

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No DA 25-0758

[to be assigned by Clerk of Supreme Court]

Monachita Howe,

\_\_\_\_\_/Appellant,

[Designation of Party in District Court]

v.

Celtic Motors,

\_\_\_\_\_/Appellee.

[Designation of Party in District Court]

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State of Montana

APPELLANT'S BRIEF

[or name of document being filed]

On appeal from the Montana 11th Judicial District Court,  
County of Flathead,

Cause No. DV-25-631 [District Court Cause No.]

Honorable Paul Sullivan Presiding [District Court Judge's name]

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## STATEMENT OF THE ISSUES

Montana allows a plaintiff to appeal a district court's clear errors to the Montana Supreme Court. Montana law indicates the district court erred in conclusions on evidence that shows that:

- 1) defendant breached a written contract for an automobile repair, intentionally misrepresented their services, and intentionally misrepresented the work they completed to defraud plaintiff;
- 2) defendant violated the Implied Covenant of Good Faith of Fair Dealing;
- 3) defendant violated the Uniform Deceptive Trade Practices Act
- 4) the district court's abuse of discretion and clear error and misapprehension of evidence resulted in findings that contradict the stated testimony and the documentary evidence. Plaintiff is appealing because the testimony of the defendants admits to their bait-and-switch and breach of contract.

## STATEMENT OF THE CASE

Plaintiff's appeal to the Supreme Court was filed so that a consideration of the evidence plaintiff provided that show:

- 1) **Breach of a Written Contract;** Plaintiff and Defendant had an agreed-upon written contract regarding a brake job she arranged Celtic Motors would complete.
- 2) **Violation of the Implied Covenant of Good Faith of Fair Dealing;** Celtic Motors deceived plaintiff by accepting the terms of the signed contract and by agreeing to complete the work to replace her brakes.
- 3) **Violation of the Uniform Deceptive Trade Practices Act;** then, after defendant had assurance and the signed written contract from plaintiff stating that she was agreeing to the terms presented therein, they switched the types of brakes they would install in her car, while never consulting or otherwise advising her of their choice to violate the terms of their contract. By so doing, Celtic Motors falsely represented to plaintiff that had completed the brake work as agreed. She discovered their deception and violation of their contract after two near-miss accidents because she suffered complete brake failure and could not stop her car. She took it to another mechanic who replaced the brakes the way she had originally agreed to with Celtic Motors. Since she paid for the more expensive option, and Celtic Motors never installed the brakes specified in the contract, she sought to recover her damages in small claims court and was denied.

#### **4) Abuse of Court's Discretion, Clear Error in Misapprehension of Evidence**

Plaintiff appealed to the District Court, which affirmed the lower court's ruling. Plaintiff is appealing to the Supreme Court due the lower courts' clear error in their ruling, since it contradicts the evidence presented, including the defendant's admission that they did not put the brakes in her car that the contract specified.

## STATEMENT OF THE FACTS

The case file is at the district court, record # District Court Record Cause # DV-15-2025-0000631-JL, -- *Nimachia Howe v. Celtic Motors* (Complaint, District Court Doc. 1, p.16.)

## **SUMMARY OF ARGUMENT**

Plaintiff is requesting that the Supreme Court consider her case for these reasons:

- 1) Breach of a Written Contract
- 2) Violation of the Implied Covenant of Good Faith of Fair Dealing
- 3) Uniform Deceptive Trade Practices Act
- 4) Abuse of Court's Discretion, Clear Error in Misapprehension of Evidence

## STANDARD OF REVIEW

The Supreme Court should consider this case with attention to these aspects:

### 1) **Breach of Written Contract**

*Hoestine v. Rose*, Sup Ct. of Mont., June 11, 1957, No. 9474

R.C.M 1974, Section 17-201; R.C.M. 1974, Section 17-202

*Schantz v. Minow*, 147 Mont. 228, 411, P. 2d, 362 (1966)

### 2) **Violation of the Implied Covenant of Good Faith of Fair Dealing**

*Holland v. Pence Auto Co.*, Sup. Ct. of Mont. March 12, 1925, No. 5, 619

- **Honesty & Fairness:** Requires parties to be honest and observe reasonable commercial standards.
- **Benefit of the Bargain:** Prevents actions that deprive the other party of the fruits of the contract.
- **Applies to Performance:** Governs contract performance, not negotiations.
- **Discretionary Power:** Particularly important when one party has discretion, demanding reasonable and good-faith exercise of that power.
- **Not a Free Pass:** Cannot be used to contradict express contract terms or create new duties.

