

## COURT OF QUEBEC

Small Claims Division

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
TOWN OF MONTREAL  
Civil Division

No: 500-32-126073-107

DATE: February 7, 2013

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**BY THE HONOURABLE SUZANNE HANDMAN, J.C.Q.**

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**GIANNI ACETO, doing business as G. SUSPENSIONS**  
8551, 10<sup>e</sup> avenue, Montréal, QC., H1Z 3B7

Plaintiff

v.

**JOHN ÉTIENNE**  
[...], Montréal, QC., [...]

Defendant

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### JUDGMENT

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[1] Gianni Aceto, doing business as G. Suspensions, is claiming \$3,068.58 from John Étienne, for the sale of parts and the repair of Mr. Étienne's motorcycle. Mr. Étienne contests the action and presented a cross demand for \$3,000.

**The evidence related to the principal action:**

[2] In the spring of 2010, Mr. Étienne brought his 2002 Yamaha YZF R-1 motorcycle to Mr. Aceto's shop for repair. Mr. Etienne claimed only the 2<sup>nd</sup> gear was popping out; there was no issue with the other gears but the valves were clicking. Mr. Aceto test drove the motorcycle and, after a short ride, considered it was not safe to drive. He put it up on a motorcycle dyno to determine what needed fixing.

[3] Mr. Aceto found that the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> gear were popping out; the valves made noise, the clutch was *not working*, the chain was *seized*, the sprockets and tires were worn. He told Mr. Étienne that most of the transmission gears would fail and needed changing. He affirmed that Mr. Étienne told him to do the work.

[4] Shortly after leaving his motorcycle with Mr. Aceto, Mr. Étienne provided him with the following list of repairs to be done: the lights, chain, sprocket, front fender, rear brakes, seat screws, frame saver, gas tank dent, 2<sup>nd</sup> gear, clutch, valves adjustment, rims contour liner and bar ends. While Mr. Aceto suggested the work be done in the fall, he nevertheless agreed to repair the bike that summer.

[5] According to Mr. Aceto, he discussed the cost of the repair with Mr. Étienne. He suggested that a used transmission be installed since many parts were on back order. Alternatively, he suggested the motor transmission be rebuilt and told Mr. Étienne he had asked his supplier to try to find an engine.

[6] Mr. Étienne claimed he was given a run around. He called every few days about the progress. Mr. Aceto was busy and was waiting for news about the engine. He then learned that the supplier may have found one but it could be "hot". Mr. Étienne was not interested. He wanted his motorcycle repaired. Mr. Aceto ordered parts in May. In June, Mr. Étienne asked for his motorcycle. Mr. Aceto claimed he was waiting for the parts to arrive.

[7] In July, Mr. Étienne sent an e-mail, again detailing the work he wanted done. He passed by at various times and although Mr. Aceto claimed he was not available or that he was going out of town, the door to his business was open.

[8] Mr. Aceto stated that the parts he ordered trickled in between May and July. By mid July, he had received all the parts and proceeded to repair the head and valves during the last week of July.

[9] He advised Mr. Étienne on August 2, 2010, that the parts for the engine had arrived and the parts and head work totalled \$2,200. He told Mr. Étienne he would finish the repair job and reassemble the bike once he received payment.

[10] Mr. Étienne asked for the total amount of the repair and an invoice for the parts and labour. He had not yet received an actual bill from Mr. Aceto and was upset that the

motorcycle repair was not finished. He wanted copies of the supplier's invoice, which Mr. Aceto refused to give him.

[11] Mr. Aceto did not hear from Mr. Étienne until September 2010. At that time, he came to retrieve his motorcycle with a tow truck and with police assistance but he refused to pay for the repairs. It was only then that he obtained the supplier's bill, which came to \$1,728.56 and which listed the parts that had been ordered.

[12] The motorcycle, at that point, was disassembled; its repair had not been completed. According to Mr. Aceto, the motor work had been done; there was only approximately \$300 of labour costs that remained.

[13] Mr. Étienne found there were parts missing. Mr. Aceto closed his doors once the police left. Mr. Étienne banged on the door to get the parts. Mr. Aceto threw some of the parts on the ground, returning bits and pieces of the motorcycle.

[14] Mr. Aceto's version differs. He claims Mr. Étienne was confrontational. Although he had put the parts outside, Mr. Étienne came into his premises, shouting and swearing. Mr. Aceto then closed the doors to his premises, telling Mr. Étienne he was not welcome. Mr. Étienne broke the lock and damaged the door.

[15] The police came to retrieve the key a few days later and took some other parts which Mr. Étienne said were missing. Mr. Aceto still has the clutch basket, the friction and steel plates but claims that his invoice does not include these items.

[16] Mr. Aceto sent Mr. Étienne a bill for the first time dated September 13, 2010. He is claiming the cost of the parts and his repair, which total \$3,068.58. He is also asking for \$250 as compensation for the alleged damage to the door and lock.

