

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: *Patter v. 1 Stop Auto Shop*, 2015 NSSM 27

BETWEEN:

LISA L. PATTTER and JAMIE S. FLYNN

Claimant

- and -

1 STOP AUTO SHOP and ELIE HOYECK

Defendants

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REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 28, 2015

Decision rendered on May 1, 2015

APPEARANCES

For the Claimants

Self-represented

For the Defendants

Self-represented

BY THE COURT:

1[] The Claimants reside in Dartmouth, Nova Scotia.

2[] The Defendant 1 Stop Auto Shop is a registered business name of the limited company Dartmouth Auto Auction Ltd. The Defendant Elie Hoyeck is the owner of the business.

3[] 1 Stop Auto Shop operates not far from the Halifax Airport. Despite the more all-encompassing implications of its name, its business appears to be mostly liquidating used vehicles which dealers have taken as trade-ins. It performs a role similar to that of an auto auction, except that it operates on a much smaller and more personal scale. One of the ways that it attracts customers is through the buy and sell website kijiji.

4[] Although Mr. Hoyeck attempted to claim otherwise, in my view he, or at least his company, is a “dealer” within the meaning of s.2 (j) of the *Motor Vehicle Act*, which defines a dealer as follows:

“dealer” means a person who carries on or conducts, either for the whole or part of his time, the business of buying, selling or dealing in motor vehicles, trailers or semi-trailers

5[] He or it is also a “seller” within the meaning of s.2 (n) of the *Consumer Protection Act*, which defines seller as:

a person who is in the business of selling goods or services to buyers and includes his agent, but does not include a person or class of persons to whom this Act is by the regulations declared not to apply;

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6[] The reason that the *Motor Vehicle Act* is arguably relevant is that dealers have certain obligations with respect to the inspection of vehicles before title is transferred.

7[] The reason that the *Consumer Protection Act* may be relevant is that it contains implied warranties that would not otherwise apply in the case of a sale between private individuals.

8[] I will return to those statutes later.

9[] In early February 2015, the Claimants were looking for a used vehicle and saw a kijiji ad for a 2008 Saturn Outlook. The price was \$4,500.00, including HST. They attended at the 1 Stop Auto Shop yard and saw the vehicle. They were told by Mr. Hoyeck that the vehicle had been acquired through a dealer trade in, and that there were some known deficiencies. For one thing, the tires were so deficient that the car was barely driveable. There were electrical problems. The battery was dead.

10[] The car was boosted and a short test drive (in light of the condition of the tires) took place. The Claimants noticed some shaking or shuddering. Mr. Hoyeck suggested that it probably needed a tune up.

11[] The Claimants returned the following week and agreed to buy the vehicle. Notably, they did not seek to have it inspected by a mechanic. There was an inspection sticker on the car, indicating that it had been inspected approximately a year and a half previously. The inspection certificate was not provided, and there is no reason to think that Mr. Hoyeck had it.

12[] The *Motor Vehicle Act* requires that a used vehicle either be sold with an inspection less than 30 days old, or it may be sold “as is” so long as the inspection sticker is removed. In the case here, Mr. Hoyeck did not remove the actual sticker, but there is no question that he was purporting to sell the vehicle “as is.” Indeed, he made extraordinary efforts on the invoice to distance himself from any responsibility for the condition of the vehicle. He hand wrote the following and had the Claimants put their signatures below:

“All vehicles sold as is where is for parts or repair. All sales are final.”

13[] To make a long story short, the Claimants later came to learn that there were problems with the vehicle’s transmission, and other mechanical problems. They have already spent over \$1,200.00, and have estimates for thousands more to bring the vehicle up to a proper state of repair. In this claim they are seeking \$6,500.00 for what they characterize in their claim as non-disclosure.

14[] The Claimants cannot point to any specific misrepresentation. They provided no evidence that the Defendants knew about the transmission problems. They argued that since he has an auto shop, he must have thoroughly inspected the vehicle and would therefore know of its deficiencies.

15[] I am prepared to accept the evidence of Mr. Hoyeck that he does not do much with these vehicles that he liquidates. He testified that he is interested in selling them quickly, and that he only makes \$200.00 on the sale. He said that

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he may fix something obvious to make it more saleable, but he does not go looking for problems.

16[] Had he actively misrepresented the condition of the vehicle, Mr. Hoyeck could have been personally liable for fraudulent, or perhaps negligent misrepresentation. I cannot find that this happened here. The wording on the sale invoice expressly disclaims any representation.

17[] What I am left with is a question of whether or not the Claimants have any arguments under the *Consumer Protection Act*, and in particular the implied warranties of reasonable fitness, merchantability and durability. The relevant parts of the Consumer Protection Act are these:

26 (1) In this Section and Section 27, "consumer sale" means a contract of sale of goods or services including an agreement of sale as well as a sale and a conditional sale of goods made in the ordinary course of business to a purchaser for his consumption or use

(2) In this Section and Section 27, "purchaser" means a person who buys or agrees to buy goods or services.