3) **Violation of the Uniform Deceptive Trade Practices Act (1965)**

*American Airlines v. Wolens*, Sup. Ct. of the United States, Jan. 18, 1995, 513 U.S. 219, 115 S. Ct. 817, 130 L. Ed. 2d 715 63 USLW 4066

- Uniform Deceptive Trade Practices Act (1965)

4) **Abuse of Court's Discretion, Clear Error in Misapprehension of Evidence**

*Riemann, II v. AutoTech*, MT. District Ct, 1<sup>st</sup> Jud. Dist., Lewis & Clark County, Mar. 4, 2004, ML 543

*Spence, v. Ortloff and Ortloff Brothers Auto Restoration* no. 95-028 Sup. Ct. of Montana 1995

*State v. Fine* [1995], Mont. 171, 902 P 2d 30, 33

*State v. Passama* [1993] 261 Mont. 338, 341, 863 p. 2d 378, 380

## ARGUMENT

### 1) Breach of Written Contract

Plaintiff filed an initial small-claims court complaint against defendant in order to recover the costs of having to hire another mechanic to redo the auto repair that defendant had been contracted to do. Despite having an agreed upon estimate and signed contract for the repair, defendant chose to misrepresent the job that was in the estimate and contract, and instead used other parts in the repair, that constituted a breach of contract. *Hoerstine v. Rose* states: “Every person who suffers detriments from the unlawful act of omission of another may recover from the person at fault a compensation therefor in money, which is called damages.”

(R.C.M 1974, Section 17-201

In *Hoerstine v. Rose*, Sup Ct. of Mont., June 11, 1957, No. 9474 further, “Detriment is a loss or harm suffered in person or property.” (R.C.M 1974, Section 17-202). Plaintiff suffered two near-miss accidents due to the breach of contract, and she was also forced to pay to have the job redone, so her complaint was an effort to recover the amount of the redone repair.

Plaintiff considers that the district court’s ruling was clearly erroneous because it ignores the evidence of the mutually agreed-upon estimate/invoice for the job she agreed to have the defendant complete, according to Montana law. *Schantz v. Minow* states: “First and foremost, the sanctity of contracts is one of the basic

principles of all jurisprudence. It is one of the fundamental doctrines of Anglo-American law. If contracts were to be easily set aside and repudiated, one of the very bases of our law would be gone.” (*Schantz v. Minow*, 147 Mont. 228, 411, P. 2d, 362 (1966)). *Schantz v. Minow* concerns insurance policy coverage for auto repairs, especially in light of what types of parts will be used to complete the repair, so the case highlights the central point of plaintiff’s complaint: the difference between originally engineered manufacturer’s parts compared with secondary manufactures who also make car parts--often counterfeit--that are in no way affiliated with the original manufacturer. Furthermore, the transcript of the civil court hearing reveals that the defendant and witness lied under oath, creating discrepancies between the documentary evidence and their words, and also between their own words in different parts of the transcript.

## 2) **Violation of the Implied Covenant of Good Faith of Fair Dealing**

Plaintiff suffered two near-collisions after the defendant installed the aftermarket brakes that the plaintiff-signed estimate/contract/invoice excluded from the brake repair they were to complete. *Holland v. Pence Auto Co.* discusses the importance of why honoring their contract was significant in how plaintiff has been damaged due to their deception, intentional misrepresentation, and the resulting danger that a person might suffer as a result of defendants’ intentional violations of the Implied Covenant of Good Faith and Fair Dealing, even though

she had a contract. “A maker or vendor of an article dangerous to life and limb, who sells without notice of the dangerous qualities, is liable to any purchaser who suffers an injury therefrom which might be reasonably have been anticipated, and whether any privity of contract existed between the parties or not. (*Huset in Holland v. Pence Auto Co.*, Sup. Ct. of Mont. March 12, 1925, No. 5, 619).

