C9520
Chilliwack Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

AMARJIT SINGH RANU

CLAIMANT

AND:

PACIFIC JUNCTION ENTERPRISES LIMITED
TDC TRUCK & DIESEL REPAIR

DEFENDANTS

ORAL REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE A. ORMISTON

COPY

Counsel for the Claimant appearing by teleconference:	J. You
Counsel for the Defendants:	B. Vickers
Place of Hearing:	Chilliwack, B.C.
Date of Judgment:	September 20, 2019

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[1] THE COURT**:** This is an application pursuant to Rule 16(6) and 713(1) (sic) of the *Small Claims Act* to dismiss the amended claim for damages relating to the defendants' mechanical work on the claimant's long haul truck.

[2] It is agreed that the claimant hired the defendant to rebuild or modify the engine of his truck. The claimant says the truck broke down a year and a half, approximately, later. In his original claim, he said the defendant was liable to pay damages based on a warranty.

[3] The defendant provided materials as required at the settlement conference establishing the warranty for his work expired after one year. The defendant raised his motion to dismiss the claim at the settlement conference when opposing counsel, not present counsel, did not attend.

[4] On the next date, the claimant appeared but had no response to the application to dismiss the claim despite it having been properly served.

[5] With new counsel, the claimant now seeks to amend his claim, which is not contested by the defendant, to include a claim for negligence and he claims two things, essentially. First, that there were issues with the truck that did fall within the one-year warranty, and secondly, that the fundamental engine failure that occurred a year and a half later is the product of negligent work.

[6] There have been four court appearances since the original claim was filed and on two such occasions, the claimant was fined by the court for not being properly prepared to proceed. The matter was adjourned to our last date,

September the 16th, with an order that the claimant file his responding materials no later than June the 21st of 2019.

[7] Present counsel for the claimant, Mr. Yu, says he was retained just prior to that date and that the materials were hastily filed. He says the material facts, though, to substantiate his amended claim have always been before the court even if the pleadings were not correctly framed.

[8] While it is understandable that Mr. Yu needed to act quickly to comply with the court order back in June, in the intervening months it does not appear that anything has been done to clarify his position or the evidence he intends to rely on, either with opposing counsel or the court. The claim has been something of a moving target, as I said, up to and including this hearing where Mr. Yu proposes now to rely on an implied warranty under the *Sale of Goods Act*.

[9] The power of a provincial court to dismiss a claim under these Rules is more broad than a summary judgment application in supreme court. The legislation and jurisprudence allow provincial court judges to consider and weigh the evidence at this early stage to make a determination that is in accordance with the purpose and objectives of the *Small Claims Act* as set out in s. 2: this is a forum for the just, speedy, and inexpensive resolution of these disputes. The claimant's conduct so far has prevented such a resolution of this matter but arguably that has been addressed by the financial penalties levied against him.

[10] What I have to determine today is whether or not there is a reasonable prospect of success based on these claims, and I agree with the defendant that there is no reasonable prospect of success based on the claim that the work of the defendant is covered by the manufacturer's warranty. It is clear that warranty did not apply to the defendant's work. The claimant's amended pleadings appear to be consistent with this.

[11] When I consider the submissions and affidavit filed by the claimant since the settlement conference, when he had the benefit of having reviewed the defendant's position in evidence, his revised argument consists of the following. One, a claim that the one-year warranty was in fact violated by issues with the engine that happened within the year of the defendant's work; secondly, that the work was negligent; and lastly, he raised on the last day, although not formerly pled, that the defendant had violated an implied warranty under s. 18 of the *Sale of Goods Act*.

[12] On the first issue, I find that the claimant has no prospect of success on the first of these arguments. The issues that occurred within the period of the warranty were not related to the work performed by the defendant. The undisputed independent evidence strongly supports this inference given that the claimant was invoiced for this work. The claimant has not pointed to any other evidence that could lead a judge to find that these issues that arose before the expiration of the one-year warranty were caused by the defendant.

[13] With respect to the issue of negligence, the claimant relies essentially on two things that I can figure from the affidavit that he filed in response, and that is that the

engine broke down after approximately a year and a half, and then also his bare assertion that he was not responsible for the breakdown by over-speeding the engine as the defendant would say at trial. These facts do not leave the claimant with a reasonable prospect of success on that claim.

[14] Finally, the claimant further argues for the first time on September 16th that despite the lapse of the one-year warranty, that the relatively rapid breakdown of the engine violates the implied conditions of quality or fitness of goods as set out in the *Sale of Goods Act*.

[15] Section 18(c) of that *Act* provides that there is an implied condition that goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale or lease.

[16] Section 18(e) further provides that an expressed warranty or condition does not negative the warranty or condition implied by this *Act* unless inconsistent with it.

[17] It is not disputed in the evidence that after the defendant installed the modifications, someone other than the defendant made further modifications that the claimant would say at trial had some damaging impact on the running of the engine. The claimant has no ground to argue in these circumstances that the goods were being used for their intended purpose.

[18] The case is distinguishable from the case the claimant has provided, *Queen Charlotte Lodge Ltd. v. Hiway Refrigeration Ltd. and Royal Insurance of Canada*. In

that case, the plaintiff had express conversations with the seller of the goods about the purpose for which they would be used and in that case, the failure of the goods happened within a couple of weeks, not a year and a half after the work was performed.

[19] I have considered the ***McVie v. Summit Steel Cladding Inc.,*** 2010 BCSC 1025, submitted by the defendant today, particularly paragraphs 165 through 167. This case is somewhat different given that the issue of the *Sale of Goods Act* is not being raised in closing submissions after a trial, but other points raised in that case are relevant here.

[20] This case really is factually aligned with the ***Millhouse Farms Inc. v. Four K Auto Service Ltd.***, 2008 SKPC 118, a case that counsel filed last day. In that case, the engine failed only after a couple of weeks following the expiration of a one-year warranty and the court also considered the applicability of the *Sale of Goods Act,* and particularly at paragraph 30 of that case, the court writes:

> In order for the plaintiff to avail itself of the protections [under the CPA or] the *Sale of Goods Act*, it must prove on a balance of probabilities that the warranties were breached. At a minimum, the plaintiff must provide clear evidence of the transmission's poor quality or on the facts it must be reasonable for the court to infer a breach of implied conditions or deemed warranties, by the defendants.

[21] As in that case, here the claimant is silent on the quality of the goods other than saying that they should not have failed so quickly. He has in no way addressed the impact of the further modifications that were not made by the

defendant and the evidence here has no reasonable prospect of success on that claim.

[22] It is not disputed that the engine the defendant worked on failed within a year after the expiration of his warranty but the claimant has provided no evidence here to establish the cause of the engine failure or evidence from which a court can infer it was a result of the defect.

[23] There is no reasonable prospect of success on these claims that Mr. Ranu says arise from the facts he has put forward and the claim is dismissed.

(REASONS FOR JUDGMENT CONCLUDED)