

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Perry v. Team Auto Used Auto Sales, 2017 NSSM 66

Claim: SCAR No.455869
Registry: Annapolis Royal

Between:

WILLIAM BRUCE PERRY

Claimant

– and –

ROGER ROMANS cob as Team Auto Used Auto Sales

Defendant

Adjudicator: Andrew S. Nickerson, QC

Heard: January 11, 2017

Decision: January 23, 2017

Appearances: The Claimants, and the Defendant in person

DECISION

FACTS

The claimant purchased a Ford F150 from the defendant. He placed a deposit of \$1000 down on the vehicle on August 27, 2016. A 1991 Cadillac Eldorado was taken in trade. The total paid in cash by the plaintiff was \$8200 which included \$1200 in HST. The documentation does not demonstrate what the initial asking price of the Ford F150 was. The claimant says that the asking price on the lot was \$12,000. The defendant says that he cannot state what the asking price was or what the actual trade-in allowance was but states that the value of the vehicle traded in was approximately \$500.

The claimant ultimately had problems with the Ford F150 and the defendant agreed to take the vehicle back on trade for another vehicle. The claimant complains that he was only allowed \$500 when making the latter transaction and that he should have been allowed a \$4000 trade in value because that was the reduction in cash price allowed when the Ford F150 was purchased.

The defendant acknowledges that the HST was not handled properly on the second trade and that he justly owes \$1200 as a result of the inappropriate handling of the HST on the second trade. He acknowledges the \$1200 should be credited as that was the amount of HST paid on the initial sale. He also acknowledges that he should credit to the claimant a deductible of \$115 with respect to a warranty that the claimant had to pay for repairs done to the F150 and a charge of \$87.18 necessary to cut a new key to assist with diagnosis of the problem of the F150. The defendant is agreeable to paying the sum of \$1402.18.

The defendant states that the Cadillac Eldorado had approximately 417,000 km on it at the time of the trade-in and as such the \$500 allowed was reasonable. The defendant also produces various private sale advertisements for similar vehicles which range between \$1100 and \$2150 but points out that these were for vehicles with substantially less mileage ranging from 130,000 km to 180,000 km.

The claimant produced confirmation from his auto insurers that they had insured the 1991 Cadillac Eldorado for \$8600 for comprehensive and collision coverage.

ISSUE

What I am required to decide is how much credit should be allowed to the claimant with respect to the trade-in of his 1991 Cadillac Eldorado.

ANALYSIS

I first say that I cannot accept the claimant's view that the insurance value is the appropriate one. Insurers typically allow coverage to a maximum amount but then upon loss utilize actual cash value calculations. Therefore this does not provide a reliable proof of the value of the vehicle. It merely establishes the maximum value that the insurance company was prepared to cover the vehicle for.

I am somewhat disturbed that the defendant was unable to provide proof of the amount credited for the trade-in on the original sale. That would have made the picture significantly clearer. Nor do I have any report done by the defendant at the time of the initial transaction evaluating the condition of 1991 Cadillac Eldorado.

I can also take notice that particularly with respect to used vehicles they are typically sold at substantially less than the initial sticker price. The price for used cars is invariably negotiated

down from the sticker price. If I accept that the sticker price was in fact \$12,000, I am satisfied that the price of an actual sale would have been something closer to \$10,000. Since I do not have actual facts on the amount allowed for the trade-in and the burden is on the defendant to produce that information as he is the one who should have appropriate business records for that purpose, I am going to use \$10,000 as the value of the Ford F150 at the time of the initial purchase. If I do that then the difference between \$10,000 and the \$8,200 paid is \$1,800. This value is completely in line with the values for similar vehicles presented by the defendant. I acknowledge that the vehicle traded by the claimant had substantially more kilometres but I do not have any objective evidence to establish how much difference that would make in general. I do find though that is something that the defendant has not provided compelling evidence for, and therefore I must make a decision based on the evidence which I do have.

The claimant has already been allowed \$500 in the second transaction. I therefore conclude that the appropriate amount that the defendant should owe the claimant in respect of the return of the Ford F150 is \$1200 and that is what I will allow to the claimant.

In addition to this amount I will allow the \$1402.18 which the defendant acknowledges is due. The claimant will have judgment in the amount of \$2,602.18

As to costs I will allow a filing fee of \$99.70 instead of the \$199.35 which the claimant actually paid because his ultimate success is under the \$5000 threshold to which the \$199.35 applies. The claimant engaged a bailiff to serve the claim. I do not find a copy of the bailiff's account in the file and I neglected to ask the claimant at the hearing. I will allow the claimant 10 days from his receipt of this decision to file the bailiff's invoice and, if reasonable, I will allow it.

The claimant also asks to be reimbursed for his travel expenses. Section 15 of the regulations of the Nova Scotia Small Claims Court permit me to award costs as follows:

15 (1) The adjudicator may award the following costs to the successful party:

- (a) filing fee;
- (b) transfer fee;
- (c) fees incurred in serving the claim or defence/counterclaim;
- (d) witness fees;
- (e) costs incurred prior to a transfer to the Small Claims Court pursuant to Section 10;

- (f) reasonable travel expenses where the successful party resides or carries on business outside the county in which the hearing is held;
- (g) additional out of pocket expenses approved by the adjudicator.

The claimant resides in Ontario and seeks the cost of transportation placing him at trial. He has submitted to me and invoice from his travel agency Expedia in the amount of \$1044 for two passengers, being he and his wife. The Expedia reservation appears to cover hotel accommodation at Halifax Airport one evening and a rental vehicle to get from Halifax to Annapolis. I am only prepared to allow for the claimant's costs, not those of his wife. Because the reservation does not seem to break down the portion which is for airfare, hotel and vehicle I am only prepared to allow one half of that invoice in the amount of \$522. He also submits documentation with respect to a shuttle transfer from his residence to Pearson Airport in Ontario at a cost of \$127. These costs of placing the claimant at trial total of \$649. I have concluded that the claimant was substantially successful but did not achieve the amount that he initially asked the court to award. Under the circumstances I consider it fair that I reduce his travel costs to \$450.

To summarize make the following award:

Damages	\$ 2,602.18
Filing fee	\$ 99.50
Travel costs	\$ 450.00
Service costs	To be determined in the final order

Dated at Annapolis Royal this 23rd day of January, 2017.

Andrew S. Nickerson Q.C., Adjudicator