

IN THE DISTRICT COURT OF OSAGE COUNTY, OKLAHOMA

Case No. SC-08-285	Judge: M. John Kane
GORDON GRAY, Plaintiff, -vs- KEVIN LANDERS, Defendant.	PRO SE, Attorney for Plaintiff
	For use by Court Clerk: <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> District Court, Osage County, Okla. FILED <div style="border: 1px solid black; padding: 2px; display: inline-block; margin: 5px 0;"> JUN 26 2009 </div> ANGIE BRUCE, Court Clerk By _____ Deputy </div>
	G. PILKINGTON, Attorney for Defendant.
Date: <u>6-26-09</u>	Court Reporter: <u>none</u>

SMALL CLAIMS COURT JUDGMENT

The Court rules upon matters previously taken under advisement. At trial, both sides presented evidence and argument in support of his respective position, employing testimony, demonstrative evidence, expert witnesses, photographs, illustrations, treatises, and other materials. Plaintiff seeks \$5,990.38 from Defendant, plus the costs of this action. Defendant denies he owes the Plaintiff anything.

The Court finds the Defendant (Seller) did not provide the Plaintiff (Buyer) with the goods described in the offering (a 93-95 "third generation" engine with turbo rotor housings). Seller agreed that the rotor housings were NOT 93-95 style turbo housings, but in fact were the earlier generation of engines, 89-91 non-turbo series of engines. Seller suggests that the differences in the two types of housings were insignificant, and that the "older" version was actually a better product in his opinion. Seller admitted that in order to get the

older version of rotor housing to work, he had to modify the exhaust sleeve, which is the very part that Buyer suggests has now failed.

Seller's own expert witness testified that he would not have made the above-described parts substitution without the knowledge and consent of the customer. No such disclosure or consent was obtained herein. Every contract has an implied duty of good faith and fair dealing. *12A Okla.Stat. Ann. §1-203*. Seller breach this duty when he failed to disclose the material fact that the "wrong" rotor housing were installed on this engine.¹ "Good faith" means honesty in fact in the conduct or transaction concerned; the buyer is entitled to get what he paid for. *Murray v. D&J Motor Co., Inc., 1998 OK CIV APP 69*. In this case, Buyer did not get what he paid for.

Buyer is entitled to damages for failing to receive from Seller the goods which were offered, but he is not entitled to a complete refund. In some circumstances, a buyer may, after-the-fact, revoke his earlier acceptance of goods:

"Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it." *12A Okla.Stat. Ann. §2-608*.

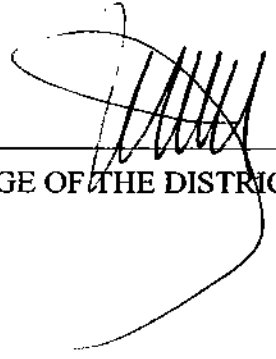
In the present case, Buyer did notify Seller of the problem with the rotor housings upon discovery of the nonconforming nature of the product, but only after years of use and eight thousand miles of driving. This late discovery was certainly through no fault of the Buyer, but the fact remains that under the above-cited statute, the engine was not in substantially the same condition as when delivered, even ignoring the sleeve damage which Buyer asserts occurred as a result of the product's nonconformity.

¹ Plaintiff offered numerous technical reasons why the "correct" motor housing should have been included. Factors discussed included, but were not limited to: better heat dissipation; better coating, and a different style of exhaust sleeve. Plaintiff also posited that the "modified" sleeve would run the continual risk of having parts flake off and damage other motor parts.

The Court finds for the Plaintiff in the sum of \$3,000.00, which the Court finds to be the sum necessary for the Plaintiff to pay a professional to remove the engine, and the net difference in value between what the Plaintiff received and what he should have received, adjusted for the actual benefit the Plaintiff received in the interim period, along with the cost of installing an engine conforming to the contract². Plaintiff is also entitled to recover the costs of this action.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the Court that Plaintiff have judgment against the Defendant in the sum of \$3,000.00. It is further ordered that Plaintiff have judgment against the Defendant in the sum of \$216.00.

IT IS FURTHER ORDERED that this is a final appealable order.



JUDGE OF THE DISTRICT COURT

² The Court is aware of the fact that the initial installation of the engine was the responsibility of the Buyer, but the installation of a new engine is a direct consequential damage occasioned by the Seller's conduct herein.