Citation: *Northside Collision Clinic v. Lexow*, 2005 YKSM 3 Date: 20050909
Docket: 04-S0167
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: Her Honour Judge Ruddy

Northside Collision Clinic

Plaintiff

v.

Matthias Lexow

Defendant

Appearances:
Sean Kelly — Appearing for Northside Collision Clinic
Matthias Lexow — Appearing on his own behalf

REASONS FOR DECISION

[1] The dispute between Northside Collision Clinic ("Northside") and Matthias Lexow arises out of an agreement between the parties involving the removal of the interior of one vehicle and its installation into another.

[2] Much of the factual background is not in dispute. Mr. Lexow, the owner of a 1986 Volvo (the "Volvo"), purchased a 1989 Volvo (the "Parts Volvo") with a view to using the interior from the Parts Volvo to replace the existing interior in the Volvo. By all accounts, the two vehicles are identical in outward appearance.

[3] Mr. Lexow contacted Northside, an autobody shop owned and operated by Alain LeBlond, to inquire about having the work completed. Over the course of their telephone conversations, Mr. Lexow expressed concern about the cost of the work. Mr. LeBlond indicated the difficulty of giving a price without first seeing

the vehicles. When pressed by Mr. Lexow, Mr. LeBlond provided a rough estimate of two days work at a cost of $1,000, but indicated the work would have to be done and billed on an hourly rate.

[4] Mr. LeBlond made arrangements to have the Parts Volvo towed to Northside. He then attended at Mr. Lexow's place of business. As Mr. Lexow was not present, Mr. LeBlond had Mr. Lexow's partner sign a blank work order which he viewed as his authorization to commence work. Mr. Lexow then arrived. The two had further discussions about the work, and Mr. LeBlond took the Volvo with him to Northside to commence the work.

[5] Northside proceeded to dismantle and remove the interiors of both the Volvo and the Parts Volvo. During the course of this work, issues arose relating to the dashboard, the roof liner and the windshield.

[6] With respect to the dashboard, Mr. LeBlond noted that the dashboard in the Parts Volvo was unsuitable for transfer into the Volvo due to a tear. It was jointly agreed that the dashboard would not be included in the transfer.

[7] Mr. LeBlond then noted that the roof liner in the Volvo needed replacement, but the liner in the Parts Volvo was similarly unsuitable for transfer. The parties discussed possible replacement with a new liner and sunroof, but Mr. Lexow found the $1,500 price tag to be excessive. Mr. LeBlond subsequently located and ordered a used liner and sunroof at a cost of $493.85 plus shipping. Whether he had Mr. Lexow's authorization to order the used liner and sunroof is a point of contention between the parties.

[8] Lastly, there were discussions and an agreement between the two parties that the cracked windshield in the Volvo would be replaced. A new windshield was ordered at a cost of $190.55.

[9] Upon completing the interior dismantling of both vehicles, Northside began the task of installing the interior from the Parts Volvo into the Volvo. It was at this point that the trouble began. Mr. LeBlond discovered that, while the parts from the two vehicles looked the same, they did not fit the same. He estimated that some 80% of the parts would fit without incident, but the remaining parts would require some modification before installation would be possible. This would take both additional time and money. Mr. LeBlond continued to work until the end of the day on one of the door panels, making the necessary modifications. In total, he had spent some 17 hours working on the dismantling of the two vehicles and beginning the transfer of the interior from the Parts Volvo into the Volvo.

[10] Mr. LeBlond attempted to contact Mr. Lexow to advise him of the problem. The parties disagree on the actual efforts made and the time it took or ought to have taken for Mr. LeBlond to reach Mr. Lexow. For the purposes of this decision, it really does not matter. Suffice it to say Mr. LeBlond was able to reach Mr. Lexow and advise him of the problem. Mr. Lexow attended at Northside. Mr. LeBlond explained the issue and advised him that it would now cost $4,000 to $5,000 to complete the full job. Alternatively, Mr. LeBlond could reassemble the two vehicles for a cost of $2,000. Mr. Lexow was strongly of the view that the full work should be completed for the estimated $1,000.

[11] As the parties could not reach agreement, work was halted. Mr. LeBlond issued an account to Mr. Lexow in the amount of $2,128.34 for parts and labour. Mr. Lexow refused to pay the account and demanded the return of the Volvo in proper working order. Mr. LeBlond retained possession of both vehicles, which remain in their dismantled state.

