

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOSEPH KAPRAELIAN

Plaintiffs

- and -

**KENNETH LEENHOUTS AND
ABC AUTO SERVICE & DETAILING**

Defendants

REASONS FOR DECISION

of the

HONOURABLE DEPUTY JUDGE BERNADETTE SCHMALTZ

Corrected Judgment: A corrigendum was issued on December 16, 2020; the corrections have been made to the text and the corrigendum is appended to this judgment.

Heard at: Yellowknife, Northwest Territories

Date of Written Decision: September 18, 2020

Date of Trial: September 11, 2020

Appearances for Plaintiffs: Joseph Kapraelian

Appearances for Defendants: Kenneth Leenhouts

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INTRODUCTION

[1] Joseph Kapraelian (the Plaintiff) claims that Kenneth Leenhouts and ABC Auto Service & Detailing (the Defendant) damaged the Plaintiff's 2017 Honda Pilot (the Vehicle) by putting the wrong type of Freon in the Vehicle. The Plaintiff traded the Vehicle in after finding out that the Vehicle's air conditioning system was damaged. The Plaintiff claims the trade in value of his Vehicle was reduced by \$6,000.00 due to the damaged air conditioning system. The Defendant denies that he damaged the Plaintiff's Vehicle, and denies putting any Freon in the Vehicle.

The Plaintiff's Claim

[2] The Plaintiff testified that in early June 2018, the air conditioning in his Vehicle was not working. The Plaintiff went to Canadian Tire in Yellowknife and enquired about having the air conditioning repaired and was told that Canadian Tire would not be able to book an appointment to look at the Vehicle for three weeks. Upon leaving Canadian Tire, the Plaintiff noticed the Defendant's business sign across the street from Canadian Tire: *ABC Auto General Repairs*. The Plaintiff went to ABC Auto and spoke to the Defendant. The Plaintiff says the Defendant looked at his Vehicle, and said he could not see anything wrong, but it may just be low on refrigerant (Freon). The Defendant said he did not have the proper adapter to put refrigerant in that Vehicle, but he would order the part and told the Plaintiff to bring the Vehicle back to ABC Auto next week.

[3] Also on this initial visit, the Plaintiff asked the Defendant if the Defendant did Honda warranty work and the Defendant said he did. The Plaintiff was very pleased to hear this as he would then be able to bring his Vehicle and his wife's vehicle to the Defendant's for servicing rather than taking them all the way to Grande Prairie, Alberta, which was a 12 to 13 hour drive from Yellowknife, each way.

[4] The Plaintiff testified that he did not return to ABC Auto the following week, but did return a few weeks later. At that time, the Plaintiff testified that there was a sign up that the garage was closed for 6 weeks for renovations.

[5] The Plaintiff testified that he returned to ABC Auto 6 weeks later, at which time the Defendant took the Vehicle into his garage, and about 45 minutes later he told the Plaintiff that he put 2 bottles of refrigerant in the Vehicle and replaced a seal; the Defendant denied that he told the Plaintiff this. The Plaintiff said the Defendant charged him \$140 for the refrigerant and \$40 for the seal and \$9 GST, totaling \$189.00. The Defendant entered an itemized invoice as Exhibit 1 on the trial, setting out the work that the Defendant did on the Plaintiff's Vehicle on July 27, 2018, and further testified as to what work he did on the Vehicle. The Defendant testified that he did not replace any parts on the Vehicle, and did not put any refrigerant or Freon in the Vehicle.

[6] In Court the Plaintiff testified that the only receipt he was offered was the slip from the debit machine after he paid the \$189.00 with his debit card; the

Plaintiff testified that he told the Defendant that he did not need the receipt. However in his Statement of Claim, the Plaintiff says:

Ken [the Defendant] asked if Joe [the Plaintiff] wanted a *bill* and Joe [the Plaintiff] declined as it didn't seem necessary at the time; *it seemed routine and there were no major parts changed.* [my emphasis]

[7] After leaving the Defendant's repair shop on June 27, the Plaintiff parked the Vehicle and it was not used for two weeks. After two weeks, the Plaintiff's wife picked him up at the airport and she told the Plaintiff that the Vehicle was making a noise. The Plaintiff also noted that the Vehicle was making a noise when the air conditioning was on and the vehicle accelerated. The Plaintiff took the Vehicle back to ABC Auto the following day. The Defendant listened to the vehicle and told the Plaintiff that it sounded like the compressor. The Defendant told the Plaintiff that he did Honda warranty work. The Plaintiff had a "bumper to bumper warranty" but told the Defendant that he would take it to a dealership as it sounded like something serious.

