

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Prall v. Welton, 2016 NSSM 68

Claim: SCAR No.449942
Registry: Annapolis Royal

Between:

TIMOTHY S. PRALL and ELIZABETH F. STEVENS

CLAIMANT

– and –

KEITH WELTON / DAY-NITE AUTO BODY

DEFENDANT

Adjudicator: Andrew S. Nickerson, Q.C.

Heard: September 14, 2016

Decision: October 21, 2016

Appearances: The Claimant, self-represented
The Defendant, self-represented

DECISION

Facts

This trial took place over several sessions and the evidence was fairly lengthy. I listened carefully to all of the witnesses and will review here only the essential elements which I have taken from their evidence that are necessary to arrive at my conclusion.

Timothy Prall testified that in 2012 he had acquired a 1967 Pontiac GTO in Alberta and that I will refer to throughout this decision as “the Vehicle”. His goal was to restore this vehicle to a condition wherein it would be capable of being shown in car shows and would be competitive. He had had some work done on it in Ontario which was unsatisfactory. He had acquired all of the necessary parts to restore the vehicle.

After his negative experience in Ontario he contacted the defendant who operated an auto body repair shop. There was a family connection as the defendant was related to Mr. Prall's wife. Mr. Prall was not an expert in restoration or bodywork on vehicles but did understand the results he wished to achieve. He was aware that the defendant had restored some of his own vehicles and had successfully competed in car shows within the Maritime Provinces.

The vehicle was delivered to the defendant in approximately July 2014. He says that the defendant assured him that it would take between one and one and half years to do the work. At that time it appeared to be merely a shell. He says he was quoted a rate of \$40 per hour for the work required. It had no engine, transmission, fenders or front-end. All the parts required to restore the body were delivered to the defendant's shop. As time went on Mr. Prall, who works in construction at various locations across Canada, occasionally when he returned to Nova Scotia attended the defendant shop to check on progress. As time went on he began to become disappointed as it appeared that no one was working on his vehicle. He says he was told on each occasion that the shop had some other priorities.

Sometime in 2015 a family dispute arose and the defendant asked the claimant to remove the vehicle from his shop which the claimant did. The parties differ in their view that the defendant said that he would take the car back in the spring 2016 to complete the work. The claimant decided that things were not working well with the defendant, he was unsatisfied with the work that was done and he therefore took the vehicle to another shop to be completed.

Curtis McLean owns and operates a company called Curtis Custom Designs Inc. His company is a world-class award winning restorer of vintage vehicles. It has been in business for 11 years and is internationally known as one of the top companies in that business. He considered the vehicle to be quite rare due to some unique features and the fact that this particular model of the vehicle was quite rare. He looked at the vehicle and determined what needed to be done in order to bring it to a competitive condition. He says when the vehicle came to his shop it was just a "shell". He reviewed in detail the work that the defendant had done. He provided photographs which are exhibits before this court and explained why the work done by the defendant needed to be disassembled and redone. He testified that for vehicles that would show well competitively one must use virtually no body filler; adjustments to body parts must be done using metal filler, usually lead. He stated that it would require approximately 60 hours of work to take apart the vehicle and correct the improperly done work and that it would take approximately 250 hours to do the work necessary to put the vehicle in a condition whereby it

could enter competition. The shop rate in his shop is \$100 per hour. The customer pays in addition for the necessary parts. He stated that the claimant did deliver virtually all of the necessary parts to his shop. He stated that it would take approximately \$18,000 and 90 days work to prepare the car to “go out the door”.

The defendant testified that he had worked in the automotive industry since 1969 and owned his own business since 1989. He does mostly repair work and only restores old cars about once per year. He says that he told the claimant that the work would require two years to complete and that the rate would be \$45 per hour. He admitted that the claimant was aware that he had competed in car shows in Atlantic Canada with his own vehicles and that the claimant had asked him to ensure that the claimant’s vehicle look as good as the ones he had done for himself. He says the claimant did not come to his shop very often but when he did come he told the defendant that he was doing a good job. He acknowledged that the claimant had paid him \$18,500. After the family argument and the withdrawal the vehicle he says that he told the claimant that he “probably owed him some money” but that he would have to calculate the labour and would make an offer to the claimant.

The defendant provided photos of the work his shop had done and testified that the work that was done was done properly and that the hours involved were reasonable. Eventually he offered the return of \$790.