[17] Mr. Étienne questions the list of parts given to him by Mr. Aceto, claiming his motorcycle is a 2002, not a 2003 and his bike has only 5 gears, not six. He only asked that the valves and second gear be replaced and not the whole engine.

**The evidence related to the cross demand:**

[18] After retrieving his motorcycle, Mr. Étienne first brought his motorcycle to Laval Auto. After it refused to repair the bike, he contacted Jessie Wilson in October to assist him repair his motorcycle. They found about 20 major parts missing.

[19] Mr. Wilson, who ultimately repaired the motorcycle, found it was missing the faring rack, the cables, the whole clutch assembly (the basket, the pressure plate, the friction and metal disks) the mechanism which activates the clutch, the bolts on the motor and aesthetic parts.

[20] The motor was open but he could not tell whether the valves had been redone. If the valves were done, he considered they were badly repaired. As well, there was no

gasket on the motor which comes in a kit and not in separate components. The valves clacked and the charging system was not working.

[21] Because of the missing items and the remaining work to be done, Mr. Étienne purchased a number of items. In addition, he had to pay for towing and for the repairs done by Mr. Wilson. He submits that his total cost came to \$2,423.

[22] In sum, Mr. Étienne states that Mr. Aceto said he could do the job but then gave him the run around. He did not have the use of his motorcycle for the entire spring, summer and fall of 2010 and therefore, in addition to his costs for parts, repair and towing he is also seeking the cost of his insurance and registration.

[23] In reply to Mr. Wilson's allegations, Mr. Aceto testified that he told Mr. Étienne that not only the second gear but the others were gone and the head needed to be resurfaced. He changed the valve guides, the stems, the exhaust gaskets.

[24] He maintained the chain and sprockets, the clutch cable and tires were finished and needed to be replaced; the gas tank had a dent when he received the motorcycle. As for the gasket on the valve cover, he explained that if the motorcycle is sitting for a long time it will dry up and crack which is why it leaked after the motorcycle was reassembled. He stated he put all the missing bolts and screws in a ziplock bag. He also claimed that Mr. Étienne put the wrong motor oil in the bike and maintained that he did not touch the stator.

[25] He admitted the valves were not adjusted since he did not finish the job. He insisted Mr. Étienne asked for the transmission gears to be changed and not just the second gears.

### **The legal principles:**

[26] The contract in this case is subject to the provisions of the Consumer Protection Act<sup>1</sup>.

[27] In particular, the Act provides that a merchant, namely someone who carries out repairs for remuneration, must give his customer a written estimate before carrying out any repairs<sup>2</sup>. The estimate must include a number of items<sup>3</sup>, including the make model and registration of the motorcycle, the part to be installed and whether it is new, used, re-tooled or reconditioned. Once accepted, no additional costs can be charged<sup>4</sup>.

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<sup>1</sup> Chapter P-40.1.

<sup>2</sup> CPA, Article 168.

<sup>3</sup> CPA, Article 170

<sup>4</sup> CPA, Article 171

[28] Where the merchant has failed to provide an estimate before carrying out the repairs, he has no right to retain possession of the consumer's motorcycle.

[29] The merchant can only carry out repairs that are foreseen in the estimate<sup>5</sup> unless he obtains the express authorization of the customer and if verbal, information relating to such a fact as well as the date, time and name of the person must be recorded in the estimate.

[30] Once the repairs have been done, the merchant must provide the customer with a bill that contains several elements<sup>6</sup>, including the parties' names and addresses, the make, model and registration number of the motorcycle, the date of delivery, the number of kilometres registered on the odometer, the part installed, whether it is new, used, re-tooled or reconditioned and its price, the number of hours of labour billed, the hourly rate and the total cost of the labour, etc..

[31] Where the merchant fails to respect these provisions, article 272 of the Act provides the consumer with several recourses, including an authorization to execute the obligation at the merchant's expense, the reduction of the consumer's obligations, the cancelation of the contract and damages.

### **Analysis of the principal action:**

[32] Mr. Étienne asked Mr. Aceto to repair his motorcycle. He provided a list of items to be repaired at the outset and a couple of weeks later he sent an e-mail, listing the parts to be repaired.

[33] Mr. Aceto, having ordered parts and having carried out work, is claiming \$3,068.58 from M. Étienne for parts and his labour to repair Mr. Étienne's motorcycle. Mr. Aceto's bill of September 13, 2010 lists the removal of parts and the installation of new parts from the dealership.

[34] The parties dispute what parts were purchased and what was done by Mr. Aceto. Mr. Aceto submitted the list of parts he bought from the supplier, Deshaies Motosport, and claims they were purchased for Mr. Étienne's bike. Mr. Étienne contends the parts were not purchased for his motorcycle.

[35] However, contrary to his allegations that his bike only has five gears and parts were ordered for a sixth gear, his Yamaha does have six gears. As for his claim that his motorcycle is a 2002 and not a 2003, this fact has no bearing on the outcome of this case.

