

Claim No: 420564

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Brooks v. Thompson, 2014 NSSM 5

BETWEEN:

MARTINA BROOKS

Claimant

- and -

DON THOMPSON

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on December 10, 2013

Decision rendered on January 10, 2014

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] This is a case of a used car purchase turning out very badly for the Claimant. The 2002 Grand-Am that she bought on September 25, 2013 for \$2,500.00 from the Defendant developed serious problems almost immediately. It is currently not driveable and would not be without further investment that the Claimant cannot afford.

[2] The Claimant sues for almost \$6,000.00, which includes the original purchase price, repair bills, the cost of insurance and registration, and general damages of \$100 for the stress that this has caused.

[3] In her claim she states that the Defendant "ripped her off" by stating that "everything was done on the car." In effect, she is claiming either fraudulent misrepresentation (i.e. he knew that what he was saying was not true) or a form of verbal warranty (promising that he would answer for whatever might go wrong.)

[4] The Defendant is not in the business of selling cars. He is an ordinary individual. He had bought the car some six months previously to be driven by his son and daughter-in-law. He says he paid \$1,500.00 originally, and spent another \$2,300.00 on repairs to get it into proper shape. After his family no longer needed it, he put it on the market after doing a few further small repairs that he was told it needed. He testified that he believed the car was in reasonable shape. He said that the only representations made to the Claimant concerned the repairs that he did.

[5] The Claimant is a young woman who had never owned a car before. She test drove the vehicle along with her mother, who is obviously more experienced.

[6] The negotiated purchase price of \$2,500.00 was paid in cash. The Claimant registered the vehicle and insured it. Unfortunately, after the first day of driving it started leaking coolant. Upon taking it to a mechanic, the Claimant learned that there were other problems including (but not limited to) worn tires, tie-rod looseness, power steering leak, rusted bottom of fender and broken bumper. It will cost a substantial amount to put into decent shape. It is questionable whether it is worth the investment in further repairs, as opposed to selling it for parts.

[7] At the hearing I asked the Claimant why she had not taken it to a mechanic before she purchased it. This is the elementary advice that most people hear when buying a car privately. The only answer that the Claimant had is that she did not know any mechanics.

[8] Unfortunately for the Claimant, the law is not on her side. Had she bought it from a dealer, or more accurately someone who meets the definition of a "seller" as defined in the *Consumer Protection Act* - being a "person who is in the business of selling goods or services to buyers" - she would be protected by an implied warranty of fitness or durability. Because the Defendant is clearly not a "seller" in that sense, there are no implied warranties.

[9] There also is no written warranty. Indeed, there was no written contract. The Defendant simply signed the back of the vehicle registration form.

[10] This case has a lot of similarities to one I decided in 2007, *Wallace v. Beazley* 2007 CarswellNS 352, 2007 NSSM 39, and the comments I made at that time are worth repeating:

15 Of particular significance is that nothing was put in writing. That means the Claimant is unable to rely on any written warranties or conditions relating to the subject automobile.

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.

[11] The evidence does not support any express misrepresentation or warranty. The Defendant did not profess to be knowledgeable about cars. He simply told the Claimant what work had been done. He did not make any promise that the car would perform in the future, or that it would not need further or other repairs.

[12] The vehicle in question was more than ten years old and had been driven in excess of 160,000 kilometres. Most people would understand that it was

possibly close to the end of its useful life. The only way to have determined whether it was a good deal would have been to have it thoroughly inspected by a mechanic.

[13] If the Defendant can be criticised for anything, it would perhaps be for taking advantage of the naivety of the Claimant. Even so, I am not making such a criticism in this case. The Defendant appeared to me to be sincere when he said that he believed the car was in reasonable working shape, and that he would not have allowed his grandchild to be transported in it if he had believed it was unsafe.

[14] Under the circumstances, harsh though it may seem, the Claimant cannot succeed on the basis of either misrepresentation or warranty, and her claim must be dismissed.

Eric K. Slone, Adjudicator