



“If warranty service is needed and you are 50+ miles from this Centre, bring vehicle to nearest Cottman for repair authorization.”

- [5] Mr. Comeau says that while he was verbally advised of the existence of the one year warranty, his attention was not drawn to any particular provisions of the warranty. In particular, his attention was not drawn to the “details of limited warranty” that appear in small print on the reverse side of the invoice.
- [6] Without setting out all of the terms and conditions of the limited warranty, suffice it to here say that the general intent was that the “warranty will be honoured at the above Centre only, unless otherwise authorized.” Throughout the terms of the limited warranty the customer is required:
- a. to notify the Cottman Transmission Centre that had performed the original repairs, unless otherwise authorized;
  - b. to bring the vehicle in to that Cottman Transmission Centre, unless otherwise authorized; and
  - c. not to permit any service or repair of the transmission by any other mechanic, unless otherwise authorized by the Cottman Centre which had performed the original repairs.
- [7] Mr. Comeau operated his van without difficulty until approximately two months later.
- [8] In December 2002 he commenced a trip to Ontario for Christmas. The day before the trip he had the vehicle fully tuned up.
- [9] On December 19, 2002 he departed for New Brunswick (where he was to pick up his wife) with the intent of continuing on to London, Ontario.
- [10] As he approached Oromocto, New Brunswick, the van started to act in a peculiar fashion and would no longer proceed with any speed. This happened about 6:00 o'clock in the evening. Mr. Comeau's wife was able to telephone a local repair shop which she normally used, and they stayed open in order to look at the van. The van was towed in to the repair shop in Oromocto.
- [11] The mechanic looked at the vehicle and concluded that the transmission was defective. The transmission could not be repaired for three days. Since this was an unacceptable delay (given their plans to visit their parents during the Christmas season) Mr. Comeau decided to authorize the repairs and rent a replacement vehicle so that they could continue on their trip to London.

- [12] On their return from Ontario they picked up the van and paid for the repair costs in a total amount of \$1,926. The cost of the rental was \$765, and there was a towing bill of \$56.50.
- [13] These amounts the Claimant claims against the Defendant.
- [14] Mr. MacKay objects on the grounds that the terms and conditions of the limited warranty had not been complied with. In particular, he objects that he had not been called by the Claimant. He says that had he been called, he would have had the vehicle towed back to his shop in Dartmouth, and conducted the repairs himself.
- [15] Mr. MacKay did not appear to be aware of the provisions that appeared on the front of the invoice (those dealing with situations where warranty service was needed and the customer was more than 50 miles from his Centre). When these were drawn to his attention he modified his position, saying that he had no problem with the van being taken to another authorized Cottman dealer; but that in any event, he still should have been called in order to authorize the repairs.
- [16] It is clear on the evidence that Mr. Comeau did not comply with the strict requirements of the terms and conditions of the limited warranty. In particular, he did not obtain authorization of the Defendant to leave the van in New Brunswick for repairs to be conducted there.
- [17] However, it is not necessary for me to determine whether or not the terms and conditions of the limited warranty are reasonable; or whether there was any obligation on the part of the Claimant, in the circumstances of this case, to comply with all of those terms and conditions.
- [18] I come to this conclusion because I am satisfied that the original repair agreement between the Claimant and the Defendant (which is contained in the invoice dated October 12, 2002) was a “consumer sale” within the meaning of s. 26(1) of the *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as amended. Pursuant to that provision, a “consumer sale” means “a contract of sale of goods **or services**.” Mr. Comeau, who agreed to purchase the goods or services set out in the Cottman invoice, was a “purchaser” pursuant to s. 26(2) of the *Act*.
- [19] That being the case, there was an implied condition on the part of Cottman “that the services sold shall be performed in a skilful and workman-like manner:” s. 26(5).
- [20] I am satisfied that a transmission that falls apart roughly two months after it is worked upon, in a case where a one year warranty is given, and when only roughly 4,000 kilometres in respect of a 24,000 kilometre warranty have been put onto the vehicle, that there was a breach of the warranty that was implied in the contract under the *Consumer Protection Act*. I note here that the warranties given under the *Consumer Protection Act* cannot be waived or modified by agreement to the contrary: s. 28(1) of the *Consumer Protection Act*.

[21] Since I am satisfied that the Defendant's work breached the above-noted implied condition, the Claimant is entitled to claim damages. Having heard the evidence, and given the nature of the circumstances in which the Claimant found himself (circumstances which would be reasonably within the contemplation of any auto mechanic or transmission repair shop), I am satisfied that it was reasonable in the circumstances for the Claimant to cause the repairs to be done; and to rent a replacement vehicle; and to incur the towing charges.

[22] I accordingly find that the Defendant is liable to the Claimant for the amounts claimed.

Dated at Halifax, Nova Scotia this 24<sup>th</sup> day )  
of April 2003 )  
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**ADJUDICATOR**  
W. Augustus Richardson

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)