Claim No: 412461

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bayers v. MacPhee GMC, 2013 NSSM 26

BETWEEN:

KEITH BAYERS

Claimant

- and -

MacPHEE GMC and MacPHEE LEASING

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 9, 2013

Decision rendered on May 5, 2013

APPEARANCES

For the Claimant	self-represented
For the MacPhee GMC	self-represented
For MacPhee Leasing	Steve Zatzman Counsel

BY THE COURT:

[1] The Claimant is the owner of a 2002 Pontiac Firebird which he bought from the Defendant, MacPhee Leasing and which he has had serviced at the Defendant, MacPhee GMC. Those two companies were at one point, but are no longer related. It was established at the outset of the hearing that the Claimant's complaint was actually against the latter company, and accordingly MacPhee Leasing was released from the action. The order will reflect that the claim against MacPhee Leasing stands dismissed. For the sake of the narrative, I will refer to MacPhee GMC as "the Defendant."

[2] The Claimant is suing for a refund of almost all of the money he spent having his vehicle serviced on two occasions, in April 2012 and several months later. He says that the Defendant failed to diagnose the actual problem, and instead performed a number of unnecessary repairs which cost him approximately $1,500. He also sues for incidental expenses.

[3] By way of background, the Claimant explained that this vehicle is a prized possession which is not driven in the winter, and even then is only occasionally driven in the summertime. On the occasion in April 2012 when he was obliged to seek the assistance of the Defendant, despite it being approximately 10 years old, there were only 36,255 miles showing on the odometer.

[4] The problem that presented was a problem starting the vehicle. Whereas previously it would start immediately upon turning the key, on this occasion it was cranking over and over and would only start after a number of tries. The Claimant drove the vehicle to the Defendant's repair facility in Dartmouth. At

that time the technician hooked the vehicle up to the computer system and made the determination that the problem resided with the so-called “vats interrogator” which I understand to be part of the theft control associated with the vehicle. In order for the vehicle to start, there is a sensor that reads the chip embedded in the ignition key, and in this case the determination was that it was only being read intermittently. As such, until it actually detected the presence of the chip, it would simply turn over and over without starting.

[5] This resulted in the ignition and key system being repaired at a total cost of $714.98.

[6] According to the Claimant, some months later he drove the vehicle on a trip to the Annapolis Valley. While there, the vehicle would not start and needed to be towed to the Defendant. It had only travelled 1,248 miles since the previous work had been done. The technician made investigations and determined that the main problem involved faulty electrical relays, which were making poor contact as a result of age. He also found the car’s battery to be at the end of its useful life and recommended it be replaced. The car also presented with other issues including the fact that the horn and air-conditioning were not functioning and, in the end, a further bill for $758.58 was rendered and paid on or about August 29, 2012.

[7] The gist of the complaint by Mr. Bayers is that, he believes, unnecessary work was done and as a result he was overcharged for what he believes would have been a simple problem had the technician checked the relays at the initial visit. He is seeking essentially a full refund of the monies paid, plus other expenses including the cost of having the vehicle towed from the Annapolis

Valley to the Defendant's repair facility, and compensation for the cost of what he regards as other unnecessary trips. His only concession is that he should pay twelve dollars for the faulty relay which, he believes, was the real problem from the outset.

[8] The Claimant called as a witness a friend, Mr. Grant Corkum, who was very experienced in auto mechanics but who had never actually worked on this vehicle. It was his opinion that the problem was misdiagnosed when the car was first brought in, and that the technician ought to have looked a little deeper instead of simply relying on the fault code which came up.

[9] The Defendant called its shop foreman, Mike MacKenzie, who was not the actual technician who worked on the vehicle but who had been present when the work was done and was fully familiar with the vehicle and its problems. He explained all of the work that had been done and insisted that the technician had followed proper procedure.

[10] As most people know, intermittent malfunctions can be very difficult to diagnose and fix, whether they occur in our vehicles or in our bodies. When a repair facility is asked to diagnose and repair a problem, they do not warrant perfection. They are hired to exercise reasonable skill and knowledge. So the appropriate question to ask is not, with the benefit of hindsight, whether some less expensive course of action might have been taken. The question is whether the repair facility exercised reasonable skill and judgment.

[11] On the available evidence, I am far from convinced that the issue was as simple as the Claimant would have me believe. The evidence rather suggests

that there were a number of possible causes, and that the technician relied on what he was trained to rely upon; namely, he allowed the computer diagnostics to direct him. There is little doubt that automobile mechanics has become a highly computerized process and it is difficult to imagine a technician doing anything different from what this technician did.

[12] For the Claimant to have any success, I would have to believe that his car would be operating properly with only the rather narrow fix that he suggests was necessary. I find that difficult to believe. I accept that the Defendant performed the work in good faith with a view toward finding the real cause of the problem and providing a durable fix. There is not a shred of evidence to the effect that the Defendant sought to take advantage of the Claimant and run up a bill for unnecessary repairs.

[13] In the result, I find that the Claimant has not made out a case for any type of refund and the Claim is accordingly dismissed.

Eric K. Slone, Adjudicator