

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Smith v. Forbes Chevrolet, 2009 NSSM 29

Claim No: 310135

BETWEEN:

PAUL and RHONDA SMITH

Claimants

- and -

FORBES CHEVROLET

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on June 16, 2009

Decision rendered on June 24, 2009

APPEARANCES

For the Claimants self-represented

For the Defendant Kim Ryan,
Accounts Receivable Manager

BY THE COURT:

- [1] In November 2007, the Claimants brought their 1995 Buick Regal into the Defendant's shop for repairs. The vehicle had problems starting and would sometimes shut down while being driven.
- [2] The Defendant's technicians worked on the vehicle and within days generated a bill for some \$635.00. The Claimants were advised that the vehicle should be picked up. Weeks and then months passed. Efforts to contact the Claimants were unsuccessful as their phone was evidently disconnected. Eventually, the Defendant commenced steps to sell the car at auction to recoup the repair cost under a mechanic's lien.
- [3] Before anything happened, in July 2008 the Claimants contacted Forbes and indicated that they would be in to pay the bill and pick up the car.
- [4] Mr. Smith went to Forbes, along with his father in law, and he paid the bill. A Forbes employee was sent to fetch the vehicle from the back lot where it had been parked for the last nine months. He came and reported that the car would not start.
- [5] Mr. Smith was told that Forbes would have to do further investigation to see what was wrong with the car. The evidence of the Forbes employee is that Mr. Smith authorized further work, and this is corroborated by a document that he signed.
- [6] It was found that the battery was no good and also that there was a corroded wire from the ignition to the neutral safety switch. The issue with

the battery was that it had likely discharged over those months and then frozen, which can cause irreparable damage to a battery. In the end Forbes replaced the battery and did a wiring repair, generating a further bill of \$639.00. Even so, Forbes admits that after those repairs the car was still not functioning well, but was smoking excessively.

- [7] The Claimants refused to pay and have left the car at Forbes for almost another year. They are suing to have the car returned to them without payment. They say that they paid for repairs once and should not have to pay a second time.
- [8] The Defendant counterclaims for the \$639.00 repair bill owing.
- [9] Sympathetic as I am to the Claimants, the fact is that they brought in an older car with obvious problems. Had they picked it up in a timely way, they would have had a functioning vehicle although probably one that did not function very well. By leaving it exposed to the elements for nine months, the risk was there that further problems would develop.
- [10] The Claimants dispute that the battery could have required repair because, they say, it was an almost new battery. Even if that were true, any small draw on the battery over that time would have caused it to discharge and become susceptible to freezing and sulfating - an irreversible process whereby lead sulfate accumulates on the plates of a lead-acid storage battery.
- [11] The Claimants are hardly the first people to experience the cascade of problems that can affect an older vehicle. I see no fault with the actions of

the Defendant and cannot say that the work was not done or not authorized, or done improperly. As such the charges are proper and the Defendant is entitled to be paid the amount set out in the Counterclaim.

[12] It should be noted that no one knows if this vehicle would still be driveable after almost another year.

[13] The result is that if the Claimants want their vehicle, they will have to pay the \$639.00 bill plus costs, as set out below, or the Defendant will be at liberty to take such steps as it may deem appropriate. If the Claimants show up for their vehicle, they should be prepared for the possibility that it will not start and may need to be towed. That is not the responsibility of Forbes.

[14] In the result, then, the claim must be dismissed and judgment is allowed on the Counterclaim in the amount of \$639.00 plus costs of filing and serving the Counterclaim in the amount of \$138.51, for a total of \$777.51.

Eric K. Slone, Adjudicator