(3) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

(e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, a condition that the goods shall be **reasonably fit for such purpose**; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(h) a condition that the goods are of **merchantable** quality, except for such defects as are described;

(j) a condition that the goods shall be **durable** for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale. **(Emphasis added)**

18[] It is not universally - even in the business community - known that these obligations exist, and it is not always easy to grasp what they mean and how they operate.

19[] The case before me comes down to a clash between these implied warranties and the express provision of the contract, to the effect that the sale was on an "as is" basis.

20[] A 1997 case before the Nova Scotia Supreme Court provides some guidance. In *Robertson v. Seddon*, 1997 CanLII 9845 (NS SC), the buyer had succeeded in the Small Claims Court in holding a dealer responsible for some repairs that became necessary a few weeks after the purchase. The sale had been on an "as is" basis. The adjudicator made a finding that the vehicle was not durable, because of the repairs that became necessary. The dealer appealed.

21[] Associate Chief Judge Palmetter wrote for the court:

In the case before me the vehicle was sold in an "as is" condition. The respondents inspected the motor vehicle and had the opportunity to have it inspected by professionals, which apparently they did not. The respondents were aware that there was no warranty, express or implied by the appellants, and this is fully set out in the receipt for payment. In addition, the receipt specifically indicates that the respondents were to be liable for all repairs needed. It is clear that the appellants advised the respondents that other repairs were needed, although it is not clear if the

oil problem in the engine was specifically mentioned. It may be that neither party were aware of this, but knowing that some repairs were needed there was an obligation on the respondents to take all necessary steps to ensure what needed repair, including the engine and the oil problem. The learned adjudicator found as a fact that the engine required oil to be added on a continual basis.

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In my opinion the decision reached by the adjudicator is not supported by her findings of fact. The surrounding circumstances of the sale as found by the adjudicator do not in my opinion substantiate her finding that the vehicle would be durable for six weeks, which she found was a reasonable period of time, or for approximately 1800 kilometres. A person buying a motor vehicle in an "as is" condition, with a declaration that there is no warranty, express or implied, and a further declaration that the purchaser is responsible for all repairs, cannot be expected to receive much warranty under the Act, if in fact there should be any.

In the case of *Carr v. G.B. Automart Limited* [1978] 5 W.W. R. 361 (Man. Q.B.), Hamilton J. in applying the Manitoba Consumer Protection Legislation, states at p. 366:

"In this case the vehicle was sold in an 'as is' condition and a written declaration there were no warranties. It was accompanied [sic] by an unsafe vehicle certificate. With such notice a buyer could hardly expect or demand the same quality of even a used vehicle as when purchased with normal warranties and a safe driving certificate. Although the principle caveat emptor has been considerably limited by the Consumer Protection Legislation, some responsibility rests upon a buyer. If one chooses to buy goods in the face of clearly expressed conditions and disclaimers, substantial risk is assumed."

In this case the respondents purchased the motor vehicle in the face of clearly expressed conditions and disclaimers. They had every opportunity to inspect the vehicle and they did assume a substantial risk. In my opinion any warranty, if at all, implied under the Act would be minimal at best and not under the circumstances as found by the adjudicator.

22[] In the case before me, the Claimants have spent approximately \$1,200.00 on a repair which, in fact, appears to have been unnecessary as it failed to address the underlying transmission problem. The vehicle has been continuously driven for more than three months. While it is clearly in need of repair, it would be perverse for me to find that there is any warranty protection available. I can imagine fact situations, and indeed have had some before me, where a vehicle literally falls apart while being driven home on the day of purchase. The *Consumer Protection Act* provides some minimal protection where there is a professional seller involved, though none where the seller is an ordinary person. In the latter case, “buyer beware” is applicable.

23[] In the result, I find that the Defendants did not warrant that this vehicle would be any more durable or merchantable than it was. It was a seven year old vehicle with more than 200,000 kilometres, with several obvious defects and an 18-month old inspection sticker, which would be of no value respecting a transfer of the vehicle. The language “for parts or repair” clearly put the Claimants on alert that the vehicle might need repair. The Claimants are mature individuals who were not misled by Mr. Hoyeck.

24[] The irregularity of the sale under the *Motor Vehicle Act*, which does no credit to the Defendants, is a red herring because it does not provide any relief in these circumstances. The Claimants managed to get the title transferred into their names. Had they been unable to get title transferred, the result might have been different.

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25[] Given my finding of no liability, it is unnecessary to consider the issue of whether or not Mr. Hoyeck would bear any personal liability in this matter, assuming his company was found liable.

26[] In the result, the claim is dismissed against both Defendants.

Eric K. Slone, Adjudicator