

Claim No: 432781

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Shaikh v. Muddy Bay Customs, 2014 NSSM 76

BETWEEN:

NAEEM SHAIKH

Claimant

- and -

ANDREW SNAIR c.o.b. as MUDDY BAY CUSTOMS

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 9, 2014

Decision rendered on December 16, 2014.

APPEARANCES

For the Claimant Self represented

For the Defendant Self represented

BY THE COURT:

[1] This is a dispute between the Claimant, who is the owner of a 2004 Mazda RX-8 sports car, and the Defendant, an auto mechanic who was given the job of installing a new engine in the vehicle. The underlying issue is that the project has stalled.

[2] The Defendant has done most of the work, but does not have the capability of doing the electrical wiring job in-house. The Claimant was able to locate a mechanic elsewhere who was qualified and willing to do the job, but that individual insisted that the car be taken to his garage some distance away. The Defendant was willing to release the car for transport, only on the condition that the outstanding bill for work to date be paid - \$2,520.00. The Claimant is unwilling to pay the account in full, until the job is complete. Attempts to find a practical solution have failed and the parties are at an impasse.

[3] The Defendant is aware that as a mechanic he is entitled to a lien on the vehicle, pursuant to s.45(1) of the *Builder's Lien Act*.

[4] The Claimant has sued for a number of items of relief, including damages and for an order requiring the Defendant to deliver up a properly working car. The Defendant has counterclaimed for the outstanding bill and for storage charges.

[5] The court's jurisdiction to make things happen as they should, is limited by the terms of the *Small Claims Court Act*. Adjudicators do not have the authority to require someone to perform a desired action, such as repairing a car. We

can order parties to pay money, and we can order that identified objects of property be delivered up to the other party. Using this authority, I will do my best to move this situation to a resolution.

[6] My findings on the evidence are these. The job of fitting a Mazda RX-8 with a salvaged Camaro engine was an ambitious one. The Defendant appears to have done a good job, so far, but has run into a snag. As he explained, he is not familiar enough with the wiring of Mazdas to complete the job himself. Up to now, he has put more time into the project than he will ever be paid for.

[7] However, the delay in completing the project is unreasonable. Something has to happen.

[8] The Defendant is aware of the fact that he can get the wiring done, under his control (so that he does not release the lien on the vehicle) but his hesitation stems from the fact that it will cost him considerably more than the \$480.00 allowance in his contract with the Claimant. He filed estimates that suggest the minimum cost to have this done will be about \$1,200.00 (including tax). Faced with the prospect of losing more money, he has stalled. However, he gave a firm quote for the job and should be held to it.

[9] In my view, the best way to break the stalemate is to give the Defendant a reasonable time to complete the work, after which he would be entitled to be paid his \$3,000.00 (\$4,400.00 minus progress payments of \$1,400.00) in full. I set that time frame at 45 days, dating from the date that this order is stamped by the court administration. I would have allowed less time, but for the fact that it may be difficult to get anything done over the holidays.

[10] Should the 45 days elapse without the job being complete, I am ordering that the Claimant be entitled to take delivery of the vehicle upon payment of \$1,800.00, which is the \$3,000.00 balance of the original quote minus the \$1,200.00 that it will likely cost him to have the work done.

[11] It is really up to the Defendant to determine if it is advantageous for him to get the electrical work done under his supervision, by someone of his choice, and whether he takes enough pride in his work to finish the job.

[12] Should unforeseen problems arise with this order at or after the 45 day mark, either party may ask court administration for a further hearing to be convened before me, to hear further evidence and argument.

[13] I do not believe either party is entitled to recover any additional amounts that they have claimed. In particular, the Claimant is not entitled to the \$18,250.00 he claims, because he will get his vehicle back. I do not find that the Defendant has established any right to storage charges, given that he is at least equally responsible for this project having stalled.

[14] Under the circumstances, I do not believe that either party should receive any legal costs.

Eric K. Slone, Adjudicator