Automobiles are dangerous instruments...The dangerous doctrine has been applied to automobiles” (*Holland v. Pence Auto Co.*, Sup. Ct. of Mont. March 12, 1925, No. 5, 619).

The defective aftermarket parts that failed would never have been in plaintiff’s car had defendant not violated both the contract and the Implied Covenant of Good Faith of Fair Dealing by substituting them for the more expensive Original Equipment Manufacturer (hereafter OEM) BMW parts they contractually promised plaintiff they would install during the repair. This violation was not an accident, or oversight. It was an intentional deception that involved for a level of negligence that could have ended in more severe detriment to plaintiff than the clearly suffered by having to get the brake job redone on her car.

“Such persons in dealing with things either imminently dangerous in kind, or such as are rendered dangerous by defects of which they have or ought to have knowledge, hold themselves out as possessing competent knowledge and skill to manufacture, prepare, and deal in and handle such machines, instrumentalities or

substances with reasonable safety to the public, and impliedly promise that they will exercise such knowledge and skill in each instance. While generally a manufacturer, vendor, or bailor is not liable to third parties, to whom he is under no contractual obligation, for negligence in the construction for negligence in the construction and manufacture, or sale of such articles as he handles; yet he is so liable for resulting injuries where his negligence causes imminent danger to human life or health and the article is used in the manner as intended, as where he impliedly invites third parties to use machines or instrumentalities, rendered defective by his negligence in their manufacture, or sells or bails the same knowing them to be defective or where he is chargeable with such knowledge” (*Holland v. Pence Auto Co.*, Sup. Ct. of Mont. March 12, 1925, No. 5, 619, also citing Sherman & Redfield, on Negligence, 6<sup>th</sup>. Ed., p. 1797).

### **3) Violation of Uniform Deceptive Trade Practices Act**

Repairs to plaintiff’s vehicle were not completed in the manner contracted, promised, or paid for, so defendant committed a violation of the Uniform Deceptive Trade Practices Act. In the transcript of the hearing, the defendant admitted that they completed the brake job with non-OEM BMW parts. Defendant Celtic Motors violated the agreement that they had initially entered into with plaintiff by presenting her with their pricing estimate set for OEM brakes, then

switched them out for aftermarket ones, which is a violation of Section 2 of the Uniform Deceptive Trade Practices Act because they not only never informed plaintiff of their decision to switch the brakes she agreed they would install, for any other type of brake.

In *American Airlines v. Wolens*, (Sup. Ct. of the United States, Jan. 18, 1995, 513 U.S. 219, 115 S. Ct. 817, 130 L.Ed. 2d 715 63 USLW 4066) the court states: “The Consumer Fraud Act declares unlawful ‘[un]fair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the Uniform Deceptive Trade Practices Act’...in the conduct of any trade or commerce... whether any person has in effect been misled, deceived, or damaged hereby” (*American Airlines v. Wolens*, 111, Comp. Stat., ch. 815 Section 505/2 (1992) (formerly codified at 111. Rev. Stat., ch. 121½, Para. 262 (1991)). Celtic Motors misled and deceived plaintiff, resulting in emergency repairs to her vehicle after her brakes failed twice.

