

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Moore v. Eurowerks, 2016 NSSM 31

BETWEEN:

DAVE MOORE

Claimant

- and -

EUROWERKS

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on June 28, 2016

Decision rendered on July 13, 2016

APPEARANCES

For the Claimant

self-represented

For the Defendant

Burt Page, Owner

BY THE COURT:

[1] The Claimant is a vintage car enthusiast, owning at least one high value model, a 1967 antique Mercedes.

[2] The Defendant “Eurowerks” is actually shorthand for a partnership name registered by 2273933 Nova Scotia Limited, the full name being “Eurowerks by Burt Page.” The Defendant specializes in mechanical work on Mercedes and a few other import lines of automobiles. The owner is Burt Page.

[3] The Claimant seeks compensation for damage which he says was done to his vehicle while it was in the Defendant’s shop for repairs between October 5 and 12, 2015. Specifically he says that there was some damage done to a recent paint job, which necessitated the vehicle being towed up to northern Nova Scotia to be repaired by the same body shop that had just painted it.

[4] The Claimant does not know how the damage occurred, though he has his theories. He relies on the principle that the Defendant was responsible for the car while it was in his possession. Although he did not specifically use the term, the concept he pleads is that of a “bailment for hire,” as opposed to a gratuitous bailment.

[5] In the case of bailment for hire, or bailment for reward, the principle was defined by the legendary Lord Denning in *Morris v C.W. Martin and Sons* (1965) 2 All E.R. at page 725:

Once a man has taken charge of goods as a bailee for reward, it is his duty to take reasonable care to keep them safe: and he cannot

escape that duty by delegating it to his servant. If the goods are lost or damaged, whilst they are in his possession, he is liable unless he can show - and the burden is on him to show - that the loss or damage occurred without any neglect or default or misconduct of himself or of any of the servants to whom he delegated his duty...

[6] Against this background, the several questions to be answered are:

- a. Was there damage done to the vehicle while it was in the Defendant's care?
- b. If so, has the Defendant established that it occurred through no negligence of him or his staff?
- c. If the Defendant cannot discharge this burden, what damages has the Claimant suffered?

[7] The Claimant says that he has owned this car since 1984 and had kept it in storage for much of that time. His plan was to get it roadworthy and drive it down to Florida, where he spends half the year. Despite being almost 50 years old, it only had about 84,000 km. on it in October 2015.

[8] The Claimant took the car to a body and painting specialist in Parrsboro to be disassembled, painted and reassembled. It was carried on a trailer both ways. According to the Claimant, backed up somewhat by photographs, the car looked to be in excellent condition - on the outside - after this treatment.

[9] The Claimant knew that the mechanical aspects of the vehicle would have to be attended to, and took it to the Defendant, with whom he had been doing business for about twenty years. He says that he explicitly instructed Mr. Page to take extra care of the new paint job, and to keep it inside and away from the elements until he picked it up.

[10] The Defendant proceeded to do more than \$4,000.00 worth of mechanical work on the car.

[11] When the Claimant returned to collect the car, he found it outside (against his explicit instructions) with the hood up and at least one window open. It was raining at the time, and the interior was getting wet. On closer inspection, he noticed several things:

- a. There was an unfamiliar orange towel or large rag thrown across the passenger seat, which appeared to have white paint chips caught up in it. (This was shown to me in the courtroom).
- b. He noticed some chipped paint on the hood and scratches on a fender.
- c. Some of the paint where the hood meets the body appeared to have been damaged and clumsily repaired with something that looked like "white-out" fluid which is used to correct typing errors.

[12] The Claimant sought an explanation from Mr. Page, who simply denied that he or his staff had done anything.

[13] The Claimant took the car back to Parrisboro and had repairs done, at a cost of \$1,035.00. He claims this amount from the Defendant, as well as some travel expenses.

[14] The Claimant theorizes, though he does not know for sure, that the orange cloth may have been caught while someone closed the hood, causing some of the paint to get scraped off. He also believes someone sought to conceal the damage with white out or some other unsuitable product.

[15] He also complained of several spots - on the quarter panel - which looked like damage done to the paint job.

[16] He does not claim that being left out in the rain necessarily caused any of the damage, but he put this forward as evidence of carelessness. As he rhetorically asked, "why would you put a \$200,000 car out in the pouring rain?"

[17] Mr. Page testified for the Defence. He simply denied that he or his staff had anything to do with causing damage to the Claimant's car. He was unfamiliar with the orange cloth, saying that he and his staff used large black blankets to protect vehicles while they are being worked on. Although he could not say for sure, he believed the orange cloth may have been in the trunk of the car.

[18] As for leaving the car out in the rain, he says it was outside because the battery needed a boost and because there was no room for it inside. Getting rained on should not harm a car.

[19] The court also heard from Andrew Hill, called by the Defendant. Mr. Hill is a retired part-owner of Coachworks, a Halifax-based auto body business which regularly works on high end cars.

[20] He did not see the car at any time, but based on the pictures he concluded that the “pick” marks on the quarter panel were actually rust coming through the paint, which he saw as a warranty issue against the auto body company that did the paint job. As for the other paint issue near the hood, he suspects that there is a lack of adhesion that caused this paint to be vulnerable.

Conclusions

[21] It is true that the Defendant bears an onus to prove that the car was not damaged while under his care. I believe it has partially discharged that onus.

[22] I do not believe the spots on the quarter panel were damage caused by the Defendant. The best evidence suggests that it was rust coming through, which implicates the paint job rather than the Defendant.

[23] The damage to the hood area is a bit more difficult for the Defendant. I accept the Claimant’s evidence that someone tried to touch it up. This suggests that someone associated with the Defendant did the damage in the first place. I accept that this was not Mr. Page himself. Although it is possible that the paint in that spot was vulnerable, having recently been painted, had someone associated with the Defendant noticed it, the honest thing to do would have been to report it to Mr. Page who could have brought it to the Claimant’s attention for discussion. Covering the area with a crude substance shows evidence of guilt.

[24] I accordingly find that the car was damaged while in the custody and care of the Defendant; or more accurately, the Defendant has not proved that it was not damaged while in his custody.

[25] The fact that the car was left in the rain is a red herring as no damage was done by the rain. The orange cloth remains a mystery.

[26] Although the Defendant is not responsible for the little rust spots, the Claimant would have had to take the car back to Parrsboro to fix the other damage and I do not believe his bill would have been any different.

[27] I therefore find that the Defendant is responsible for \$1,035.00 in damages. I find the claim of \$350.00 for fuel and towing charges to be excessive and allow \$150.00, plus the cost of issuing the claim in the amount of \$99.70, for a total of \$1,284.70.

Eric K. Slone, Adjudicator