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Claim No. SCT 267410

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Teasdale v. Ellis Import Service Ltd., 2006 NSSM 58

BETWEEN:

DAVID TEASDALE

CLAIMANT

- and -

ELLIS IMPORT SERVICE LIMITED

DEFENDANT

Adjudicator David TR Parker

Heard August 28, 2006

Decision October 30, 2006

Counsel: Earl D. Cormier represented the Claimant

DECISION and ORDER

Parker:-This matter came before the Small Claims Court of Truro and Province of Nova Scotia on the 28th day of August, A.D. 2006.

The Claimant is the owner of a classic 1966 Volkswagen Beetle and this action is framed in negligence against the Defendant Company that was performing work on the Claimant's vehicle.

The Claimant states in his pleadings: "Negligent performance of Automotive repairs to my Volkswagen car while in the possession of the defendant resulting in damages..."

On September 7, 2005, the Claimant could not start his vehicle. Following a boost of his vehicle and turning it back off the vehicle would not start. A few days later the Claimant had his vehicle boosted again and once started he took it to the Defendant for repairs. Other than the vehicle not starting it appeared to be working fine and the Claimant said he did not notice any pinging or knocking sound or any noise whatsoever coming from the engine.

The Defendant's owner confirmed the Claimant brought in the vehicle and the car was running smoothly, there were no knocks or pinging sounds. This occurred on September 13, 2005.

It was determined the vehicle was not charging and required a generator. The Claimant gave the "go ahead" to put it on in his vehicle, the part arrived at the Defendant's business on September 19th and it was put in the vehicle on September 20, 2005.

Mr. Ellis said they started the car up and there was no rattles, it was tested and it was charging properly. He said the little fan at the end of the generator was making a light swishing noise and it had to be adjusted twice and after that the car was working fine. The car was put out front. The testimony of Mr. Ellis and a worker, who was working in the yard, was that, when the car was driven out front there was no noise. When the car was restarted out front there was a "knock, knock, knock" sound and it was turned off. The Defendant's employees pushed the vehicle back into the garage and determined the spark plug was damaged and they looked at #3 spark plug and could see "marks on piston where it hits the spark plug. It was running on three cylinders instead of four and it was full of oil."

When the Claimant was informed of this he instructed the Defendant not to touch his vehicle, he came in, paid his bill and had his vehicle taken to a garage in Halifax that repaired the engine at a cost of \$1,512.75 plus HST.

The Claimant provided the Court with an Affidavit of Michael Settles that states he is a mechanic who repaired the Claimant's vehicle.

The Affidavit states that "in my opinion the Plaintiff's motor vehicle was suffering from a seized

engine due to overheating of the engine. Upon investigating the engine it was seized and had a blown third piston which in my opinion is highly indicative result stemming from an overheated engine.”

The Claimant in his testimony said he was told that his car was left outside running for 10 to 15 minutes and that it was his “understanding he put it outside to charge up the battery” and “I assume the car was running as I was told the car was outside making a loud noise.”

The testimony of Mr. Ellis and his yard worker differs from the Claimant. I prefer their evidence as they were actually there when the engine started to knock. The vehicle was not running when the battery was being charged and the vehicle was not left running when the engine started to make a knocking sound. Mr. Ellis said, “When the car was finished it was sounding fine. We pulled the car around to the front, everything was fine.” [His employee] decided to turn the car off when it made a knocking sound.

Mr. Ellis’ testimony was that if the engine was run for 10 to 15 minutes it would not damage the engine; it would have to take much longer. He said possibly the engine was running too long before it came to this shop. Mr. Ellis said, “If the noise had been heard we would not have waited [to turn it off]. The one split second out front when the car was turned on it had a knock and a skip.” He said that “-the car was not left out back running, it was not going even though the Claimant thought it was.”

Affidavit evidence is not given any weight by me where there is inconsistency with the evidence of Mr. Ellis and his employee who were present. There is no evidence to show the Defendant caused the engine to overheat or that it caused damage to the vehicle.

IT IS THEREFORE ORDERED that the Claim against the Defendant be dismissed.

Dated at Truro, this 30th day of October, 2006.

David T.R. Parker
Small Claims Court Adjudicator