[12] Northside commenced an action in Small Claims Court, seeking payment of the account in full plus the amount of $10 per day as a compound or storage fee for the two vehicles.

[13] Mr. Lexow filed a counterclaim alleging that he was induced to enter into the contract by the plaintiff's representations that the parts in the two vehicles were compatible, that compatibility of the parts of the two vehicles was an implied condition of the contract, and that the plaintiff owed him a duty of care to ensure that the parts of the two vehicles were compatible before proceeding to dismantle them, and, in failing to do so, the plaintiff breached that duty of care. Mr. Lexow is seeking damages for breach of contract and for negligence. He is further seeking to recover possession of both the Parts Volvo and the Volvo.

[14] The preliminary issue in this case is whether the agreement between Northside and Mr. Lexow amounts to a contract in law. This determination requires an examination of what was written and what was said by each of the parties.

[15] In terms of written documentation, the only document provided was the work order which later became the account issued by Northside. Mr. LeBlond clearly seemed to be of the view that the work order finalized the agreement between the parties and gave him the legal authorization to proceed with the work. I would note, however, that the work order was blank when signed. Furthermore, it was signed by Mr. Lexow's partner, Mr. Peterson, rather than Mr. Lexow. There was absolutely no evidence before me to suggest that Mr. Peterson had any legal authority to sign on Mr. Lexow's behalf. As Northside's counsel quite properly realized, a blank work order signed by someone other than a party to an agreement is essentially worthless from a legal perspective.

[16] This leaves the issue of whether the verbal agreement between the parties amounts to a binding contract. On all of the evidence, I am satisfied that the verbal agreement can be summarized as follows: Northside would remove the interior of both vehicles and would install the interior of the Parts Volvo into the Volvo; the work would be done on an hourly rate with the expectation that it would be around $1,000.

[17] Does this verbal agreement amount to a binding contract? In my view it, does not, and it does not for two reasons.

[18] Firstly, there is a clear element of mutual mistake in this case. Each of the parties believed the agreement to mean something different. Mr. Lexow clearly believed the figure of $1,000 to be an actual quote or estimate upon which he could rely. He believed that all of the work would be completed for that amount, and that any cost overruns would be borne by Northside. Mr. LeBlond, on the other hand, clearly believed the figure of $1,000 to be nothing more than a rough ballpark figure which did not bind him in any way. He expected to be paid for the work on an hourly rate regardless of the actual time required to complete the job. The evidence suggests no actual meeting of the minds took place on the issue of price.

[19] Secondly, there is a clear element of uncertainty as to the terms of the agreement. The parties did not clearly specify what was meant to be included in the term ‘interior’. This is evident by the number of issues which arose over the course of the work, including the issues of the roof liner, the dashboard and the windshield. In addition, the term of the price for the work was not adequately agreed upon. This is evident not only in the differing views that each party had on the issue of price, but also in the fact that there was no discussion between the two parties as to what actual hourly rate would be charged for the work.

[20] In light of both of these concerns, I am satisfied, on balance, that there is and was no binding contract between Northside and Mr. Lexow.

[21] Having made this determination, it is a relatively straightforward matter to dispense with Mr. Lexow’s counterclaim. In the absence of a binding contract, Mr. Lexow has no claim for breach of contract. However, had I found there to be a binding contract, I would have dismissed the claim for breach of contract in any

event. Even on Mr. Lexow's evidence, it is clear that Mr. LeBlond did not make any actual representations as to the compatibility of the parts, and Mr. Lexow did not expressly ask him about compatibility. Instead, Mr. Lexow, in his own words, 'assumed' that Mr. LeBlond would know if the vehicles were compatible as he was the professional. Mr. Lexow's assumptions do not amount to inducements or representations by Mr. LeBlond, nor would they amount to implied conditions if there had been a binding contract.

[22] On the issue of duty of care, Mr. Lexow did not specifically request Mr. LeBlond to check for or to ensure compatibility of the parts before proceeding with the work. Mr. Lexow was clearly aware that Mr. LeBlond had not seen either of the two vehicles when they were discussing the feasibility of the project, and when Mr. LeBlond did finally see both vehicles, the evidence is clear that they were outwardly identical. Again, Mr. Lexow simply assumed that Mr. LeBlond would know or would check for compatibility. In such circumstances, and in the absence of an express request, I cannot find that Northside owed a duty of care to ensure compatibility before dismantling the vehicles. Mr. Lexow's claim in negligence is denied.