[8] In early October 2018, the Plaintiff took his Vehicle to another mechanic in Yellowknife, and explained to that mechanic what happened. That mechanic did not have time to look at the Plaintiff's vehicle for three weeks. Three weeks later, the Plaintiff returned to the second mechanic and the mechanic said he would look at the Vehicle. However the Plaintiff asked the mechanic whether it would be better for the Plaintiff to drive the vehicle down to Grande Prairie to the Honda Dealership. Without ever looking at the Vehicle, the Plaintiff says the mechanic told the Plaintiff it would be better to take the Vehicle to the dealership.

[9] The Plaintiff drove the Vehicle down to Grande Prairie the following day. The Honda dealership in Grande Prairie determined that the wrong Freon had been put in the Vehicle, and it need to be removed, at a cost of \$300.00 to \$500.00. The Plaintiff testified that when he told the Defendant that it would cost \$300.00 to \$500.00 to remove the Freon, the Defendant told the Plaintiff to bring the bill to the Defendant and the Defendant would pay it. The Defendant denied having this conversation with the Plaintiff.

[10] In November 2018, the Plaintiff left his Vehicle with the dealership in Grande Prairie to remove the Freon. However the dealership contacted the Plaintiff about a week later and told the Plaintiff the damage caused by the Freon was more extensive than originally thought. In the end the repair involving

removing the Freon would cost \$5,700.00, and the air conditioning warranty on the Plaintiff's vehicle would be void. Rather than have the air conditioning system repaired, the Plaintiff decided to trade the Vehicle in, and purchase a new vehicle. The Dealership reduced the trade in value of the Vehicle by \$6,000.00 due to repairs needed to the air conditioning system.

[11] The Plaintiff claims that because the Defendant put the wrong Freon or refrigerant in the Vehicle, the Defendant is responsible for the damage done to the air conditioning system, and therefore \$6,000.00 reduction in trade in value.

The Defendant's Position

[12] The Defendant agrees that the Plaintiff first brought the Vehicle to ABC Auto in early June 2018. At that time the Plaintiff told the Defendant that the Vehicle was under warranty. The Defendant told the Plaintiff that any repairs would void the warranty unless the Plaintiff contacted Honda first. The Defendant says he further told the Plaintiff that the Defendant did not do air conditioning work, and that he had no air conditioning equipment or fittings to repair air conditioning.

[13] The Defendant also agreed that the Plaintiff returned to ABC Auto on July 27, 2018; the Plaintiff was very persistent that ABC help him out and repair the vehicle as no other mechanic in Yellowknife would repair the vehicle. The Defendant agreed to look at the vehicle. The Defendant testified that he did a scan of the vehicle for codes and data, and there were none; he then made some routine checks. When the Defendant checked the electrical connector at the compressor, he found some corrosion, and therefore cleaned the connector. When the Defendant reassembled the connector, the compressor turned on, and the air conditioning started blowing cold. The Defendant says this is the only work he did on the Plaintiff's Vehicle. The Defendant itemized the work done on the Vehicle on the invoice (Garage Repair Order) entered as Exhibit 1 on the Trial. The Defendant testified that the Plaintiff did not want a copy of the invoice.

[14] The Defendant testified that he does not do any air conditioning repairs at ABC Auto, he does not know enough about air conditioning systems to repair such, and he has no signs or advertising indicating the he does air conditioning repairs.

[15] The Defendant called Glynnis Poitras as a witness for the Defence. Ms. Poitras is a bookkeeper and has been the Defendant's bookkeeper for 8 years. Ms. Poitras testified that ABC Auto had never purchased Freon, she had never seen any tanks of air conditioning refrigerant or Freon at ABC Auto, she had never seen any air conditioning repair equipment at ABC Auto, and she had never seen any invoices from ABC Auto for any repairs done to air conditioning systems. Ms. Poitras collects the invoices from ABC Auto every month in order to remit GST, and to establish the accounts receivable.

Analysis

[16] In a civil law suit a plaintiff must prove his or her claim against the defendant on the balance of probabilities. In this case the onus is on the Plaintiff to prove that whatever the Defendant did to his Vehicle caused damage to the Vehicle resulting in a loss of \$6,000.00 to the Plaintiff.

