

Claim No: SCCH-453678

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Seacoast Automotive Ltd. v. Parsons, 2016 NSSM 54

BETWEEN:

SEACOAST AUTOMOTIVE LTD.

Claimant

- and -

DANNY PARSONS

Defendant

Claim No: SCCH-451925

BETWEEN:

DANNY PARSONS

Claimant

- and -

SEACOAST AUTOMOTIVE LTD.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 6, 2016

Decision rendered on September 16, 2016

APPEARANCES

For Danny Parsons self-represented

For Seacoast Automotive Ltd. Leanne Hines
Manager

BY THE COURT:

[1] These two matters were heard together. In fact, because they arise out of one set of facts, they ought to have been filed as a Claim and Counterclaim, but for some reason Seacoast chose to respond to Mr. Parsons's original Claim with a Claim of its own. For narrative purposes, I will treat them as one matter. Because they are two separate files, there will be separate orders.

The Facts

[2] Mr. Parsons is a fisher by trade, who lives in Tangier, Nova Scotia, on the Eastern Shore. In early 2016 he bought an old 2003 Ford Expedition that needed a lot of work, from his friend Calvin Harnish. The price was \$1,500.00. The vehicle had over 340,000 km on it. It was not in running condition.

[3] Mr. Parsons did not himself have the mechanical skills to fix up the vehicle, but Mr. Harnish did. Together with another mechanic that they located, Mr. Harnish replaced 4 of the ignition coil packs and all 8 spark plugs with a combination of new and used parts. In the end, they got the vehicle running and Mr. Parsons and Mr. Harnish drove it towards Dartmouth. On the way, the vehicle exhibited some problems. The engine was misfiring on at least one cylinder. Also, there was a noticeable burning smell which, on examination, seemed to be a plugged catalytic converter, which was actually red hot on examination.

[4] Mr. Parsons had dealt with Seacoast before. He believed them to be reasonable, in part because the owner (Stephen Philpitt) was a member of his extended family. He decided to take the vehicle into Seacoast. Because it was a Sunday when they were not open, he called the owner on his cell phone and told him he would be dropping off the vehicle at their yard. There is some difference as to what was said, but it is agreed that he wanted Seacoast to check out the catalytic converter and fix it, if possible. Otherwise, he wanted it removed and replaced with a straight piece of pipe - an illegal but probably not uncommon fix. He also wanted Seacoast to look at why the engine was misfiring. According to Ms. Hines, who was listening to the conversation as she was sitting right next to Mr. Philpitt when the call came in, and could hear both sides - Mr. Parsons said "just get it running." Mr. Parsons did not admit to giving Seacoast essentially a blank cheque.

[5] Mr. Parsons then left the area for a few weeks to go fishing. Apparently, he was not reachable by phone while he was away.

[6] When he got back, Mr. Parsons learned that he was facing a bill for \$1,564.00 from Seacoast. This was way more than he had anticipated. When he learned about all that Seacoast had done, or claimed to have done, he felt that they had exceeded their instructions. He refused to pay and has not tried to reclaim his vehicle. It sits - somewhat inconveniently - in Seacoast's smallish auto yard.

[7] Mr. Parsons sued first, on May 31, 2016, asking the court to find that he owed a lot less than Seacoast was claiming. Seacoast filed its own claim (essentially a counterclaim) on July 20, 2016, seeking payment of its invoice

plus interest and storage fees. It would like Mr. Parsons to collect his vehicle and get it off their yard.

[8] Both parties seemed sincere. Mr. Parsons sincerely believes that Seacoast exceeded its instructions and perhaps even did unnecessary work. In particular, he believes that they had no reason to remove and discard 6 ignition coils and all 8 spark plugs.

[9] Seacoast believes that it was following instructions to get the vehicle moving. There were additional things it could have done, that it did not, because Mr. Parsons could not be contacted for instructions. Examples of this include replacing the battery, which was essentially dead and had to be repeatedly boosted.

[10] Sincere belief is not, however, the only or even the best indicator of what most probably happened. In light of the personal relationship between the parties, I find it more likely than not - objectively speaking - that Seacoast was instructed to deal with the issues of the catalytic converter and the misfiring engine. I accept the testimony of Ms. Hines that they found 6 of the 8 ignition coils to be worn out and require replacement. The fact that Mr. Parsons had previously replaced four of the coils - with used ones - does not prove that the coils were not in need of replacement. We have no way of knowing which of the four recently replaced four were among the six replaced, but logically it could have been anywhere from two to four.

[11] I also accept that the plugs could have been covered in sludge by the time the vehicle had been driven to Seacoast's shop. The plugs themselves are not

expensive, and it probably would not have been cost effective to try to clean them. Seacoast may not have known the plugs were new, because they were so dirty.

[12] The invoice prepared by Seacoast includes several items that cannot be questioned. They had to put gas in the tank in order to test drive it, because the tank was brought in empty. It was sensible to do an oil change, given the state of the plugs and coils and the other work that had to be done. The work to clean up the catalytic converter was clearly authorized.

[13] The big ticket item on the bill is \$718.00 for six ignition coils. I am prepared to accept Seacoast's evidence that they found the coils to be in poor condition and that they believed they had authority to replace them, given the instruction to solve the problem with the motor misfiring.

[14] Overall, I cannot find anything on the bill that is unreasonable. Given the vague instructions, I find that Seacoast did - in good faith - what it believed to have been instructed to do.

[15] I therefore find that Mr. Parsons legitimately owes Seacoast \$1,564.00.

[16] I am not prepared to order him to pay storage fees. I believe it was reasonable for Seacoast to store the vehicle while this was sorted out. Upon payment of \$1,564.00, plus the interest and costs that I will award Seacoast, he is at liberty to pick up his vehicle.

[17] For interest, I award Seacoast interest at the statutory rate of 4% for a period of four months, for a total of \$20.85. I am limiting Seacoast's court costs to what it would have cost to issue a counterclaim, namely \$66.00.

[18] Seacoast will have judgment for \$1,650.85. Upon payment of this amount, Mr. Parsons is free to retrieve his vehicle. Should he not do so within 30 days of the date of this order, Seacoast shall be at liberty to exercise its rights under s.45 of the Builders' Lien Act.¹

Eric K. Slone, Adjudicator

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Builder's lien on chattel

45 (1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement in its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists, but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell by auction the chattel or thing in respect to which the lien exists, on giving one week's notice by advertisement in a newspaper published in the county in which the work was done, or in case there is no newspaper published in such county, then in a newspaper circulating therein, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of such county.

(2) Such mechanic, or other person, shall apply the proceeds of the sale in payment of the amount due him and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto.