

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Gerhardt's v. Fancy Construction*, 2023 NSSM 60

Date: 20230728
Docket: 520816
Registry: Bridgewater

Between:

Gerhardt's Fleet Tech Service

Claimant

- and -

Craig Fancy Construction (Craig Fancy)

Defendant

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| DECISION |
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Adjudicator: Eric K. Slone

Heard: June 23, 2023, via zoom in Halifax, Nova Scotia

Appearances: For the Claimant, John Collyer

For the Defendant, self-represented

By the Court:

[1] The Claimant, Gerhardt's Fleet Tech Service (a business name of 3316004 Nova Scotia Limited), services trucks and other heavy equipment from its shop in Hebbville, Nova Scotia. The Defendant is a vehicle operator based in Petite Riviere, Nova Scotia.

[2] The Claimant is suing for \$16,061.96 which it says is the amount owing for service work done on the Defendant's vehicles.

[3] The Defendant denies that he owes the money claimed, and counterclaims for \$25,000.00 for what he claims is deficient work and the loss of use of his vehicle. Much of the counterclaim could be seen as a claim of set-off.

[4] The issues in the case are partly accounting issues, and partly questions of allegedly defective work.

[5] The Claimant's Account Manager, Kathy Dorey, testified as to the state of the account between the parties before any of the contested work was done. It appears that the Defendant was allowed to run up his account by several thousand dollars for unrelated repairs. At several points the Defendant made partial payments which were applied to the oldest invoices, which is standard accounting practice. One of those payments was \$9,000.00 on March 8, 2022. Mr. Fancy seemed not to appreciate that this money was being applied to older invoices and was not being applied to the invoice for the engine replacement that is the source of the controversy.

[6] According to the accounting evidence, the net amount still owing to the Claimant is \$16,178.15, which includes but is not limited to the invoice for \$10,653.15 which was rendered on August 20, 2021 for the job in question.

[7] I have not been shown any reason to doubt the accuracy of the accounting records. The issue in this claim concerns the engine job, as well as the justification for certain charges applied to the account.

[8] The truck in question is a 2009 Chevrolet 3500 LTZ plow truck with high mileage, which the Defendant says he acquired in (or from) Florida. It had been

used by the Defendant for one full season plowing snow in Nova Scotia. In April 2021, the engine gave out and the truck was towed into the Claimant's shop. The Defendant wanted the engine replaced but did not want to spring for a new engine. The person that the Defendant mostly dealt with was service writer Darren Whitman. A used engine was located which was quoted to the Defendant for \$3,500.00, not including labour or tax. No amount for labour was quoted by Mr. Whitman, but was rather left to be determined later after the job was completed. Mr. Fancy later claimed that he was relying on a verbal quote from the owner of the Claimant, Bill Gerhardt, which I will comment upon further below.

[9] For a number of reasons this job took approximately six months to complete. As explained by Mr. Whitman, there were significant delays in acquiring parts due to supply chain issues that were occurring during the early years of the Covid pandemic. As a result, the truck was often stored outside until it could be worked on further.

[10] Also, there were complications adapting the replacement engine to fit the truck.

[11] A number of mechanics worked on the vehicle, including an apprentice, Josh Tanner whose qualifications have been questioned by Mr. Fancy. Even so, the project was supervised by fully qualified mechanics.

[12] When the work was finally complete, Mr. Whitman test drove it for about 200 km., and found no issues with it.

[13] Mr. Fancy picked it up, but within a week experienced a fuel leak, which was repaired. So were some electrical issues and an exhaust leak. He later brought it back complaining of some sticky substances having been left on the body (possibly an adhesive) and also some chipped paint. Some effort was made to clean this up.

[14] Graham Sarty is a shop foreman with the Claimant, who supervised the work in question. He admitted that Mr. Tanner made some mistakes along the way, but everything he did was corrected, if necessary, by a fully licenced mechanic.

[15] Mr. Sarty and Mr. Whitman assessed the job after it was complete and came up with what they believed was a suitable charge for labour. They did not bill for all of the time spent. Mr. Sarty said that they actually only charged for about one half of the hours spent on this repair. Mr. Sarty testified that he went over the invoice with Mr. Fancy and explained everything.

[16] The Defendant called two witnesses apart from himself.

[17] Todd Silver is an experienced mechanic. He says that he saw the truck when it broke down again, and the wiring under the hood seemed to be in disarray. He offered the opinion that the hours charged for the job done by the Claimant were out of line with industry standard. He did not take on the job himself because he does not typically work with diesel engines.

[18] Andrew Himmelman also testified on behalf of the Defendant. Although not a licensed mechanic himself, he owns several service locations and employs licensed technicians. He examined the truck in December 2022 - more than a year after the Claimant's work. He popped the hood and observed that many wires were not where they were supposed to be. He also plugged in a scan tool and came up with many fault codes.

[19] Back in 2021, he had provided Mr. Fancy with an estimate for the engine replacement which was \$7,000.00 plus tax. He had a high mileage engine available and estimated that the labour component would have been in the 40-to-50-hour mark.

[20] He performed repairs in early 2023, at a cost to Mr. Fancy of \$3,644.91. Much of the cost was related to rearranging the wiring under the hood and repairing a number of fluid leaks. He attributed some of the issues that he encountered to the fact that the vehicle had sat outside for months at a time while being worked on by the claimant.

[21] On cross-examination, Mr. Himmelman admitted that he had not actually seen the vehicle in April 2021, but just gave a verbal quote to Mr. Fancy. He also admitted that Nova Scotia can be particularly hard on trucks engaged in snow plowing and related activities.

[22] Mr. Fancy testified on his own behalf. He gave some of the history of this vehicle. He acquired it from the US in early 2020, at a cost of \$7,500.00. It had been in some kind of accident and required approximately \$8,000.00 worth of repairs. In November 2020, he had the truck fitted with a plow and salt spreader which was an additional cost.

