



Civil Resolution Tribunal

Date Issued: December 27, 2017

File: SC-2017-002631

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wyatt v Wood et al*, 2017 BCCRT 147

B E T W E E N :

Robert Wyatt

APPLICANT

A N D :

Ian Wood and IWE Rear Ends Only Ltd

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kamaljit Lehal

INTRODUCTION

1. This dispute is about repairs to a vehicle. The applicant alleges the respondents intentionally tampered with and vandalised a vehicle part during repairs to his vehicle. All parties are self-represented. The respondent Ian Wood is the owner of the respondent company IWE Rear Ends Only Ltd (“IWE”).

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility that cannot be resolved without an oral hearing and no other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:
 - a. Did the respondents intentionally tamper with and vandalise a vehicle part during repairs to the applicant's vehicle, if so what is the remedy?
 - b. Were the respondents negligent in providing repair advice or services to the applicant, if so what is the remedy?

EVIDENCE AND ANALYSIS

7. Around May 2016 the applicant took his vehicle, a 2004 Mazda Miata, into IWE to assess a rumbling noise coming from the rear suspension. IWE's preliminary assessment suggested that the rear differential bearings were worn and should be replaced. IWE quoted \$1025.00 plus tax to replace the bearings in the differentials and seals. IWE recommended inspection of the differential to rule out any other components that may require repair. The applicant agreed to the further inspection and testing. However, the exact nature of the testing appears to be at issue, as the applicant did not anticipate the differential unit being completely dismantled.
8. IWE state that the differential was inspected according to Mazda Canada's written guidelines, a copy of which was provided to the tribunal. The inspection revealed that the differential's internal pieces were broken and it needed to be completely replaced. The vehicle required a differential called a Fuji posi, which IWE told the applicant would have to be ordered from Japan at a cost of about \$2,200.00 and would take 4-6 weeks to arrive.
9. The applicant initially told IWE to hold off on any work and wanted to pick up his vehicle. IWE were neither able to nor willing to put the broken Fuji posi differential back together and let the applicant drive it due to safety and liability reasons. The applicant ultimately placed an ad on Craigslist seeking a "Miata LS rear differential from 1.8". The applicant also attended Metrotown Mazda where the manager

located a used Fuji posi differential from Coast Import, which the applicant purchased on May 19, 2016 for \$1,114.40 and dropped it off at IWE the same day. The applicant said Coast Import described this differential unit as “pristine with 60,000km on it.” The Coast Import differential had a 120 day warranty which expired September 14, 2016.

10. IWE conducted non-invasive testing on the Coast Import differential and advised the applicant that it had bad bearings and noise coming from it and as such IWE did not want to install it without further examination. The applicant insisted that IWE install it the way it was especially since the differential unit was warranted by Coast Import. IWE agreed to install the differential unit on the condition that it would not warranty any customer-supplied parts, a condition stipulated on their sales invoice.
11. IWE also state they contacted Coast Import about the noise coming from the differential unit. As a result, Coast Import gave the applicant a \$200.00 price reduction for a “noise bearing adjustment,” for the differential being “sub-par.”
12. IWE state the differential unit from Coast Import was installed, as supplied by the applicant, on May 20, 2016. The applicant was called that same day to pick up his vehicle. The applicant picked up his vehicle on May 24, 2016 along with a box containing his old parts.
13. After IWE completed the repair work and prior to the applicant picking up his vehicle on May 24, 2016, on May 22, 2016 the applicant received a response to his Craigslist ad and spoke with the person on May 23, 2016. The applicant recognized the caller as a worker from IWE by the name of Valise who the applicant states told him he had a differential from a 2004 Miata with 60000km. The applicant suspects that Valise did not, initially, realize whom he was talking to and was trying to sell him back either the original differential removed from his vehicle or the differential he had brought in from Coast Import, or a combination of parts from both. The applicant ended the call. The applicant says that when he came to the repair shop to pick up his vehicle the next day, Valise was behaving

suspiciously. Given the above conversation with Valise, the applicant was concerned about the repairs done to his vehicle, he had no confidence in the repair work, and he believed that Valise had vandalised the differential unit installed.

