

Date: 20010517  
Docket: S.C. No. 00-AP009  
Registry: Whitehorse

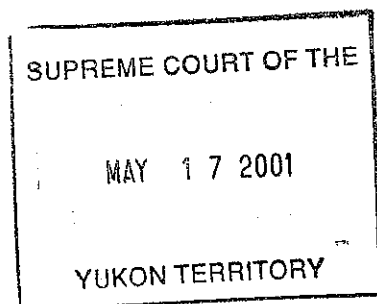
**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

CLAUDE GUERIN

APPELLANT  
(PLAINTIFF)

AND:



WHITEHORSE WHOLESALE AUTO CENTRE

RESPONDENT  
(DEFENDANT)

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**REASONS FOR JUDGMENT OF  
MR. JUSTICE RICHARD**

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[1] On June 16, 2000 the plaintiff purchased a used vehicle from the defendant. Within days, the plaintiff regretted the purchase, as the vehicle's transmission was broken and unserviceable. The plaintiff returned the vehicle to the defendant's business premises, and refused to pay the balance of the purchase price unless the defendant repaired or replaced the transmission. The defendant refused to do so and the parties have since been at a stalemate. The plaintiff took the dispute into Small Claims Court. The judge found (partly) in favour of the defendant. The plaintiff appealed pursuant to s. 9 of the *Small Claims Court Act*, R.S.Y. 1986, c. 160:

9. An appeal lies to the Supreme Court from a final order of the Small Claims Court by way of trial *de novo*.

[2] At the trial *de novo* I heard oral evidence from the plaintiff and also from Mr. Woloshyn on behalf of the defendant. Each side also provided documentary evidence.

[3] I find the plaintiff to be a credible witness. I am satisfied that he genuinely believes that the defendant deliberately sold him a dud and took advantage of his dire financial situation and his need to acquire a cheap form of transportation. However, that is not the point. The plaintiff entered into the contract willingly with eyes wide open. From his testimony I find that he is quite knowledgeable about used vehicles and their inherent mechanical problems. He acknowledged in his evidence that he knew he was buying a used, sixteen-year old vehicle and that he could not expect perfection. He claims that he was not permitted to do an extensive test-drive or arrange an independent inspection, however no one forced him to enter into the transaction in the absence of these precautionary steps. I find that he knowingly assumed the risk of the continued usefulness of the vehicle and/or its transmission.

[4] The transaction between the parties took the form of a conditional sale agreement, which was evidenced in writing, a pre-printed form used by the defendant in the course of its business. The vehicle being purchased was a 1984 Ford Bronco, blue in colour. The plaintiff had no money to use as a down payment but the defendant accepted two used vehicles owned by the plaintiff (a red 1984 Bronco and a 1984 Dodge Aries) as a trade-in or down payment. For purposes of the transaction, the vehicle being purchased was valued at \$3,000 and the two trade-ins an aggregate of \$2,000. It was Mr. Woloshyn's evidence that he "inflated" these values to assist the plaintiff purchaser with insurance coverage. In any event, the important figure for both parties was the net amount owing, i.e. \$1,000. One hundred dollars was added for

interest charged, and another \$100 for GST and security registration fees. The plaintiff gave the defendant 12 post-dated cheques of \$100 each. (The first two cheques dated July 1 and August 1 were returned marked NSF and the plaintiff put a stop-payment order on the remaining cheques.)

[5] Mr. Woloshyn testified that the present unserviceable state of the transmission is the result of abusive use or misuse of the vehicle while the vehicle was in the plaintiff's possession. I do not accept Mr. Woloshyn's evidence as establishing that fact.

[6] It is an express term of the conditional sale transaction between the parties that the vender makes no warranties or guarantees regarding the vehicle. This is understandable given that the subject matter of the contract is a sixteen-year old vehicle. It is also expressly provided that title to the vehicle does not pass from vendor to purchaser until the purchase price is paid in full. Accordingly, at the present time, the defendant is the owner of the blue Bronco.

[7] In his claim in Small Claims Court, and here, the plaintiff seeks an order compelling the defendant to provide him with a repaired or replacement transmission in the blue Bronco. This Court is unable to grant such an Order, as the agreement between the parties does not contain any warranty regarding the transmission. Also, the plaintiff has not made payments on the vehicle pursuant to the contract.

[8] In its counterclaim, the defendant seeks the unpaid purchase price of \$1,200 plus storage costs or, alternatively, a return of ownership of the blue Bronco, and damages for repairs to the transmission.

[9] In my view, it is regrettable that the parties were not able to resolve this dispute by mediation rather than bringing the matter to Court.

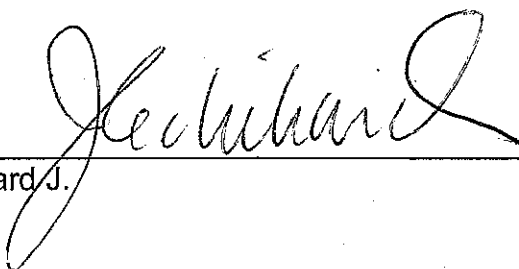
[10] However, the matter is here now and the Court will do what it deems to be just and equitable between the parties.

[11] In all of the circumstances, the defendant ought not to obtain full recovery of the outstanding purchase price but rather, instead, ought to take back the unserviceable blue Bronco as its remedy.

[12] For the foregoing reasons, it is hereby ordered as follows:

1. The plaintiff's claim is dismissed.
2. The defendant's counterclaim for recovery of the unpaid purchase price of \$1,200, and storage costs, is dismissed.
3. The defendant's counterclaim for return of the blue Bronco is granted.
4. The defendant's counterclaim for an award of damages for repairs to the transmission is denied.
5. The plaintiff forfeits any interest he has in the two trade-in vehicles, i.e., the red 1984 Bronco and the 1984 Dodge Aries.
6. The plaintiff is relieved from any further liability to the defendant for the unpaid purchase price, interest, NSF charges, storage or other costs.

7. The plaintiff shall sign whatever documents which may be required to re-transfer registration of the blue Bronco into the defendant's name.
8. The Order of Small Claims Court dated October 16, 2000 is hereby set aside.
9. Each party is responsible for their own costs of these proceedings in Small Claims Court and in this Court.



Richard J.

Claude Guerin

Unrepresented

Whitehorse Wholesale Auto Centre

Unrepresented