[23] When the engine blew in April 2021, Mr. Fancy spoke to Andrew Himmelman and obtained a verbal quote of approximately \$7,000.00. He had to look elsewhere because Mr. Himmelman was too busy to take it on. He sought out Bill Gerhardt, the owner of the Claimant company, and reported a conversation with Mr. Gerhardt where he supposedly stated that he thought he could match Mr. Himmelman's price.

[24] Mr. Gerhardt was not called as a witness, and none of the Claimant's witnesses knew anything about this purported conversation and verbal quote, such as it was. I have to question why when discussing the job with other people at Gerhardt's this verbal quote was not brought up. If Mr. Fancy had really expected this quote to be fulfilled, surely he would have mentioned it at the time when he was presented with his invoice for several thousand dollars greater than this quoted amount. I am unable to give any weight to this supposed verbal quote.

[25] Mr. Fancy testified that at one point he had to acquire another vehicle for \$11,000.00 because this one was out of service.

[26] He testified that since Mr. Himmelman performed his repairs, the truck has been working fine.

[27] Mr. Fancy had no explanation for why the truck odometer showed that it had been driven an additional 9,000 miles after it was repaired by the Claimant and before it broke down again. He insisted that it has only been driven a much lesser distance. He speculated that maybe someone had written down the mileage wrong.

[28] I believe this must remain a mystery, and I am not willing to place much weight on mileage amounts that may have been written down wrongly, or merely carried forward without adjustment from previous invoices.

Discussion

[29] As already noted, I do not question the Claimant's accounting. I also find that there was no fixed quote for labour, and that the amount eventually charged was fair - assuming that the job was properly done. I find that the Claimant made a good faith effort to perform the work, but experienced delays and complications beyond its control.

[30] I am not convinced that the main work of replacing the engine was done improperly and am unwilling to lay any blame at the feet of the apprentice who did much of the work. I am satisfied that all of his work was checked by licenced mechanics.

[31] Though I am not convinced that all of the work done was faulty, the Claimant must assume some responsibility for the fact that the vehicle broke down so soon after having been repaired. Section 27(5) of the *Consumer Protection Act* provides that “[t]here shall be implied in every consumer sale of services a condition, on the part of the seller, that the services sold shall be performed in a skilful, efficient and competent manner.” I believe that the Claimant must answer for some of the losses that were incurred by the vehicle breaking down so quickly after having been extensively repaired.

[32] I hold the Claimant responsible for the \$3,644.91 invoice from Mr. Himmelman's company, which mostly dealt with the faulty wiring under the hood. I am satisfied that this was caused by poor workmanship on the part of the Claimant.

[33] There are also a few charges on the account that I find questionable:

- a. The Claimant charged \$1,164.13 to remove the engine that it eventually sold to Mr. Fancy. I find that this ought to have been included in the quotation for the engine, which was \$3,500.00. If it was going to cost \$4,614.13, this ought to have been disclosed in advance. I will disallow this amount.
- b. The Claimant charged \$1,888.54 for repairs, including replacement of the fuel line, on October 25, 2021 - i.e., only ten days after the vehicle

was handed back to Mr. Fancy after the engine replacement. It seems logical that some of this work ought to have been done while the engine replacement was taking place. I will disallow \$1,000.00 of this cost.

- c. The Claimant charged \$856.99, also on October 25, 2021, for some electrical repairs and to fix an exhaust leak. I am also satisfied that this was work that ought to have been done at the time of the main repair and I disallow it.

[34] Mr. Fancy makes other claims in his counterclaim. He asks for the following:

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| a. | Repair engine damage | \$5,000.00 |
| b. | Paint Damage repair | \$3,000.00 |
| c. | Replacement truck to drive | \$11,000.00 |
| d. | Replacement truck to plow and sand | \$6,000.00 |
| e. | McCarthy towing expenses (5X not incl. original tow) | \$875.00 |
| | Total | \$25,875.00 |

[35] Several of these claims deserve comment.

[36] I can accept that Mr. Fancy needed to make other arrangements in order to carry on his business, but he has not proved that what he did was the most cost-effective way to accomplish this. There was no documentation to support the replacement trucks, nor any indication of what residual value they have or had.

[37] The claim for paint damage is unsupported. It has not been proved to my satisfaction that this was caused by the Claimant. Nor am I convinced that minor cosmetic defects on a 15-year-old working vehicle are worthy of being repaired beyond what might be necessary to prevent rusting.

[38] It does appear that some of the towing expenses might have been occasioned by the vehicle breaking down after the Claimant's work, but the proof is lacking in several respects. There are no invoices, and no dates attached to the expenses. Under the circumstances, I am prepared to allow \$350.00.

Conclusion

[39] I begin with the full claim amount and deduct the items for which the Claimant should be held to account:

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| Claimant's account | \$16,178.15 |
| invoice from Mr. Himmelman's company | (\$3,644.91) |
| charge to remove engine | (\$1,164.13) |
| October 25, 2021 for repairs | (\$1,000.00) |
| October 25, 2021 for repairs | (\$856.99) |
| towing charges | (\$350.00) |
| Net owing to Claimant | \$9,162.12 |

[40] The Claimant is entitled to its cost of filing the claim in the amount of \$199.35. I will allow \$100.00 for a reasonable cost of service, in the absence of a confirming invoice.

Order

[41] It is accordingly ordered that the Defendant pay to the Claimant the sum of \$9,162.12 plus costs in the amount of \$299.35, for a total of \$9,461.47.

[42] It is ordered that the counterclaim be dismissed without costs.

Eric K. Slone, Small Claims Court Adjudicator