14. Immediately after picking up his vehicle on May 24, 2016, the applicant could hear the “same distinct rumbling sound as before.” The applicant states the very next day, May 25, 2016, a company called Pacific Alignment conducted a wheel alignment and confirmed the same noise was coming from the rear of the vehicle.
15. The applicant states he did not make a claim under his warranty with Coast Import because the warranty was void since the differential had been vandalised. However, no evidence was provided that Coast Import refused to honor the warranty.
16. The applicant states during a June 5, 2016 routine oil change by Mobil1 Lube Express, it was discovered that the rear differential was overfilled by about 10oz and the fluid was dark in color. The applicant describes the oil as being black and full of crud and fillings. The applicant states another oil change was required on July 29, 2016 by Golden Touch Auto Centre who advised that overfilling could cause damage to the seal in the differential.
17. The applicant states that Bert’s Automotive had to repair the seal in the differential on August 5, 2016 at a cost of \$181.98. In Bert’s Automotive’s invoice it states “condition differential is not a posi or the posi is not holding”, suggesting there were issues with the differential. The warranty with Coast Import was still valid at this point.
18. The applicant states that Bert’s Automotive also advised him that IWE may have improperly re-inserted part of the differential compromising the seal. The applicant maintains that IWE installed the axles and overfilled the differential.
19. In November 2016, Bert’s Automotive replaced the differential with a more readily available “Torsen” differential for \$1,289.91. In its invoice Bert’s Automotive

comments about the differential removed, it states the “Differential posi would not function properly due to the friction ring tabs broken. Differential case was worn. Bearings were worn from metal running through them.” (Reproduced as written).

20. The applicant states Bert’s Automotive’s invoice refers to wear and tear to the removed differential unit that is consistent with a high kilometre differential unit such as his original unit with 170,000 km on it, suggesting that his original differential unit was put back into the vehicle. However, the invoice does not actually state this. Further, in an October 25, 2017 letter, Bert’s Automotive only goes as far as saying the damage to the replaced differential unit was “consistent with repair to a worn out Mazda Miata posi differential.” The letter also states there were no foreign parts or material in the differential unit.
21. Both the applicant and respondents acknowledge that Fuji posi differentials are known to be problematic. The respondents, in fact, provided testimonials from a forum which describe the problems with Fuji posi differentials and actually recommend a Torsen differential.

Applicant’s Position

22. The Applicant maintains that IWE and or their employees deliberately tampered with and vandalised the differential unit in his vehicle because he had caught their employee trying to sell back either the part he brought in from Coast Import or his original parts or a combination thereof.
23. The applicant maintains that either a) his original differential was reassembled and re-installed along with black contaminated oil or b) the differential unit purchased from Coast Import was gravely damaged by thick black contaminated oil that was pumped into it to purposely destroy it.
24. The applicant states that because he would not agree to let IWE dismantle the differential he purchased from Coast Import that IWE vandalized and contaminated it to penalize him for being a difficult customer. The applicant states he has a Red

Seal Ticket in both HVAC-R and Electrical and has a lot of knowledge and experience with gears and bearings and he felt that IWE was just trying to “fish for more work.”

25. The applicant states that the respondents and Coast Import are friends and suggests Coast Import’s evidence about the “sub-par” differential is not credible.
26. The Applicant seeks:
 - a. Reimbursement of the cost of the differential that failed due to intentional tampering in the amount of \$914.40;
 - b. Reimbursement of repairs required for deliberate overfilling of the differential with sludge oil for \$181.98;
 - c. Reimbursement for two oil changes required to try and save the differential unit for \$86.38;
 - d. Reimbursement for a complete rebuilt of the differential by Bert’s Automotive because of vandalism by IWE for \$1,289.91; and
 - e. Tribunal fees of \$125.00.

Respondents’ Position

27. IWE states it carried out all the necessary steps to initially diagnose the issue with the applicant’s vehicle. IWE maintains it installed the Coast Import differential as supplied by the applicant on the understanding that IWE would not warranty the part. IWE submits that at no time did it tamper with or vandalize the differential by filling it with sludge oil.
28. IWE acknowledges that its employee Valise did speak to the applicant in response to the Craigslist ad. However, IWE state the part Valise spoke to the applicant about was not the applicant’s original differential unit that was returned to him when he picked up his vehicle nor was it the one purchased from Coast Import. The part Valise was selling was different from the part the applicant needed. IWE

provided a photo of the part Valise was selling. Further, the conversation between the applicant and Valise occurred after the applicant's vehicle had already been repaired and Valise was not the worker that repaired it.

29. IWE agrees it did place oil into the differential unit installed by them, however, IWE state it was brand new oil to the specified level. IWE state that the oil change invoices provided by Mobil1 did not change or drain the oil and Golden Touch Auto Centre does not mention anything about the differential being overfilled. Further, they state the oil supplied by the applicant to both Mobil1 and Golden Touch Auto Centre was the wrong type.