**4) Abuse of Court’s Discretion, Clear Error in Misapprehension of Evidence**

*Riemann, II v. AutoTech* discusses the standard for determining what appellate courts will generally review (*Riemann, II v. AutoTech*, MT. District Ct, 1<sup>st</sup> Jud. Dist., Lewis & Clark County, Mar. 4, 2004, ML 543). In *Spence v. Ortloff*, the Court developed a 3-part test to determine whether the findings are clearly erroneous: “First, if a court’s findings are not supported by substantial credible evidence, they are clearly erroneous; Second, if a court has misapprehended the effects of the evidence, its findings are clearly erroneous. Third, if a review of the record leaves the reviewing court with the definite and firm conviction that a mistake has been committed, the lower court’s findings are clearly erroneous” (*Spence, v. Ortloff and Ortloff Brothers Auto Restoration* no. 95-028 Sup. Ct. of Montana 1995).

A higher level court will not disturb lower court decisions unless an abuse of discretion is shown (*State v. Fine* [1995], Mont. 171, 902 P 2d 30, 33): “District courts have broad discretion in determining whether the evidence is relevant and admissible; absent a showing of abuse of discretion, we will not overturn the court’s determination (*State v. Passama* [1993] 261 Mont. 338, 341, 863 p. 2d 378, 380). As set forth above, we also review a court’s decision to grant or deny a motion for a new trial for abuse of discretion (Matter of J.R.I., 853 p. 2d at 711)”.

The focus in this appeal on the district court’s abuse of discretion and clear error because it contradicts the evidence presented in the documents, and

misrepresents the actual words of defendants who not only contradicted and qualified their answers to the judge's questions, but their inconsistencies and carefully constructed qualified responses that failed to answer the questions honestly, then constant talking and noise-making when it was plaintiff's time to talk. This appeal is supported by an accurate presentation of authority (Mont. R. App. P. 12 (1)(f)) and accurately represents the record.

The lower-level courts contradict facts about the differences between BMW Original Equipment Manufacturer (OEM) parts and any or all other brakes, and therefore commits a clear error because this constitutes a nonsensical reorganization of facts: there is a qualitative distinction between these two types of brakes, so to say the equivalent of "they are just the same, only without the brand" or to quote the technician; **"You know, it's as factory as you can get without paying for the BMW name,"** (*Celtic Motors technician, District Court Hearing Transcript, District Court Record Cause # DV-15-2025-0000631-JL, p.8*) is an admission that they did not use BMW OEM parts, and proves plaintiff's claim made in her initial complaint. The district court is in clear error in its assessment of facts, stating **"I do believe that the defendants did the work as they were requested; they used parts—as going with the testimony that we have from somebody here, that the same part, same strength, same model, make, everything, other than the stamp on the name."** (*Celtic Motors technician,*

*District Court Hearing Transcript, District Court Record Cause # DV-15-2025-0000631-JL, p.15)*


Brand markings are meaningful. They represent a standard of quality that customers can expect. Consistency and accountability are part of elements that contribute to why customers like the plaintiff elect to repair her car with BMW-OEM branded parts. The district court judge accepts defendants' false assertions regarding the significance and purpose of why BMW-stamped brakes qualitatively differ from any other aftermarket brand brake, and reaches the illogical position that there is no difference between BMW OEM brakes Celtic Motors promised to put into plaintiff's car, and the ones they installed instead. Defendants admitted there is a price difference between these two types of brakes, so: different price + different brand = bait and switch. The question in this case is not whether or not Celtic Motors did the job of exchanging brakes, which seems to be satisfactory standard given the lower courts' reasoning. Rather, the issue in this case is specifically that when Celtic Motors changed plaintiff's brakes, they saved themselves money on the more expensive brakes plaintiff was contractually obligated to pay for, but snuck in cheaper, much less reliable brakes – hence the brake failures that followed their “work.” Celtic Motors kept the money plaintiff meant to go to BMW OEM brakes and installation, that failed. Plaintiff provided evidence to support her claims, so the lower court is in clear error.

## **CONCLUSION**

Plaintiff asks the Supreme Court to reverse the district court's order and remand the case to the district court for an entry of judgement in plaintiff's favor.

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

  
[Signature]



### CERTIFICATE OF SERVICE

I certify that I filed this

Petition

Motion

Other Appeal Nimachia Howe v. Celtic Motors  
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

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