[23] This leaves the remaining issue of whether, in light of the lack of a binding contract, Northside is entitled to recover for the actual work performed on a *quantum meruit* basis plus reimbursement for parts and compensation for storing the vehicles.

[24] *Quantum meruit* in its simplest terms is about determining what is fair in all of the circumstances. Northside's counsel urges me to find that his client should be compensated for the full amount of the actual labour as set out in the account. With respect, I disagree. Mr. LeBlond gave an initial estimate of two days and $1,000 to complete the full job. It was clear in Mr. LeBlond's evidence, and I do accept, that the job could not be fully completed for this amount due to incompatibility of some of the parts.

[25] Mr. LeBlond did not give any evidence suggesting there were any other issues arising which affected that initial estimate. It is therefore logical to conclude that if the parts had been compatible, the work ought to have been completed in that estimated two days for roughly $1,000. If such had been the case, it is reasonable, in my view, to conclude that approximately one third of the cost and the time expended should relate to dismantling the Parts Volvo, another third should relate to dismantling the Volvo, and the final third should relate to the installation of the interior of the Parts Volvo into the Volvo.

[26] In this case, Northside spent 17.5 hours and is claiming $1,137.50 for that labour, having done little more than dismantle the two vehicles and reinstall one door panel. Thus Northside is claiming for even more than the total initial estimate, while having completed only two thirds of the work. This suggests that Mr. LeBlond grossly underestimated the work that would be required even if the vehicle parts were compatible.

[27] While I appreciate that Mr. LeBlond's estimate was only intended to be a rough estimate, as a businessman and a professional, he has a responsibility to be extremely careful in any figures that he provides as those figures are relied upon by his customers to make their decisions. Mr. Lexow may well have determined not to proceed at all with the work if told it would likely cost $2,000 rather than $1,000.

[28] In my view, it is most fair in all of the circumstances to compensate Northside for just over two thirds of the original estimate in light of the fact they completed just over two thirds of the work. Accordingly, there will be judgment for Northside in the amount of $700.00 for the actual work completed.

[29] In terms of the reimbursement for parts, the parties disagree on whether Mr. LeBlond had Mr. Lexow's authorization to order the used liner and sunroof.

Mr. LeBlond says that he contacted Mr. Lexow once he located the used liner and sunroof, and that Mr. Lexow told him to order it. Mr. Lexow says he was not advised that Mr. LeBlond had located the used liner and sunroof until after Mr. LeBlond had already ordered it, and that he did not authorize Mr. LeBlond to order it. While I accept that Mr. LeBlond believes that he had authorization, I am not satisfied on the evidence that he, in fact, did. In his evidence, he demonstrated some difficulties with his recollection which he explained by referencing the number of clients he services. Mr. Lexow, on the other hand, was extremely clear and detailed in his evidence, particularly where it related to money. He was clearly concerned about cost throughout and made special note of any discussions relating to cost. On this point, I accept the evidence of Mr. Lexow. The claim for reimbursement of the cost of the liner and sunroof and of the shipping is denied.

[30] Northside's claim for reimbursement for the cost of the windshield is conceded by Mr. Lexow, and the claim for reimbursement of the towing costs, in my view, should be borne by Mr. Lexow as well.

[31] The only remaining issue is that of the claim for storage costs. The claim is for $10.00 per day which, as of the date of submissions, amounted to $1,980.00. I would note that there was no evidence before me to justify this claim. Counsel for the plaintiff urged me to take judicial notice, pursuant to the *Garage Keepers Lien Act*, of the plaintiff's entitlement in this regard. Unfortunately, I could find no such entitlement in the *Garage Keepers Lien Act*. The claim for storage fees is denied.

[32] In conclusion, there will be judgment for Northside as follows:

1. $700.00 for labour;
2. $190.55 for the windshield;
3. $80.00 for the towing costs;
4. $67.94 for GST; and
5. Court costs.

[33] The total amount of the judgment is $1,038.49 plus court costs.

[34] As noted earlier, the counterclaim for breach of contract and negligence is denied, but I order that Mr. Lexow is entitled to recover possession of the Parts Volvo, the Volvo, all interior parts of both vehicles, and the new windshield, upon making payment of the judgment owing to Northside.

Ruddy T.C.J.