[36] With respect to the issue of what work was carried out, one of the basic problems in this file is that no written estimate was prepared by Mr. Aceto for the work to be done.

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<sup>5</sup> CPA, Article 172.

<sup>6</sup> CPA, Article 173.

[37] The evidence shows that Mr. Aceto ordered parts that were relevant to the job he was asked to do and included parts of the gear box and valves, which at full list price amounted to \$1,728.56. Mr. Aceto's cost with a discount was \$1,394.10. He also carried out a valve job on the engine. He charged \$1,728.56 for the parts and the remainder for his labour, for a total of \$3,068.58.

[38] On the other hand, Mr. Aceto did not obtain all the parts that were required for the repair and did not carry out all the work that was needed. Following his repairs, the motorcycle was not ready to be "*up and running*". Not only was it not ready to be driven, it also was left in pieces and had to be reassembled and the remaining work had to be done. There were also parts missing.

[39] As indicated above, given the lack of a written estimate for the repairs to be carried out and an acceptance of same, contrary to the obligations of a merchant pursuant to the Consumer Protection Act, the Court considers it appropriate to reduce Mr. Étienne's obligations by requiring him to only pay for the parts ordered at Mr. Aceto's cost (\$1,394.10) and for the cost of the dyno run (\$50), for a total of \$1,444.10.

[40] As for Mr. Aceto's claim for damage to the door of his premises, he submitted no evidence to substantiate this allegation. This aspect of his action is therefore denied.

**Analysis of the cross demand:**

[41] Mr. Étienne, in his cross demand, is claiming the costs he incurred for towing, parts, repairs by Mr. Wilson, as well as the cost of his insurance and registration. According to the evidence, Mr. Étienne purchased the following items:

- \$200 for new tires
- \$284 for a clutch assembly (MotocamJ)
- \$253 for a chain and sprockets (Alex Berthiaume)
- \$40 for clutch cables from a particular
- \$239 for a bracket stay (Moto Repentigny)
- \$40 for a bolt
- \$100 for a gas tank dent job
- \$205 for a stator from MotoCamJ (May 9<sup>th</sup>, 2011)

[42] In addition, Mr. Étienne incurred the following costs:

- \$25 for the bike pick up from Blainville to Jessie's place in May 1011
- \$100 to Jessie as a deposit and \$360 for Jessie's labour on April 13, 2011
- \$100 to Jessie to fix a leaking problem.
- \$97 plus \$80 for towing to J. Proulx dépanage.

[43] Mr. Étienne's total cost comes to \$2,423.

[44] He is also claiming the cost for his insurance and registration since he did not have the use of his motorcycle during the spring, summer and fall of 2010.

[45] Mr. Étienne is entitled to recover the cost of purchasing clutch cables (\$40), the cost of the bracket stay (\$239) and bolts (\$40) since they were missing when he retrieved his motorcycle.

[46] The Court also grants the towing costs of \$97 to retrieve the motorcycle from Mr. Aceto's place of business but not the second towing cost to bring the bike from Laval Auto to Mr. Wilson's premises. Mr. Aceto is not responsible for the refusal by Laval Auto to repair the motorcycle.

[47] The following items are not granted: The cost of new tires since they were needed prior to the repairs by Mr. Aceto, the cost of the clutch assembly since it was not purchased by Mr. Aceto. The same applies to the cost of the chain and sprockets; these items had not been bought by Mr. Aceto.

[48] Mr. Étienne cannot be compensated for the cost of the gas tank dent job since he had not been charged for this repair by Mr. Aceto. As for the cost of the stator, Mr. Étienne cannot claim for this part since it was not repaired by Mr. Aceto.

[49] Mr. Étienne's claim of \$460 for the labour costs he paid to Mr. Wilson are not allowed since Mr. Étienne did not pay Mr. Aceto for this work. The Court does not allow the added cost of \$100 to fix a leakage problem plus \$75.14 for a battery replacement since Mr. Étienne has not shown by preponderant evidence that Mr. Aceto is responsible for the leakage problem or for the state of the battery.

[50] As for Mr. Étienne's insurance (\$223) and registration costs, these costs are not direct damages and therefore are not granted.

[51] Accordingly, the total compensation awarded in virtue of the cross demand is \$416.00.

**FOR THESE REASONS, THE COURT;**

**GRANTS**, in part, the introductory motion presented;

**CONDEMNNS** John Étienne to pay Gianni Aceto, doing business as G. Suspensions, \$1,444.10 plus interest at the legal rate and the additional indemnity foreseen by section 1619 of the Civil code of Quebec since the institution of the action, plus judicial fees of \$129.

**GRANTS**, in part, the cross demand;

**CONDEMNNS** Gianni Aceto, doing business as G. Suspensions, to pay John Étienne \$416, plus interest at the legal rate and the additional indemnity foreseen by section 1619 of the Civil code of Quebec since the institution of the cross demand plus judicial fees of \$118.

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SUZANNE HANDMAN, J.C.Q.

Date of hearing: December 10, 2012