Findings

30. I will deal with the intentional tampering and vandalism claim first. I find that the evidence does not support the allegations. The applicant admits receiving a box with his original parts in it. The applicant was shown these parts when his original differential was first dismantled and would have known if there were missing parts when he picked them up given his knowledge as a Red Seal Ticket holder. He did not report any parts as missing. Furthermore, IWE had refused to install the original differential at the very outset when they had dismantled it citing safety and liability reasons.
31. I accept the evidence of the respondents that the differential unit from Coast Import was installed in the applicant's vehicle. While it is concerning that a worker from IWE contacted the applicant with a unit which the applicant states had identical mileage to the unit he purchased from Coast Import, the applicant himself states he is not sure whether the differential from Coast Import was inserted or modified or sabotaged. In addition, the conversation with Valise occurred after the car was repaired which makes it difficult to accept the applicant's suggestion that there was a deliberate attempt to tamper with the repair work as retaliation for catching an employee in the act of doing something improper.

32. The evidence from Bert's Automotive does not support the applicant's assertion that the differential from Coast Import was not installed or was tampered with. What is clear is that the type of differential that was purchased from Coast Import is known to be problematic, which both the applicant and respondent acknowledge. The preferred solution to differentials in the make and model of vehicle the applicant had is to install a "Torsen" differential.
33. Further, IWE did not recommend the applicant's purchase of the differential unit from Coast Import, even though the respondent Wood may be friends with the owner of Coast Import. The applicant was directed to Coast Import through Metrotown Mazda and it was the applicant's decision to buy the unit. IWE identified issues with the part prior to installation, problems that suggested similar issues to the original differential removed. However, the applicant insisted they install it as is.
34. Based on the above conclusions, I find that there is insufficient evidence that the respondents failed to install the part provided by the applicant or that the respondents tampered with or vandalised the unit. The burden of proof is on the applicant to establish the claim on a balance of probabilities and he has failed to do so. I therefore dismiss the claim for intentional tampering with the differential unit for \$914.40.
35. As for the sabotaging of the replacement differential unit with contaminated sludge oil, I find that the evidence and photographs provided by the applicant do not establish that the darkened oil was a contaminated sludge added by the respondents. I therefore dismiss the claim for damage caused by overfilling with sludge oil.
36. Having dismissed the claim for intentional tampering and vandalism, I find that the claim for oil changes cannot be sustained and I dismiss that claim. Likewise I find the claim for a complete rebuilt as a result of vandalism is not met and dismiss that claim.

37. The applicant was aware of a noise coming out of the vehicle immediately after picking it up on May 24, 2016. He was further advised of issues with the differential during work performed by Bert's Automotive on August 5, 2016. The applicant was aware that his part was under warranty yet he did not report a potential defect to Coast Import.
38. The part supplied by Coast Import was not warrantied by IWE. I find that the applicant's recourse was to make a claim under his warranty with Coast Import. The applicant maintains that Coast Import would not have honored the warranty because the part was not properly installed, however, there is no evidence that Coast Import declined to cover the warranty.
39. Aside from allegations of intentional tampering and vandalism which I have dismissed above, the applicant did make submissions that the respondents' work or advice was negligent. The applicant states that the respondents' process of assessing his vehicle and providing him with options was less than satisfactory since Bert's Automotive was able to diagnose the problem without dismantling the entire unit and recommend the replacement Torsen part, which was more readily available.
40. I find that IWE's process of dismantling the unit, while it could have been better explained, was not negligent and in fact appears to be in accord with Mazda guidelines.
41. However, IWE specializes in rear differentials and as such IWE has a duty of care to their customers to provide expert advice and service regarding rear differentials. I find IWE did not meet that standard of care when they failed to advise the applicant about the more readily available option of purchasing a Torsen differential. Had the applicant at the outset been explained this option I find he would not have purchased the differential from Coast Import and incurred the installation cost charged by IWE. That said, as the differential from Coast Import was a warrantied I find the applicant was obliged to mitigate his loss and make a claim under the warranty. But I find that the repairs carried out by IWE to install the

differential should be reimbursed to the applicant. I find IWE must reimburse the applicant \$468.38, the amount of IWE's invoice to install the Coast Import differential. The respondent Wood is not responsible in his personal capacity to pay this sum as he was not retained for advice or repair work in his personal capacity.

42. Under section 49 of the Act, the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the respondent to also immediately reimburse the applicant for tribunal fees of \$125.00. There were no dispute-related expenses claimed.

ORDERS

43. I order the respondent IWE to immediately pay the applicant a total of \$598.65, comprised of:
- a. \$468.38 in damages,
 - b. \$125.00 in tribunal fees. and
 - c. \$5.27 in pre-judgment interest under the *Court Order Interest Act* (COIA).
44. The claims against the respondent Ian Wood are dismissed.
45. The applicant's remaining claims are dismissed.
46. The applicant is entitled to post-judgment interest under the COIA, as applicable.
47. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunals' final decision.

48. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or if, no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kamaljit Lehal, Tribunal Member