

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Simpson v. Jordan, 2014 NSSM 21

BETWEEN:

DEBORAH MARIE SIMPSON and
JAMES ANTHONU CAROCCI

Claimants

- and -

PHIL JORDAN, ATLANTIC TIRE SERVICES LIMITED
and PATRICK KEVIN MCKEOUGH

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on February 4, 2014

Decision rendered on February 19, 2014

APPEARANCES

For the Claimants self-represented

For the Defendants self-represented

BY THE COURT:

[1] In October 2013, the Claimants purchased a second hand 2005 model year Ford Ranger pick-up truck, which they learned about on the buy and sell website kijiji. The seller was the Defendant Patrick Mckeough (“Mckeough.”)

[2] The Claimants live in Cape Breton. Mr. Mckeough resides in Lake Echo, just outside of Dartmouth. Mr. Mckeough is a private individual, in the sense that he is not in the business of buying and selling vehicles. This is important, because the provisions of the *Consumer Protection Act* do not apply to sales by ordinary people.

[3] As is sadly common in this type of situation, the Claimants did not avail themselves of the opportunity to have the vehicle inspected by their own chosen mechanic before they agreed to buy it. They liked what they saw. Mr. Mckeough was friendly and accommodating, and he indicated that there had been significant work done on the truck before he advertised it for sale. A test drive did not reveal any obvious problems. And, as Ms. Simpson candidly admitted, they were in a bit of a hurry to return to Cape Breton.

[4] They paid \$6,000.00 for the vehicle, which they primarily hoped to use to haul their All Terrain Vehicles around.

[5] The most serious problem that eventually became known concerns the frame. Elements of it were seriously corroded to the point that the frame lacked structural integrity. Also, the rear end was rusted out. These problems surfaced within weeks of the purchase, as the Claimants first attempted to have a trailer

hitch installed at the local Canadian Tire. The hitch was installed, but the work revealed some of the serious problems. The Canadian Tire mechanic informed the Claimants that the “shocks were falling off.” There was also a loose tie rod end.

[6] The Claimants got back in touch with Mr. Mckeough to complain about the problems that they were finding. He suggested that they get in touch with the Defendant Phil Jordan (“Jordan”), who owns the Defendant Atlantic Tire Services Limited (“Atlantic.”) It was Mr. Jordan who had performed a safety inspection on the vehicle mere weeks before Mr. Mckeough sold it to the Claimants.

[7] Before discussing the culpability of Jordan and Atlantic, it is important to dispose of the potential liability of Mr. Mckeough. In the absence of outright fraud or grossly negligent misrepresentation, or of an express warranty, he is protected by the principle of *caveat emptor* - or “buyer beware.” As I wrote several years ago in *Wallace v. Beazley* 2007 CarswellNS 352, 2007 NSSM 39:

16 As noted above, this was a private sale. Accordingly, it would be my view that the provisions of the Nova Scotia *Consumer Protection Act*, R.S.N.S. 1989, c. 92, would not apply. That Act dictates certain implied conditions or warranties in Section 26 and also contains a provision in Section 28A regarding express warranties regarding the sale of an automobile. However, these provisions would only apply to a “seller” as defined in the *Consumer Protection Act* which would mean a “person who is in the business of selling goods or services to buyers” (see Section 2(n)). The Defendant here does not fit that definition.

17 That leaves us with the common law. The starting point on a private sale of a used car is the general proposition that there are no implied warranties or representations with respect to the physical condition of the car. However, it does not follow from that that there cannot be express representations and warranties which form part of the contract. To the

contrary, and as with any contract, there certainly may be express representations and warranties. The question in any case then turns to whether the facts, objectively viewed, support a finding of an express warranty.

[8] The facts here do not support any warranty by Mr. Mckeough. He simply told the Claimants what work he had recently done on the vehicle. He also told them that it had recently passed inspection. All of that was true.

[9] There is accordingly no legal responsibility on the part of Mr. Mckeough, and the claim against him will be dismissed.

[10] The situation as regards the other Defendants is very different.

[11] Mr. Jordan is the owner and operator of Atlantic. He is licenced by the Province to perform Motor Vehicle Inspections ("MVI"). A reasonably current MVI is necessary to be able to transfer ownership of a vehicle. This provides a measure of comfort to the driving public that unsafe vehicles will not be permitted on the roads. The more recent the inspection sticker, the greater would be the reliance that one could place on it.

[12] It is well understood that an MVI does not touch upon all of the components of a vehicle, and a number of items such as windshield wipers and the horn only need to be checked on new vehicles.

[13] On the form there are a number of components which the inspector is directed either to pass or reject. When a component is rejected, the procedure is for the owner to make repairs and bring the rejected component up to the required standard. Once that is confirmed by the inspector, the sticker may be

issued certifying the vehicle as having passed inspection. If the vehicle cannot be repaired, or if the owner chooses not to repair it, it cannot be transferred as an operating vehicle.

[14] Under s.18 of the *Vehicle Inspection Regulations* made under subsection 201(7) of the *Motor Vehicle Act*, the vehicle parts that must be inspected are:

18 (1) All of the following parts of a Type 1 vehicle, except a motorcycle, motor-driven cycle or trailer, must be inspected:

- (a) windshield and window glass;
- (b) brakes;
- (c) steering system;
- (d) suspension system;
- (e) exhaust system;
- (f) fuel system;
- (g) tires and wheels;
- (h) body components.

