

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Cullen v. Cox, 2008 NSSM 80

BETWEEN:

DANIELLE CULLEN and CATHERINE JULIA CULLEN

Claimants

- and -

RYAN COX

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 9, 2008

Decision rendered on December 10, 2008

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

- [1] This claim arises out of a rear-end motor vehicle accident on July 8, 2007. The Claimant Danielle Cullen (“Danielle”) was driving the vehicle owned by her mother, the Claimant Catherine Julia Cullen.
- [2] The Defendant Ryan Cox (“Ryan”) was at the time a friend of Danielle, and they had been driving their respective vehicles in tandem fashion, back from an outing with mutual friends.
- [3] As Danielle approached an intersection on Victoria Road, she saw the light turn yellow and decided to stop rather than try to make it through. The evidence seems clear that this was an abrupt stop.
- [4] Ryan was actually two cars behind Danielle. The car between them swerved to the left to avoid a collision, while Ryan had neither enough stopping room, nor any opening to swerve. He rear ended Danielle.
- [5] The police were not called. Because they were friends, and given the awkwardness of the situation, they did not engage in the kind of blaming that often occurs at roadside accidents. The damage to Ryan’s car was considerable, or at least obvious, while the damage to Danielle’s car seemed to be more minor. There were no personal injuries.
- [6] Danielle testified that Ryan agreed to pay for the damage, but did not want to go through insurance. Ryan’s version of events was that he agreed to pay his own repairs, while Danielle would pay for hers.

- [7] I am uncertain what was said, but even so I would not hold anyone to what they might have said in such an awkward and charged circumstance.
- [8] As it turns out, there was damage both to the bumper and to the exhaust system of the Cullen vehicle, a 2003 but well looked after Saturn Ion.
- [9] Once the full extent of the damage was made known, this led to an unfortunate breakdown in the friendship between the parties, and this lawsuit was brought after all efforts to resolve it short of court were exhausted.
- [10] The issues for me to decide are whether the Defendant is legally responsible for the damage, and whether the damages claimed have been established.

Liability

- [11] The law places a very high responsibility on drivers to follow behind at a safe enough distance that would allow for a sudden stop. Danielle's decision to stop at the yellow light was obviously unexpected, but the drivers following should have left enough distance between them to allow for a safe, if also sudden, stop. Here, Ryan was not even the car directly behind Danielle, and should have been far enough behind to have stopped safely.
- [12] From a legal standpoint, it is Ryan that must bear full liability for having caused the accident. If Danielle was arguably over-prudent in stopping as she did, Ryan should have anticipated that possibility.

Damages

- [13] The issue of damages is a bit trickier. Danielle and/or her family took the vehicle to the Saturn dealer, who did some inspection but also referred them out to a repair facility.
- [14] The amount claimed in the Claim is \$2,824.60, which was the higher of two estimates that the Claimants obtained. Only the lower estimate (from Burke's Auto Body) was filed as an exhibit, and that one is for \$2,791.50, including HST.
- [15] The Defendant objects to paying for this repair, which he regards as exorbitant. He claims that his mechanic could repair the bent exhaust pipe for a fraction of the amount that Burke's estimates. The Burke's estimate includes about \$1,000.00 or more for a new exhaust system. The rest is for bumper repair and/or replacement.
- [16] The Defendant filed a letter from Scott Andrews, the owner of Major Discount Complete Auto Service, to the effect that all that is required to repair the exhaust system would be \$35 worth of labour and \$10 for shop supplies.
- [17] The contrast between the two positions, as far as the exhaust system is concerned, is stark. In an ideal world, the parties would work together and shop around for a better deal that both could live with. That is clearly not going to happen in this real world.

- [18] Essentially, the Claimants are arguing for repairs that will replace a five year old, though somewhat damaged exhaust system, with a brand new one. It should be noted that the car has been driven for a almost a year and a half without these repairs, with no evidence that the system has malfunctioned.
- [19] It appears to me that the damages are more cosmetic than functional.
- [20] I am quite sceptical of repair facilities that give these kinds of estimates, because they are often not at all objective. They are prone to recommending top of the line fixes, because they hope to get the work, whether it is strictly needed or not. Most often it is insurance companies who are paying, and not all insurers bother to bargain for a better deal.
- [21] Here the Defendant is a young man of limited means who must pay the bill, although I do note that he could have let his insurer deal with it.
- [22] All of that aside, a Claimant has a legal duty to mitigate her damages by taking reasonable steps to minimize the loss which the other party must bear, and if she opts for a top of the line fix may have to account for the “betterment” received. In other words, the Claimant should not end up, at the Defendant’s expense, with something that is better than what she started with.
- [23] I am not satisfied that the amount claimed is the best deal that the Claimants could get to have their vehicle restored to the position it was in before the accident. I reiterate that this was already a four year old exhaust system that has given another 18 months of service without failing.

Many vehicles would have required exhaust system repairs or replacements simply from normal wear in that period of time.

- [24] Nor am I satisfied that the \$45 repair proposed by the Defendant is a reasonable estimate either, because if it did not hold up the Claimant would be left without recourse.
- [25] I believe there is a higher onus on the Claimant than merely to file one estimate without producing as a witness someone qualified to explain why such an expense must be incurred, and who could speak to the betterment factor that might result. This court frequently hears from auto mechanics in like circumstances, and if there is a cost to bring such a person to court it is an expense that can be passed on to the at-fault party.
- [26] Experience also bears out that if someone is given a budget for a repair, they can often achieve what they reasonably require within that budget.
- [27] Given the somewhat unsatisfactory state of evidence, the best I can do is to make a common sense determination based on the evidence that I do have. I believe that the Claimants will need to make a determination as to whether they want a reasonably repaired vehicle or a fully restored and better one.
- [28] As such, I assess the Claimants' damages as \$1,500.00, for damage both to the bumper and the exhaust system. The Claimant is also entitled to her filing fee of \$87.06, for a total judgment of \$1,587.06.

Eric K. Slone, Adjudicator