

Claim No: 285772

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Broughm v. Cheapy Tire and Auto Repair, 2007 NSSM 69

BETWEEN:

WAYNE A. BROUGHM

Claimant

- and -

JIM SMITH, c.o.b. as Cheapy Tire and Auto Repair

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 6, 2007

Decision rendered on November 8, 2007.

APPEARANCES

For the Claimant: self-represented

For the Defendant: self-represented

BY THE COURT:

- [1] This is a Claim for alleged faulty repair work to the Claimant's 2003 Hyundai Sante Fe SUV. The Claimant alleges that the Defendant improperly repaired a timing belt, leading to a cascade of problems that eventually resulted in the vehicle requiring a new engine.
- [2] The Defendant's position is that the initial repair was done properly and that subsequent problems occurred for unknown reasons. The Defendant says that his mechanics did everything they could to help the Claimant with his problems, but cannot be held responsible for mechanical problems that developed in an older vehicle that was being heavily driven.
- [3] The Claimant filed an affidavit which supplemented his *viva voce* testimony. While somewhat irregular, this was very helpful in this case because there was a lot of detail that otherwise would have been much more difficult to process.
- [4] The relevant events occurred from September 28, 2006 when the Claimant first was told (by someone other than the Defendant) that he needed a new timing belt, through June 2007 when the new engine was installed, and on to September 5, 2007 when the Claimant traded in the subject vehicle.
- [5] The undisputed facts are that the vehicle was brought in to the Defendant's shop on October 19, 2006 and work was done, including replacement of the timing belt, at a cost of \$364.59. A few days later, the Claimant brought the car in for a safety inspection, also complaining of noise and a vibration.

The vibration and noise were gone when he took the vehicle. He was told that a minor adjustment had been required, for which he was not charged.

[6] About a month later the Claimant experienced a sudden loud noise, which turned out to be a frayed power steering belt. That was repaired by the Defendant at a cost of \$53.50 on November 27, 2006.

[7] In late January 2007 the vehicle was brought in for an oil change. No complaints were noted on the work order.

[8] On or about February 22, 2007 the Claimant experienced a complete engine failure. The Defendant's mechanics did some testing and eventually discovered a broken crank shaft sensor, which they theorized had in turn damaged the timing belt. The further result was damage to the valves, requiring a complete valve job. By then the Claimant had started to lay blame on the Defendant and his mechanics, who did not accept responsibility but nevertheless did a lot of the work at cost (i.e. waiving labour charges) to assist someone they regarded as a good customer. The total repair bill was \$1,239.32 paid on March 12, 2007.

[9] About two months later, on May 24, 2007, the engine quit again. It was towed to the Defendant's shop. The mechanics started to take the engine apart. The early verdict was that the pistons were ruined and the engine needed replacement. The Defendant was prepared to attempt to find a reasonable used engine. The Claimant elected to have the vehicle towed to the Hyundai dealer. Eventually they replaced the engine at a total cost of \$3,734.18, the work having been completed on or about May 29, 2007.

- [10] The Claimant continued to drive the vehicle for another few months until he decided to trade it in on a newer vehicle. He believes that the fact that he was only offered \$4,000 for trade in was a result of all of the mechanical problems that the vehicle had experienced. Part of his claim is for a diminution of value which he estimated as \$2,000.00.
- [11] As noted above, the Claimant blames the Defendant for this cascade of problems, tracing it all back to the initial replacement of the timing belt. His theory is that the problem with the power steering belt must have been caused when it was loosened earlier to obtain access to the timing belt. He also theorizes that the Defendant's mechanics must have damaged the crank shaft sensor when they were replacing the timing belt, which in turn caused the damage to the valve stems and later irreparable engine damage.
- [12] The Claimant attempted to back up his theories with third-party statements in his affidavit, from two outside mechanics. I advised the Claimant at the outset of the case that I would not admit expert evidence in support of his case unless the experts were in court to be properly qualified as experts and cross-examined on their evidence. The Defendant was also alert to this issue, taking the position that he would want to ask some questions of these mechanics before being willing to accept any of their conclusions. I offered the Claimant an adjournment so he could arrange for these individuals to be present. He declined and wished to go ahead.
- [13] The Defendant does not accept that any of the events occurred as a result of negligent work on the part of his mechanics. Evidence was given by his shop manager and chief mechanic, Bill Campbell, who was intimately

familiar with the vehicle. He stated that the main flaw in the Claimant's theory is the fact that the vehicle was driven for considerable distances between the allegedly connected events. For example, had the power steering belt been improperly replaced after it was loosened to give access to the timing belt, it would have frayed within minutes of being driven, not months later. Other repairs, had they been done improperly, would also have manifested as serious problems much sooner.

[14] Mr. Campbell candidly stated that it is very difficult to say in retrospect what has gone wrong to produce a mechanical problem. As noted, this was a vehicle with about 113,000 kilometres on it when all of the trouble began, and it was driven another 20,000 kilometres when the engine failed for the second time. He stated that his approach with this vehicle was to assess what was wrong so that he could fix it. He did not do a forensic examination to determine what went wrong, because that was not his focus.

[15] In a case such as this, the onus is on the Claimant to prove that the Defendant did faulty workmanship. We are not dealing with warranty items where the Defendant takes responsibility, no matter the cause. The Claimant is alleging that mechanics did work in a sloppy manner with the eventual result that it caused his engine to blow.

[16] It is not enough to posit a theory for what might have happened. The Claimant has to prove on a balance of probabilities that it was faulty work that led to his difficulties, and that the sum total of all other explanations are less likely than that. The problem here is that there are many alternate explanations. The engine was far from new. It was being driven some 160

kilometres per day during the week to get the Claimant to and from his work. Dirt or debris can get into the engine in any number of ways, causing problems down the road.

[17] In the end I am left with the conclusion that it is all speculation. There is no piece of evidence that is anywhere near conclusive. Perhaps the most difficult question for the Defendant to answer is how the crank shaft sensor could have gotten damaged. Mr. Campbell candidly admitted that it is rare for such a part to crack or break. It is not a moving part; it is an electronic component. However, it is only made of plastic and it is being endlessly vibrated as the car is driven, so the likelihood of it having been damaged by the Defendant's mechanic can hardly be said to be the most probable, let alone the only explanation.

[18] I am not saying that the Claimant's suspicions are frivolous. He could well be correct. The Claimant appeared to be an intelligent individual who was not making this claim lightly. In the end, however, I am simply not satisfied that a case of faulty workmanship has been proved, and the claim must be dismissed.

Eric K. Slone, Adjudicator