[15] In the case here, Mr. Jordan identified some deficiencies and sent Mr. Mckeough to get them repaired. The evidence suggests that Mr. Mckeough tried to get the work done “on the cheap,” rather than have it done at a dealer or other reputable commercial shop, which is perhaps understandable as he hoped to maximize his proceeds of sale. I have no doubt that he simply wanted to comply with the directions of the inspection.

[16] The vehicle was brought back to Mr. Jordan on October 13, 2013, and it was passed and given the necessary sticker. Ten days later it was sold to the Claimants.

[17] When the Claimants discovered the problems with the vehicle, they contacted Mr. Jordan (as directed by Mr. Mckeough) to see if he would take

responsibility. It is sufficient to say for purposes of this decision that he offered the Claimants some hope that he might help, but he ultimately appears to have had a change of heart and has since disavowed any responsibility.

[18] The Claimants decided to report Mr. Jordan to Service Nova Scotia, which is the government body that licences motor vehicle inspectors. As per their procedure, an inspector from the Sydney area was dispatched to inspect the vehicle and determine whether there was any reason to question the original inspection. That inspector discovered a hole in the frame where it was rusted out. This was sufficient to take it to the further step of having Mr. Jordan interviewed, which was done by a different Halifax based inspector. A written statement was taken on January 6, 2014, which included the following questions and responses by Mr. Jordan:

- Q. As a result of a complaint by purchaser of vehicle, our officer in Cape Breton inspected the vehicle. Several defects were found. Can you explain the play in the tie rod end.
- A. No - it was tight when it was here. It was probably 3 weeks later that he had everything fixed that we told him.
- Q. Can you explain the rusted frame section at the rear of vehicle.
- A. We told the customer to have the gas tank support repaired at the frame plus he had numerous other repairs to do. It is a visual inspection. The repairs and underbody was sprayed with undercoating and I did not see the hole in the frame.

[19] These answers did not satisfy Service Nova Scotia, which concluded that Mr. Jordan had not done a proper or competent inspection. In the result, Mr. Jordan had his licence to perform MVI's suspended for 90 days.

[20] Mr. Jordan's testimony in court was to the effect that he only does a visual inspection and does not poke around to see if there may be holes in the frame. As such, if there is something like undercoating or even dirt obscuring a hole, he might miss it.

[21] The suggestion that there might have been recent undercoating, which might have obscured holes in the frame, is not supported by the evidence, as Mr. Mckeough testified that he had not had any undercoating done for about a year. Even if there was still some undercoating adhering to the underbody, surely Mr. Jordan should have looked more closely.

[22] As for the tie rod end that was loose, and the shocks that were found to be falling off so soon after his inspection, Mr. Jordan speculated that things can become loose over time. While this is true, the evidence suggests that he just missed these defects.

[23] It is this court's finding, on all of the evidence, that Mr. Jordan did an inadequate inspection and, as such, he failed to detect the very defects that have caused the Claimants so much trouble. His practice in this instance undermines the very reason for such inspections.

[24] I further find that Mr. Jordan and his company owed a clear duty of care to the eventual purchasers of vehicles, who are the very people who would be relying on the supposed expertise of the inspector.

[25] I further find that Mr. Jordan initially accepted responsibility to the Claimants, but backed away from it when he learned of how much it was going to cost. I find that his acceptance of responsibility was an admission of responsibility, and not a mere gesture of goodwill.

[26] I further find that the Defendants Jordan and Atlantic are jointly liable for all of the reasonable and foreseeable expenses to bring the vehicle to a reasonable standard so that it can be driven. It should be noted that until the work was completed just before the trial, the Claimants had never been legally able to drive their vehicle, except for the limited purpose of driving it to a service facility.

[27] I further find as a fact that the Claimants have acted reasonably in having the repairs done in an economical way, and I allow the following:

Actual repair costs	
Frame repair	\$1,732.00
Shocks	\$274.84
Rear end repair	\$800.00
	\$2,806.84

[28] One feature of this case is that the Claimants have incurred an extraordinary cost for travel, taking the vehicle to various service facilities, and attending court. They have also paid witnesses mileage money. I allow the following:

Costs

mileage for Nov 13/15 trips (2 vehicles)	\$414.60
Further mileage for drive to pick up vehicle	\$138.20
Further mileage for drive to have rear end repair done	\$138.20
Mileage paid to witnesses	\$398.80
Cost to effect service	\$255.16
Cost to file claim	\$96.80
Travel expenses relating to court attendance	\$214.57
	\$1,656.33

[29] In addition the Claimants have asked for general damages. Given the extraordinary and stressful process that they have been through, I am awarding \$100.00 to Ms. Simpson. Mr. Carocci did not attend court, so I cannot consider his damages proved.

[30] There is also a claim for interest. Not all of the expenses were paid at the same time; indeed, the last \$800.00 for the repairs to the rear end was to be paid the day of, or day after the trial. The amounts that they paid earlier totalled approximately \$2,000.00. I allow interest on \$2,000.00 from November 15, 2013 to the date of this order, February 19, 2014, at the statutory rate of 4%, for a total of \$21.04.

[31] The total judgment against the Defendants Jordan and Atlantic will be:

-9-

Repair costs	\$2,806.84
Costs	\$1,656.33
General damages	\$100.00
Prejudgment interest	\$21.04
	\$4,584.21

Eric K. Slone, Adjudicator