[17] The Plaintiff's position is that the Defendant put Freon in his vehicle that caused damage to the air conditioning system. The Plaintiff says in early June 2018 he took his Vehicle to the Defendant's shop, then on July 27 took the Vehicle back to the Defendant at which time work was done on the Vehicle though he has no invoice or bill for that work which cost him \$189.00. Then sometime in early November 2018 the Plaintiff took the Vehicle to the Honda dealership in Grande Prairie. An undated letter from Grande Prairie Honda states that the trade in value of the Vehicle was reduced by \$6,000.00 due to the repairs needed to the air conditioning system.

[18] The Plaintiff says the Defendant told the Plaintiff that he put Freon in the Plaintiff's Vehicle. Again, the Plaintiff did not get a bill or an invoice from the Defendant for the work done on the Vehicle. The Plaintiff says the only receipt offered to the Plaintiff was the slip from the debit machine which the Plaintiff says he did not need.

[19] The Defendant denied putting Freon or any refrigerant in the Plaintiff's vehicle. The Defendant denies doing any work other than that set out in the Garage Repair Order or invoice (Exhibit 1 on the Trial). The Defendant says the Plaintiff did not want a copy of the invoice.

[20] I have concerns with a number of aspects of the Plaintiff's evidence: why did the Plaintiff wait close to two months to return to ABC Auto when he says he

initially went to ABC Auto because he did not want to wait the 3 weeks that Canadian Tire told him he would have to wait until Canadian Tire would be able to look at his Vehicle? The Plaintiff testified that he was pleased to find out that ABC Auto did Honda warranty work, yet when he needed work done to correct the noise his vehicle was making in mid-September, he decided to take it to a Honda dealership as he thought it was serious. Yet in early October he took it to another mechanic in Yellowknife; that mechanic could not look at it for three weeks. The Plaintiff waited the three weeks, took it back to that mechanic, but then rather than have that mechanic look at his Vehicle, the Plaintiff decided to take the Vehicle to the dealership in Grande Prairie.

[21] In early November the dealership in Grande Prairie told the Plaintiff that his air conditioning system had been damaged.

[22] I am very suspicious that Plaintiff is not telling the whole truth about all that happened with his Vehicle. The only evidence that I have that the Defendant put Freon in the Vehicle is that Plaintiff said the Defendant told the Plaintiff he did. The Plaintiff has no invoice or receipt from ABC Auto indicating that Freon was put into the Vehicle. I find it very unusual that a person would not want a receipt when having work done on a one year old vehicle with a “bumper to bumper” warranty.

Conclusion

[23] On the whole of the evidence on this Trial, I do not find it probable or likely that the Defendant caused the damage done to the Plaintiff’s vehicle, and consequently the Defendant is not responsible for or liable for the reduction in trade in value of the Vehicle. The Plaintiff has not proved his claim against the Defendant. The Plaintiff’s action is dismissed with costs in favor of the Defendant in the amount of \$500.00

“Bernadette Schmaltz”

Bernadette Schmaltz
T.C. Deputy Judge

Dated at Yellowknife, Northwest
Territories, this 18th day of
September, 2020.

**Corrigendum of the Reasons for Decision
of
The Honourable Deputy Judge Bernadette Schmaltz**

1. The spelling of the Plaintiff's last name was incorrect. It read:

KAPRAELINA

The cover page and first page have been corrected to read:

KAPRAELIAN

2. A paragraph numbering sequence error occurred starting on page 5 at paragraph [12] as indicated below:

[12] The Defendant agrees that the Plaintiff first brought the Vehicle to ABC Auto in early June 2018. At that time the Plaintiff (...)

[12] The Defendant also agreed that the Plaintiff returned to ABC Auto on July 27, 2018; the Plaintiff was very persistent that (...)

The numbering sequence has been corrected to change the second paragraph [12] to that of paragraph [13] and all subsequent paragraphs thereafter:

[13] The Defendant also agreed that the Plaintiff returned to ABC Auto on July 27, 2018; the Plaintiff was very persistent that (...)

3. An error occurred with the date indicated on the first and second pages and the backer:

Date: 2020 08 18

All pages have been corrected to read:

Date: 2020 **09** 18

4. The citation has been amended to read:

Citation: *J. Kapraelian v. K. Leenhouts
and ABC Auto Service & Detailing* 2020 NWTTC 15.cor1

*J. Kapraelian v. K. Leenhouts
and ABC Auto Service & Detailing 2020 NWTTC 15.cor1*

Date of Corrigendum: 2020 12 16

Date: 2020 09 18

File: T-1-CV-2019-000044

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