

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Brown v. Mattatall, 2007 NSSM 75

Between:

**PAUL BROWN**

**CLAIMANT**

-and -

**ANTHONY MATTATALL**

**DEFENDANT**

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**DECISION AND ORDER**

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Adjudicator: David T.R. Parker

Heard: June 18, 2007

Decision: August 3, 2007

Counsel: Charles A. Ellis represented the Claimant.

Jim O'Neil represented the Defendant.

This claim involves a contract between the parties for the Defendant to carry out restoration work on a 1957 Chevrolet automobile owned by the Claimant.

## **Facts**

There are certain facts that are agreed to between the parties and I shall enumerate them as follows:

- (1) In October 2005, the Claimant contracted the Defendant with a view of having the Defendant do restoration work on the Claimant's 1957 Chevrolet.
- (2) The Chevrolet was delivered to the Defendant in October 2005 and restoration work was commenced.
- (3) The Claimant provided the Defendant with a retainer of \$1,000.00 and restoration work began. Further payments of \$1,000.00 were made on October 27, November 9, November 17, and November 30, 2005.
- (4) On December 12, 2005, the Claimant requested the return of his vehicle.
- (5) The Claimant was required to pay a further \$750.00 and then removed the vehicle from the Defendant's premises.
- (6) The Claimant has paid to date \$5,750.00 to the Defendant and paid for parts in the amount of \$2,023.00.

## **The Claim**

The Claimant alleges that the said vehicle is now in worse condition than it was when the Defendant started work on it and it now requires total reconstruction and restoration.

The Claimant alleges he received no value for the labour and parts supplied and it will be necessary to replace the parts he purchased for use by the Defendant.

The Claimant stated in his pleadings that the Defendant breached his agreement with the Claimant to restore the vehicle, or in the alternative his restoration work was negligent and therefore the Claimant received no benefit.

The Claimant seeks damages in the amount of \$7,773.00 representing the amount paid to the Defendant plus costs of purchasing materials "by the Plaintiff for which he (h)as received no value".

The Defendant's pleadings were succinct in that he stated, "there are no monies owing".

### **Analysis**

The Claimant purchased the 1957 Chevrolet and wanted it refinished, that is, sanded, primed and painted. The Claimant said there was a fixed price of \$5,000.00 and he was simply to deliver it to the Defendant's shop. The Defendant said he expected the Claimant to remove the chrome and engine but this did not happen and it took over forty (40) hours to remove the chrome. The Defendant's employee also testified that it was his understanding that the Claimant would

remove the chrome. At any rate, once the chrome was removed and seven layers of paint were sanded, it became apparent that the car had a lot of body fill and this had to be replaced to pass inspection. The Claimant was aware of the work being done as it progressed and even participated in getting the parts as he felt he could do so at a reduced price. Then in his testimony the Claimant said he expected the \$5,000.00 price initially discussed would include everything. He said, "I would say he (the Defendant) would pay if a new hood is needed. I would expect a new roof. Yes I would expect he would replace all parts." This is incongruous with the fact the Claimant went out and bought parts. The Claimant knew that extra work was required to completely restore the vehicle but he was not willing to pay for same. The fact that more work is necessary on the vehicle is reinforced in part by the estimate the Claimant obtained.

For all these reasons the Claim against the Defendant is dismissed with no order as to costs.

IT IS HEREBY ORDERED that the Claim against the Defendant be dismissed with no Order as to costs.

Dated at Amherst, Nova Scotia, this 3rd day of August, A.D., 2007.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia