

Citation: *McPherson v. M. & P. Varley Holdings Ltd.*,  
2025 YKSM 3

Date: 20250502  
Docket: 24-S0024  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before Her Honour Judge Cairns

DOUG MCPHERSON

Plaintiff

v.

M. & P. VARLEY HOLDINGS LTD.  
DBA CANADIAN TIRE ASSOC. STORE #452

Defendant

Appearances:  
Doug McPherson  
Peterson Ndlovu

Appearing on own behalf  
Counsel for Defendant

**REASONS FOR JUDGMENT**

[1] Pursuant to the *Small Claims Act*, RSY 2002, c. 204, the Plaintiff, Doug McPherson, brings a claim against the Defendant, M. & P. Varley Holdings Ltd., doing business as Canadian Tire Assoc. Store #452 (“Canadian Tire”).

[2] The trial proceeded on February 28, 2025. Mr. McPherson represented himself. Canadian Tire was represented by legal counsel.

[3] Mr. McPherson’s claim is that Canadian Tire is responsible for having done faulty repairs on his vehicle. He seeks reimbursement for the costs of those repairs and additional work done by Pryor Automotive Repair Ltd. (“Pryor Automotive”) that he argues was necessitated by the work done by Canadian Tire. He also seeks

reimbursement for court filing costs and compensation for stress, health impacts, and the time spent on the claim. Canadian Tire disputes Mr. McPherson's claim.

[4] As the plaintiff, Mr. McPherson bears the onus of proving his claim. The standard of proof is the civil standard on a balance of probabilities, which is often described as "more likely than not".

[5] At the beginning of the trial, Mr. McPherson clarified that he was no longer making a claim for the full amount set out in the Claim. He confirmed that the amounts set out in invoices from Canadian Tire filed as Exhibits "B" and "C" are not being pursued. Mr. McPherson confirmed that he seeks the amount of \$642.42 described in an invoice from Canadian Tire filed as Exhibit "D". He also claims an amount related to an invoice from Pryor Automotive filed as Exhibit "F". He agreed that the invoice attached as Exhibit "F" could be reduced by \$198 to account for unrelated work done by Pryor Automotive. Reducing that invoice by \$198, plus related tax, the amount Mr. McPherson is claiming in relation to the work done by Pryor Automotive is \$1,338.16. As such, the total amount of his claim is \$1,980.58.

[6] Mr. McPherson testified at trial on his own behalf and called Ron Heynen as a witness. In its defence, Canadian Tire called two witnesses: Cory Lamble and Desmond Schab. The following paragraphs provide a summary of the evidence.

### **Evidence**

[7] In August 2022, Mr. McPherson purchased a 1999 Chevrolet Suburban. He had observed this vehicle parked on the street over a period of several years and assumed

something must be wrong with it. It turned out that the transmission needed work but, in Mr. McPherson's view, the vehicle was otherwise in good shape. He described it as having "all the bells and whistles". He purchased the vehicle, removed the transmission and transfer case himself, and took those parts to Ron Heynen to rebuild.

[8] While Mr. McPherson is not a licensed mechanic, he described himself as having significant experience working with vehicles for over 50 years, since approximately age 17. He testified that he has a solid understanding of automotive mechanics. As such, when Mr. McPherson purchased the vehicle, he was confident it could be repaired.

[9] Mr. McPherson arranged to have the vehicle towed to Canadian Tire in November 2022 to have the transmission and transfer case worked on by Ron Heynen installed. He brought these parts to Canadian Tire. Once the installation was done, Mr. McPherson was invoiced. That invoice included a charge of \$567.00 for removal of the Transmission Assembly. As Mr. McPherson had done the removal himself, he objected to this charge. Canadian Tire subsequently removed this charge and apologized to Mr. McPherson. However, it appears that Mr. McPherson remained suspicious and distrustful of Canadian Tire thereafter.

[10] Following the work done by Canadian Tire, Mr. McPherson drove the vehicle home, describing himself as "elated" by how the vehicle drove. A week or so later, when he was driving the vehicle, he heard an "audible clunk" and the driveability was affected, requiring him to manually push the vehicle across a bridge and then drive home in reverse. He contacted Mr. Heynen as he thought the noise came from the transmission. Mr. Heynen could not tell from listening to the vehicle what the concern

was but asked what kind of fluid had been used in the transfer case. Mr. McPherson then contacted Canadian Tire and learned that the wrong type of fluid had been used. Upon advising Canadian Tire that the vehicle had failed, a tow truck was provided by Canadian Tire at no cost to Mr. McPherson to bring the vehicle back to their shop.

[11] Mr. McPherson did not want Canadian Tire to work on the vehicle until he and Mr. Heynen could be present to listen to the sounds it made. When he gave the key to Canadian Tire, Mr. McPherson says he instructed them not to work on the vehicle until Mr. Heynen was present.

[12] Desmond Schab, the Automotive Service Technician employed by the Defendant who had worked on the vehicle, testified for Canadian Tire. Wanting to verify the noise Mr. McPherson had described, Mr. Schab attempted to start the vehicle so that he could diagnose the problem. His evidence was that he turned the key once and the engine cranked, rotating about five to seven times. Unable to start the vehicle, he then used a forklift to bring it into the shop. He then began working on the “no start”. Mr. Schab identified that there was no spark by removing the spark plugs and using a spark plug tester. He then replaced the ignition coil. When that did not rectify the issue, he replaced the electronic ignition module. I note that Canadian Tire did not charge Mr. McPherson for the ignition coil as they had disposed of the original ignition coil without allowing Mr. McPherson to inspect it. Canadian Tire also suggested that the radiator needed replacing. Mr. McPherson did not agree with this and declined to have this work done.

[13] When he arrived at Canadian Tire, Mr. McPherson observed the vehicle on the hoist and a container with the transfer case fluid in it. He described himself as upset by this turn of events, given that he had asked Canadian Tire to wait so that he and Mr. Heynen could listen to the vehicle so as to diagnose the issue. However, by that point, Mr. Schab thought he had diagnosed the problem and had already ordered a replacement transfer case from Prince George, British Columbia, at no charge to Mr. McPherson.

[14] Mr. McPherson was upset that a replacement transfer case had been ordered as he thought the issue was with the transmission, not the transfer case. He told Canadian Tire that when the replacement transfer case arrived, he wanted his mechanic, Mr. Heynen, to examine it before it was installed and to change the seals and gaskets. However, when the replacement part arrived, Canadian Tire installed it. Again, Mr. McPherson was frustrated that Canadian Tire had not held off to allow Mr. Heynen to carry out the work Mr. McPherson wanted done, namely, inspection of the replacement transfer case.

[15] Following Canadian Tire's installation of the replacement transfer case, upon starting the vehicle, the loud ratcheting noise Mr. McPherson had previously heard was still present. This confirmed that the issue was with the transmission itself. Mr. McPherson expressed significant frustration as, in his view, if Canadian Tire had waited, as requested, to allow he and Mr. Heynen to listen to the vehicle, the unnecessary work and ensuing delay caused by ordering a replacement transfer case could have been avoided.

[16] The transmission and transfer case were then removed by Canadian Tire and delivered by them to Mr. Heynen for repair. Mr. Heynen determined that the transmission had, in lay terms, “imploded”. He rebuilt it and the parts were then returned to Canadian Tire for installation.

[17] Following the second installation of the transmission and transfer case by Canadian Tire, there continued to be difficulty starting the vehicle. At that time, Canadian Tire also advised Mr. McPherson that fuel had been noted in the engine oil. Mr. McPherson was concerned by this as he had previously changed the oil and not noted any fuel in the oil. He had only driven about 40 kilometers since that time.

[18] By July 2023, Mr. McPherson was advised his vehicle was ready for pick up but that it was still running rough. A friend drove the vehicle to Carcross for Mr. McPherson and confirmed that it was running rough. The next day, Mr. McPherson and another friend drove the vehicle and a second vehicle on an intended trip to Skagway. Partway there, Mr. McPherson’s friend noted a clicking sound. Upon examining the vehicle, Mr. McPherson noted that one of the lug studs had snapped off and many of the wheel nuts were loose enough that they could be hand tightened. On this issue, Canadian Tire’s evidence was that none of the work they did involved removal of the wheels and, as such, this concern was not connected to their shop.

[19] Approximately one week later, Mr. McPherson attended Canadian Tire to report that the vehicle continued to run rough. However, shortly after leaving the vehicle with Canadian Tire, he received a call saying that they would not do any more work on the vehicle.

[20] Mr. McPherson ultimately retrieved his vehicle and later took it to a different mechanic at Pryor Automotive to determine why the vehicle was running rough. Travis, the mechanic from Pryor Automotive, did not testify at trial. However, the filed invoice from Pryor includes the following notation under “Labor Description”: “inside intake was on fire at one point and burnt injectors and lines”.

[21] Mr. McPherson concedes that neither Travis nor the invoice specify when the fire occurred. However, Mr. McPherson testified that the only time the fire could have occurred was one of the two occasions that Canadian Tire was attempting to start his vehicle in the cold. He referred to Canadian Tire’s documented difficulties with starting the vehicle, testifying that he believed that they had caused the fire through these attempts and were covering it up. Mr. McPherson said he believed that “someone was not saying something”.

[22] Mr. McPherson agreed that he was not present for either attempt to start the vehicle and was speculating; however, he said his speculation rested on his many years of experience dealing with vehicles. In his view, attempting to start the vehicle after it had been parked in the cold explained the fire.

[23] In response to questions about the fire damage identified by Travis at Pryor Automotive, Mr. Schab denied that there had been a fire in the vehicle when he had attempted to start it. Given that there was no spark, his evidence was that it was not possible that a fire had started. Further, he denied that Canadian Tire’s mistake in putting the wrong fluid in the transfer case could have caused the fire.

[24] Cory Lamble, the Assistant Service Manager for Canadian Tire, also testified.

The primary purpose of Mr. Lamble's evidence was to introduce prior automotive service records for the vehicle. Through Mr. Lamble, Repair Orders describing work done by Canadian Tire on the vehicle for its prior owner were admitted into evidence.

The records include Repair Orders for the vehicle dating from 2015 to 2019.

Mr. McPherson objected to the admission of these documents as they were only disclosed to him shortly before trial. As it was admitted by Mr. McPherson that he had been in possession of the records through his purchase of the vehicle, I allowed the records to be admitted. However, I find they do not assist me in determining the issue in this case, namely, whether Canadian Tire is responsible for the causing the fire in the inside intake which burned the injectors and lines. I give those records no weight.

### **Analysis**

[25] Mr. McPherson agrees that Canadian Tire's mistake in putting the wrong fluid in the transfer case did not cause damage to the vehicle. In relation to that mistake, Canadian Tire replaced the transfer case at no cost to Mr. McPherson. While I acknowledge Mr. McPherson's frustration with the delay caused by Canadian Tire's decision to, perhaps unnecessarily, replace the transfer case, I find that Canadian Tire's error did not cause Mr. McPherson to suffer any quantifiable loss.

[26] The evidence at trial established that the initial problem with the vehicle was not the incorrect fluid in the transfer case; rather, the issue was the implosion of the transmission installed by Mr. Heynen. In other words, the failure of the transmission was not Canadian Tire's fault. Even so, the vehicle was towed to the Canadian Tire

shop by the defendant at no cost to Mr. McPherson. Once the transmission was rebuilt for a second time by Mr. Heynen and installed by Canadian Tire, the vehicle was having difficulty starting. Canadian Tire then began work to diagnose and resolve the failure to start, replacing the ignition coil (at no cost to Mr. McPherson) and the electronic ignition module.

[27] Mr. McPherson argues that the fire in the engine must have been caused on one of two occasions when Canadian Tire attempted to start the vehicle after it had been sitting in the cold. The first of these attempts occurred after the replacement transfer case arrived and was installed by Canadian Tire. The second was after the transmission was rebuilt a second time by Mr. Heynen. Mr. McPherson concedes that he was not present for either occasion. He acknowledged that he is speculating that the fire damage identified by Pryor Automotive occurred when Canadian Tire attempted to start the vehicle. The invoice from Pryor Automotive does not assist me in determining the timing of the fire.

[28] Mr. Schab was present when attempts were made to start the vehicle as he was making those attempts. He testified that no fire occurred while the vehicle was on Canadian Tire's property and, further, with no spark, it would not have been possible to cause a fire. I found him a credible witness and I accept this evidence.

[29] Finally, Canadian Tire denies that any of its work on the vehicle involved removing the wheels. I accept this evidence and, as such, there is no connection between their work and the snapped wheel lug or loose wheel nuts.

## **Conclusion**

[30] I accept Mr. Schab's evidence that there was no fire when he made efforts to start the vehicle. Mr. McPherson's speculation as to the timing and cause of the fire is insufficient to meet the burden required to prove his claim. I am not satisfied, on a balance of probabilities, that Mr. McPherson has met the onus of proving his claim, either for the faulty repairs alleged or stress, health impacts and time spent on the claim.

[31] The claim against Canadian Tire is dismissed with no costs awarded.

---

CAIRNS T.C.J.