use of one of its spark plugs that was unable to be held in place because of the stripped threads.

The Plaintiff was given the opportunity, and to a limited extent was advised, to call the mechanic from the first repair shop so that the Court could assess his evidence to determine whether what he had done on the vehicle was or was not the actual cause of the damage, or whether the valve was bent even before he started to do the tune-up on the vehicle.

The small scratch or indentation observed by the Court on the valve produced by the Plaintiff was obviously not a mark or flaw on the smoother or machined surface ring of the valve where it sits on

or against the valve hole in the engine head. It is impossible for the Court to determine, without some advice from a qualified person, that a nick or scratch on an unessential part of the valve was caused by metal filings dropped in the tapping process. It might have been caused, as the Defendant says, by the valve being bent when it was hit by the piston.

The contract between the parties was for the Defendant to install a Healey coil in the Plaintiff's vehicle. There is no evidence that that coil was not installed properly and that it effectively retained the spark plug in place.

Without producing evidence from the mechanic who worked on the vehicle before the Healey coil had been inserted, there is no basis on which the Court can find that the Plaintiff has proven on the balance of probabilities that the Defendant caused the damage.

As neither party to these proceedings had been represented by counsel, I wished to ensure that I had considered every legal basis on which a finding could have been made for the Plaintiff who as yet does not know the cause of the bent valve. I have been unable to produce any.

Any party who is affected by a decision of this Court may seek a further remedy pursuant to the Rules of Court, which Rules are available from the office of the Clerk of the Court, 2nd Floor, Court House, Yellowknife.

As neither party called the mechanic who may have shed some light on this matter, I am allowing no costs to either party.

The action by the Plaintiff against the Defendant is hereby dismissed.

A handwritten signature in cursive script, appearing to read "Thomas B. Davis". The signature is written in dark ink and is positioned above a horizontal line.

JUDGE T.B. DAVIS