

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

DELTA FORD MERCURY SALES LTD.

Plaintiff

and

HARRY PEFFER

Defendant

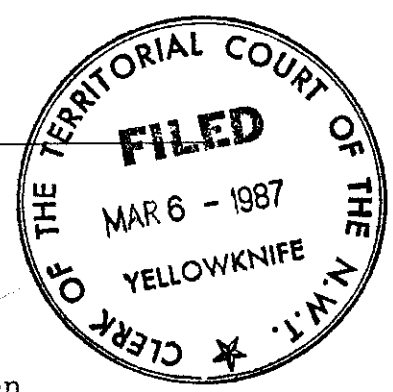
Heard at Inuvik, N.W.T.

Reasons Filed: March 6, 1987

REASONS FOR JUDGMENT

of

His Honour Chief Judge J. R. Slaven



APPEARANCES:

F. KAMBER

On behalf of the Plaintiff

H. PEFFER

On his own behalf

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Plaintiff

and

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Defendant

REASONS FOR JUDGMENT

The Plaintiff's claim is for parts and labour used in attempting to repair a 90 H.P. motor owned by the Defendant, and interest on the unpaid balance, less \$175.00 paid by the Defendant to the Plaintiff. The total claim is \$1,048.26.

On 26 August 1986, I heard unsworn evidence and submissions from F. Kamber, an employee of the Plaintiff, and the Defendant. On 25 November 1986, I heard the sworn evidence of E. Kiel, a mechanic employed by the Plaintiff who did the work on the motor.

A fair amount of the evidence is contradictory, and having weighed it carefully I have made the findings of fact

contained herein. In deciding what weight to give to the Defendant's evidence, I was influenced by the fact that although the Plaintiff sent monthly statements of what is considered a past due account to the Defendant, he did not dispute the amounts claimed to be owing until the Plaintiff threatened legal action in February 1986. Although he admits the indebtedness for parts, he made no earlier offer to pay for them.

In June and July of 1985, the Defendant's motor was not in proper working condition. He then obtained a charter from I.C.S., from which he expected to realize the sum of \$750.00. He phoned Mr. Kamber in early July and arranged for his motor to be repaired sufficiently for him to fulfill his charter. It was agreed he would pay \$175.00 down, and the balance would be on credit. Mr. Kiel then went to the river and brought the motor to the shop. He stripped the engine and put in the parts that were bare essentials to get the motor running quickly, and adequately for the charter. The motor was tested twice, in the shop and in the river, in the Defendant's presence. It was still not working properly, and Mr. Kiel informed the Defendant that more parts would have to be sent for, and more work done on it. The Defendant refused to wait for more parts or to allow Mr. Kiel to do any further work on the motor. He took the motor back, and the Plaintiff commenced sending him monthly statements of the amount it

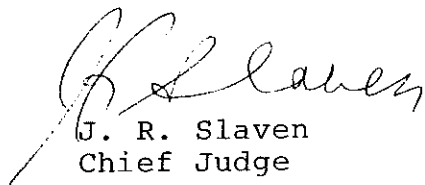
claimed was owing. At some time when the motor was under repair by the Plaintiff, the Defendant signed an invoice (a copy of which is on file herein as an exhibit to the Statement of Claim) acknowledging in blank amounts his indebtedness for the total amount shown on the invoice, and authorizing the work and parts referred to therein.

Eventually, with the help of a service manual and lengthy telephone conversations with a motor dealer in Edmonton, and further parts, the Defendant was able to restore the motor to running condition himself.

The mechanic, E. Kiel, would appear to be qualified and experienced in the type of work he undertook to do for the Defendant.

In short, the work done by a qualified mechanic was authorized by the Defendant, and because of the Defendant's action the mechanic was not able to complete the work satisfactorily.

Judgment to enter for the Plaintiff in the amount of \$1,048.26 and its costs to be taxed.


J. R. Slaven
Chief Judge