

Citation: *Bahm v. Capital Towing Services Ltd.*,
2019 YKSM 1

Date: 20191204
Docket: 19-S0004
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Lilles

GEORGE BAHM

Plaintiff

CAPITAL TOWING SERVICES LTD.

Defendant

Appearances:
George Bahm
Doug O'Connor

Appearing on his own behalf
Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

[1] On May 11, 2018, George Bahm (the “plaintiff”), contracted with Capital Towing Services Ltd. (the “defendant”), to replace the engine in his 1993 Toyota half-ton truck. The plaintiff paid \$3,161.31 in total. That price included \$500 for the purchase of a used engine, \$2,124 for labour, \$295.34 for parts plus applicable tax, totalling \$3,061.31 (the actual bill was \$100 larger due to an addition error).

[2] Within a week after the repair was completed, the plaintiff noticed that the truck “seemed to be losing a bit of power” and he immediately called the defendant who advised that this could be caused by antifreeze or oil burning off in the engine. The

plaintiff was told to continue driving it for a week to see how it responds. During that week, the loss of power persisted and the check-engine light came on.

[3] The plaintiff again called the defendant who advised that his mechanic was unavailable. The plaintiff called repeatedly over a time period of approximately two months, even offering to deliver his truck to the defendant's place of business, and leave it there for repair. The defendant would not agree to this.

[4] The plaintiff advised the defendant that if the defendant was not prepared to repair the vehicle, the plaintiff would take it to another shop. The defendant would not agree with this proposal and insisted on doing the repair himself. Yet he refused to or was unable to indicate a time when he could do the work.

[5] The plaintiff called several more times towards the end of the two-month period but he was unable to secure an appointment. Understandably, words were spoken, tempers frayed and finally the defendant refused to take any more of the plaintiff's calls.

[6] As a result of this breakdown in communication, the plaintiff obtained an estimate to repair the truck from Mic Mac Toyota in May 2019. The repair required the replacement of a "knock sensor" that cost less than \$300. However, the engine had to be taken out of the vehicle to do this work and the resulting bill came to \$1,509.29.

[7] There was no suggestion by the defendant that this cost was excessive.

[8] While it is apparent that the defendant did not specifically refuse to repair the plaintiff's vehicle, he refused to take any further calls from him. I find that the refusal to take his calls, combined with the two-month delay and the failure to provide the plaintiff

with a date for the repairs to this vehicle, amount to a constructive refusal to complete the repairs. In these circumstance, the plaintiff was justified in approaching Mic Mac Toyota to repair his truck.

[9] On the other hand, the plaintiff is not without blame. He was overly persistent in his calls to the defendant. Understandably, the defendant was annoyed with the frequency of his calls. Both parties, frustrated and angry, raised their voices. Words were exchanged. After that, the defendant then refused to take the plaintiff's calls.

[10] I have come to the conclusion that in all of the circumstances, both parties must equally share the blame for the breakdown in communication. It was this breakdown in communication, not the initial repair work by the defendant that resulted in the plaintiff contracting the repair to Mic Mac Toyota. As I indicated earlier, after the breakdown of their relationship, it was not unreasonable for the plaintiff to take his vehicle to Mic Mac Toyota.

[11] In the result, the plaintiff is awarded half of the Mic Mac Toyota repair costs, \$754.64 and \$100 for overpayment of the Capital Towing invoice, for a total of \$854.64 in relation to the initial repair by the defendant.

[12] The parties will bear their own costs.

LILLES T.C.J.