

COURT OF QUEBEC

Small Claims Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

No: 500-32-133329-120

DATE: December 5, 2013

BY THE HONOURABLE ARMANDO AZNAR

P & P AUTOTECH

Plaintiff

v.

2756-5639 QUÉBEC INC. (ECLAIRAGE KNIGHT)

Defendant

JUDGMENT

[1] Plaintiff claims from Defendant the sum of \$1,950.66 for mechanical car repairs performed at the request and for the benefit of said Defendant.

[2] Plaintiff also claims a sum of \$76.34 representing the fees paid to a bailiff for the service of a letter of demand dated February 2, 2012 (exhibit P-1).

[3] Defendant contests Plaintiff's action.

[4] In this regard, in the Defence it has filed in Court, Defendant alleges that:

- a) the vehicles entrusted to Plaintiff were not properly repaired;
- b) it had to take the vehicles to a new mechanic to have them repaired.

[5] Furthermore, although not alleged in the Defence filed in Court, at the hearing, Defendant, through the voice of its President, Sarandos Iliopoulos, alleges that, for the most part, the repairs performed by Plaintiff were not authorized.

[6] The evidence adduced at trial has revealed that Mr. Prahalis, President of Plaintiff, and Mr. Iliopoulos, President of Defendant, were friends before the events leading to the dispute that has brought them to Court in the present file.

[7] According to Mr. Prahalis, the repairs performed by Plaintiff were performed at the request of Mr. Iliopoulos himself as well as at that the request of his right handman, a person called "Les".

[8] According to Mr. Prahalis, the repairs performed on Defendant's vehicles as described in the bills filed as exhibit P-2 in support of the Demand were performed satisfactorily. These bills amount to the sum of \$2,950,66.

[9] Considering that Defendant has paid Plaintiff the sum of \$1,000 in partial payment, the claim filed in Court is in the amount of \$1,950,66.

[10] Mr. Iliopoulos testified before the Court affirming that the repairs performed to Defendant's vehicles and more particularly, to an Audi, were not satisfactory.

[11] The evidence adduced at trial has revealed that Defendant did pay to Plaintiff a sum \$1,000 for the repairs performed. However, Mr. Iliopoulos never advised Plaintiff in writing that this amount was being paid under protest in view of the fact that according to him, the repairs performed were not satisfactory.

[12] Furthermore, Mr. Iliopoulos never wrote a letter to Plaintiff stating that the reason why he was refusing to pay Plaintiff's bills was that the repairs had not being performed properly.

[13] Although it is stated in the Defence filed in Court that Defendant had to take the vehicles to a new mechanic to have them repaired, said mechanic was not called as a witness at the hearing.

[14] Considering the preceding, the preponderance of the evidence is such that the Court concludes that:

- a) Plaintiff did perform the repairs detailed in the bills filed as exhibit P-2 at the request and for the benefit of Defendant;
- b) said repairs were performed in a satisfactory manner.

[15] Consequently, Defendant is condemned to pay to Plaintiff the sum of \$1950,66 claimed for the said repairs.

[16] However, as concerns the sum of \$76,34 claimed by Plaintiff in reimbursement of the fees charged by a bailiff to serve the letter of demand (exhibit P-1), this amount cannot be granted as Plaintiff could have sent the letter of Demand by mail at a lessor cost. His decision to retain the services of a bailiff is not Defendant's responsibility.

[17] **WHEREFORE, FOR THE FOREGOING REASONS, THE COURT:**

[18] **GRANTS** Plaintiff's action in part;

[19] **CONDEMNS** Defendant to pay to Plaintiff the sum of \$1,950.66 with interests at the legal right plus the additional indemnity provided for by article 1619 of the *Civil Code of Quebec*, as of February 9, 2012, plus the judicial fees in the amount of \$152.

ARMANDO AZNAR, J.Q.C.

Date of hearing: November 26, 2013