STATE OF NEW YORK: COUNTY OF GENESEE
CITY COURT: CITY OF BATAVIA

JOHN M. STEVENS,

Plaintiff

vs.

CHESLEY'S AUTO SERVICE EXPERTS,

Defendant.

DECISION AND ORDER

Index No. SC-000058-20/BT

THOMAS A. BURNS, J.

In this small claim Plaintiff seeks monetary damages in the amount of $1300.00 related to service repair work performed on Plaintiff's motor vehicle by Defendant. At the original trial date Plaintiff was permitted to proceed on the basis of an apparent default by Defendant and a default Judgment was entered in the amount of $1320.00. Subsequent to that proceeding it was determined by the Court that Defendant was not provided with notice of the original trial date on February 5, 2021 and a written request by Defendant to vacate the Judgment was treated by the Court as a motion to vacate the Judgment as an excusable default. Thereafter a virtual trial was held on March 19, 2021 at which time all parties appeared and decision was reserved by the Court for written determination thereon.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff is the owner of a 2006 Chevrolet Equinox motor vehicle, which was serviced by Defendant at Plaintiff's request to address a malfunction causing heating/cooling issues. Testimony established that the motor vehicle was initially brought to Defendant's shop on April 19, 2020 at which time Plaintiff requested assistance in installing a thermostat in the motor vehicle. Defendant provided that assistance at no charge to Plaintiff. Unfortunately that repair did not address the heating/cooling problem and Plaintiff returned to Defendant's shop for a diagnostic evaluation to determine what the cause of the malfunction was. At a subsequent visit to the repair shop Plaintiff was advised that the lower manifold was leaking and that the motor vehicle would require replacement of the gaskets to address the problem. Although the part was relatively inexpensive the labor required would be significant as the replacement of the gaskets

would require the removal of the engine to complete the work. In her testimony Defendant indicated that Defendant advised Plaintiff that the repairs (if done completely) would require the replacement of more than one gasket. Testimony of the parties established that the recommended repairs would have totaled approximately $2100.00 exclusive of tax. Testimony of the parties further established that Plaintiff elected to request a less expensive option, (the replacement of only one gasket), which amounted to a charge of $1204.95 with tax in the amount of $96.30 for a total of $1300.00. That work was performed on or about May 2, 2020 and the total of $1300.00 was paid after the completion of the work and before the return of the motor vehicle. The parties were at odds as to whether Defendant had advised Plaintiff to select the more costly comprehensive repair and unfortunately for the sake of the parties and this Court the paid invoice created by Defendant did not include any disclaimer that Plaintiff had selected the less comprehensive repair option. However, based on the testimony offered at trial the Court is unable to establish that Defendant assured Plaintiff that the work performed would correct the malfunction. The testimony further established that Plaintiff did not return the vehicle to Defendant for a follow up diagnostic to afford Defendant the opportunity to address the problem. It appears that in the months to follow Plaintiff continued to drive the vehicle and that the head gasket eventually failed causing coolant to leak into the engine block. This condition was confirmed by a diagnostic performed by a third party mechanic/repair shop on July 16, 2020. That diagnostic cost was an additional $160.87 paid by Plaintiff.

In a small claim action the Court is called upon to do substantial justice between the parties according to the rules of substantive law. See Uniform City Court Act Section 1804. However "[e]ven in the relatively relaxed and informal atmosphere of a small claims action the plaintiff bears the burden of his establishing his case by the preponderance of the evidence." *DeMeo v. Con. Ed. Of New York, Inc. 32 Misc. 3d 131(A) (App Term 2nd, 11th and 13th Judicial Districts 2011).* It is undisputed on the facts at trial that the service work performed by Defendant did not remedy the malfunctions reported to Defendant by Plaintiff at the time service was requested. According to the proof and testimony presented at trial the Court cannot find that Defendant, through words and conduct, adequately cautioned Plaintiff that the repair work at a cost of $1300.00 would address the malfunctioning issues. The Court also finds that upon discovery of the unresolved mechanical issues Plaintiff elected not to return the vehicle to Defendant thereby prohibiting Defendant from addressing the issue. Moreover the Court finds that Plaintiff continued to drive the motor vehicle for a number of weeks after discovering the continued mechanical problems and up to the point where the motor vehicle's engine fell victim

to the head gasket failure. Testimony further established that Plaintiff expended additional sums in the amount of $160.87 for a diagnostic assessment of the motor vehicle approximately ten weeks following the May 2, 2020 service at Defendant's shop. That diagnostic assessment recommended replacement of the head gasket. The testimony further established that within one month of that assessment Plaintiff had installed a replacement engine with an expense of approximately $1600.00 although the Court finds that approximately $320.00 of that expense involved matters not related to the engine replacement.

Ultimately the question, which must be resolved by the Court, becomes what is the obligation of the expert service provider to the consumer when the consumer is unwilling to authorize the recommended repairs for financial reasons?

It has been established that Plaintiff is entitled to the "reasonable care and competence of those in the automobile repair profession," see *Grooms v. Davidson Chevrolet Oldsmobile Cadillac, 9 Misc. 3d 318, (Watertown City Ct 2005),* and the automobile consumer is entitled to rely upon the "expertise of the service provider who hold themselves out as experts providing a service," *Kanarek v. Mannie & Al's Service Station, 123 Misc. 2d 221 (N.Y.C. Civil Court* 1984). On the facts present it is entirely reasonable to conclude that Plaintiff would believe that in agreeing to perform the less expensive repair option that the automotive repair expert was of the opinion that this option would remedy the problem. In this context Plaintiff proceeded with the repairs. However, based on Plaintiff's delay in making additional repairs and in electing not to immediately return the vehicle to Defendant and in continuing to drive the vehicle even after the third party diagnostic it is unreasonable to conclude that Plaintiff should be entitled to recover the entire cost of the $1300.00 repair. Based thereon the Court finds that Plaintiff is entitled to recover the cost of the engine labor ($600.00) plus tax as reflected on the May 2, 2020 invoice for a total of $640.00.

Accordingly, Plaintiff is awarded Judgment in the amount of $640.00 plus costs.

The foregoing constitutes the Decision and Order of the Court.

Dated March 25, 2021
at Batavia, New York

THOMAS A. BURNS
Batavia City Court Judge