

Claim No: 419989

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: McKenzie v. G.T. Auto Repair, 2013 NSSM 56

BETWEEN:

DANIEL W. MCKENZIE

Claimant

- and -

G.T. AUTO REPAIR and GLENN FORD

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on November 19, 2013

Decision rendered on December 10, 2013

APPEARANCES

For the Claimant self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimant seeks damages of \$2,000.00 for damage allegedly done to his power boat by the Defendants, who were hired to fix a problem with the boat's engine.

[2] The Claimant had restored the boat and was actually getting it in shape to sell it. On July 28, 2013 he decided to take it out for one last run in and around the Halifax Harbour. As he was heading back to the Alderney Marina, he says that he noticed water being pumped out of the bilge, which indicated some type of leak. He says that he very carefully nursed it back to shore, and then contacted the Defendant Ford, owner of the business G.T. Auto Repair, and asked him to come down to the marina to have a look. Mr. Ford allegedly told him that he suspected a "front plug" issue, and as a result he arranged to have the boat towed to the Defendants' shop.

[3] He received the boat back on August 17. At that time he was told by the mechanic who worked on the boat that he was having trouble with the engine over-revving. The Claimant says he put it back in the water, but with the over-revving problem he could not get the engine to stay in gear without stalling. He says he called Mr. Ford who came down and tried to get it to work. Mr. Ford stated that he suspected a carburetor problem, and came back a couple of days later and removed the carburetor and did some work on it. By then the engine was no longer running. Mr. Ford suggested that it was "hydro-locked" which I understand to mean that water had found its way into the cylinders and caused everything to seize up.

[4] The Claimant removed the engine and took it to another mechanic shop, who removed the cylinder head and found it to be warped just enough to create a serious problem. Although not present at the trial, the owner of that auto shop offered the opinion that the cause of the warping had to have been that the engine had overheated at some point.

[5] I would have been reluctant to accept this expert opinion, given that there was no witness in court to back it up, but for the fact that the Defendants agree in general terms that overheating must have occurred at some point. The area of disagreement is whether that overheating occurred before or after the Defendants took custody of the boat.

[6] In the end, the Claimant had to scrap the engine and have a new (used) engine installed. The cost to get the boat up and running was approximately \$1,000.00, on top of the approximately \$1,000.00 that the Claimant had paid to the Defendants.

[7] Mr. Ford testified, as did several of his employees who were present when the engine was serviced.

[8] Mr. Ford says that the original problem which he identified was the front expansion plug, which had corroded with the result that coolant water was escaping from the engine at that point rather than continuing through the engine to be eventually expelled through the exhaust. Mr. Ford's employee, Brett Davidson, suggested that the plug was of the wrong kind, namely steel, which is unsuitable for a boat running in salt water. He replaced it with a brass plug which does not corrode in salt water.

[9] Mr. Ford and his employees had to remove the engine from its housing in order to seek out the leak. He says that when they ran the engine for test purposes, they hooked it up to a water supply as is required to avoid overheating. This is done with a device that resembles a pair of earmuffs. A water hose is connected to the muff, which is placed over the water intake area to make sure that the water is properly drawn into the coolant channel.

[10] Although the Claimant did not specifically make this accusation at the hearing before me, he apparently had accused Mr. Ford of neglecting to use the muff, i.e. running his engine dry and causing it to overheat. Mr. Ford brought several of his employees to court to refute that suggestion. They all testified that the water supply was properly attached before the engine was started.

[11] Mr. Ford and others also testified that the engine was not run long enough at the shop to overheat. Mr. Ford speculated that the overheating must have occurred when the Claimant was driving back to the marina after the coolant leak had occurred.

[12] Mr. Ford testified that the engine was running fast from the time he had it, and that his inspection of the carburetor indicated that the fast idle cam was in the wrong position, which might have explained why it was revving so fast. By the time he sorted out the carburetor problem, the engine had locked up, likely as a result of the failure of the head gasket, following upon some warping of the head.

[13] The issue for the court is whether or not the Defendants did anything to cause or contribute to the misfortune suffered by this boat engine.

[14] In the final analysis, while I am not entirely without some suspicion, I am unable to conclude on this evidence that the engine overheated while in the custody of the Defendants. I do not believe that Mr. Ford and his employees would have made the elementary mistake of running an engine dry. Servicing car and boat engines is their business, and it is hard to believe that they would have forgotten or neglected to make sure that there was engine coolant running at the time.

[15] The burden of proof is on the Claimant to show that it is more probable than not that the overheating, and all of the consequent damage, occurred while the Defendants were working on his engine. I simply do not believe that he has made out a case that proves that.

[16] It is not strictly necessary for me to propose or even accept an alternate theory, so long as there are logical alternatives that might explain the problem. I would regard it as more inherently probable that the overheating occurred before the Defendants ever took custody of the engine. I believe it is quite possible that the warping had occurred, and the head gasket was on the verge of failure. Eventually, probably after it was put back in the water, it simply failed.

[17] The Defendants were not looking for head gasket problems. They were looking for a coolant leak.

[18] In the end, sympathetic as I am to the inconvenience and expense experienced by the Claimant, I am unable to fix responsibility on the Defendants. In the result the claim must be dismissed.

Eric K. Slone, Adjudicator