Willie Gregory is a qualified auto body mechanic of some 35 years’ experience and the person who worked for the defendant who did virtually all of the work on the vehicle. He was not impressed with this vehicle and felt that every panel needed to be replaced and that the claimant would have been better off to start with a different vehicle. Nevertheless he proceeded to work on the vehicle. He described sandblasting the vehicle, working on the roof using body fill, replacing and fitting fenders, the floor, brackets for the back seats, the doors, and some of the fender panels and a few other things. He also says that Mr. Prall was at the shop a lot and always complementary as to the work that was being done. He says that you cannot rebuild a vehicle without the use of body fill. He also provided photographs of the work which he did. His time records and his evidence indicate that perhaps close to half of this time was dedicated to repairing the roof.

I am satisfied that Mr. Prall communicated to the defendant that his desire was to put the vehicle in a condition where it could be competitive in car shows. There certainly is a difference between the level of car shows which Mr. Curtis’s vehicles compete in those that the defendant

competes in. My view is that Mr. Prall understood the type of car show which the defendant competed in. It is not essential for my decision to determine what length of time and what shop rate was to be applied and I declined to do so.

I found the evidence of the defendant to be somewhat dismissive of the claimant's concerns. His evidence left me with the impression they had not taken the work seriously or supervised it seriously. He appeared to me to view this litigation as just some part of an ongoing family dispute and to have a retaliatory nature to it. I do not accept that. He arrived at what he felt should be returned to the claimant by simply adding up the hours recorded in his shop, applying a \$45 rate and simply saying that his work was satisfactory. As to Mr. Gregory, I do not think he was deliberately attempting to mislead the court. It clearly was primarily his work that was under criticism and his interest in that regard tempered his evidence.

I was very impressed with the evidence of Curtis McLean. He is clearly highly professional and knowledgeable. Not only is his track record in the business impressive but I found his evidence to be clear and straightforward and factual. His explanations were understandable and logical. I do not accept the argument that his credibility should be affected by the fact that he now has the work. Firstly he already had the work and he did not need to disparage the defendant in order to get the work. Secondly I am satisfied that his reputation is such that he does not necessarily need the claimant's work in any event. Where his evidence differs from that of the defendant and that of Mr. Gregory, I prefer the evidence of Mr. McLean.

Law analysis and law

The task of the court in any case involving a contract is to determine the precise terms of that contract. I am satisfied that Mr. Prall was promised that the defendant would undertake to restore his vehicle, as to the bodywork only, to a condition that would make it suitable to compete as a show vehicle at least in Atlantic Canada. I do not hold the defendant to a standard that the vehicle would be in a condition to compete at major international car shows. The parties have agreed that the defendant was paid \$18,500 in advance for this work.

I have carefully examined all of the photographs offered by both parties. I have carefully listened to the explanations provided by Mr. McLean, the defendant and Mr. Gregory. I am not satisfied that the hours claimed by the defendant are reasonable or appropriate for the work that was performed. I have accepted Mr. McLean's evidence that his shop would complete all of the work necessary in a significantly lesser time. I am satisfied that the work performed by the

defendant was inadequate in most respects. I do find it difficult to determine what of the work cannot continue to be used in the ongoing restoration but I have concluded that it is very little.

I do not think it is particularly helpful to my decision to determine whether two years or one year was promised for the completion of the work. Nor do I consider it essential to determine whether or not the rate was \$40 or \$45.

I am satisfied that the claimant got no value for the \$18,500 that he paid and I will order that that be returned to him.

The claim for the \$6000 necessary to disassemble the work done by the defendant is more problematic. My assessment of the evidence is that some of the problems resulted in the faulty work done by the shop in Ontario. However I am satisfied that a reasonable portion of it was due to the work of the defendant. Mr. McLean says that body fill is not acceptable for vehicles that would compete at the level of competition that he engages in. I am not satisfied that that is accurate with respect to competition in Atlantic Canada. This particularly applies to the roof of the vehicle. It is difficult to be precise on the evidence before me but I am satisfied that some allowance should be made for this corrective work, at least with respect to matters other than the roof. I will allow the \$2000 of this part of the claim.

Therefore the claimant will have judgment for \$20,500 together with the filing fee of \$199.35 for a total of \$20,699.35.

Dated at Yarmouth, Nova Scotia, this 21st day of October, 2016.

Andrew S. Nickerson Q.C., Adjudicator