



# Civil Resolution Tribunal

Date Issued: May 22, 2018

File: SC-2017-003857

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heidary et al v. Prestige Auto Parts*, 2018 BCCRT 197

**B E T W E E N :**

Mehdi Heidary and Niloufar Heidary

**APPLICANTS**

**A N D :**

Prestige Auto Parts

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a used 2010 Audi A4 engine (engine) the applicants Mehdi and Niloufar Heidary bought from the respondent Prestige Auto Parts, which is formally known as Prestige Auto Parts, Ltd. Mr. Heidary had a third party, The Speed Syndicate (TSS), test the engine which said it was defective.

2. Mr. Heidary says after TSS' testing he returned the engine to the respondent and the respondent failed to honour the warranty and provide a refund. The issue in this dispute is that the respondent says half the engine's parts were missing on its return, and that is why it could not honour the warranty. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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 on the documentation before me, or other reasons that might require an oral hearing.
5. 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.
6. Under the Act and tribunal rule 126, in resolving this dispute the tribunal may:
  - 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**

7. The central issue in this dispute is whether, after having the engine tested by TSS, the applicant Mr. Heidary returned the entire engine to the respondent. If so, it is undisputed that the applicants are entitled to a full refund of \$1,568.00. A secondary issue is whether the respondent is entitled to \$450 for storing the engine during this dispute.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. Before this file was assigned to me for a decision, the parties consented to the disclosure of their discussions with the tribunal facilitator.
10. The respondent agrees it sold the engine to Mr. Heidary for \$1,568.00 on March 7, 2017, with a 30-day warranty. At Mr. Heidary's request, it shipped the engine through a courier to TSS for testing. TSS' March 23, 2017 invoice, which said the engine showed low to no compression, does not indicate how the testing was done.
11. Mr. Heidary then called the respondent to say he wanted to return the engine given the compression testing results. The respondent agreed, and Mr. Heidary arranged to have the engine shipped back to the respondent, using the same courier.
12. The crux of this dispute is that the respondent says that when the engine arrived back to them on March 20, 2017, half of the engine's components were missing: all of the coil packs, throttle body and upper plenum parts, and EFI wiring. In addition, the respondent wrote that the EFI wiring had been cut. The respondent says the engine was not sealed or wrapped when it was returned.

13. In contrast, the applicant says he sent the entire engine, including all parts, back to the respondent within the 30 day warranty period. The applicant's assertion is based on what TSS told him, and its photos, as discussed below.
14. After the applicant told the respondent on March 22, 2017 that he would follow-up with TSS, Mr. Heidary did not contact the respondent again until April 27, 2017. There is no explanation before me about this delay, but in the interim TSS repaired Mr. Heidary's original Audi engine.
15. In his April 27, 2017 email, Mr. Heidary wrote that the engine was tested without installation in the car, due to the associated high cost of doing so. Mr. Heidary wrote that he had some pictures taken "just before shipment", and that no items were missing. Because the engine was not installed in the car for testing, Mr. Heidary wrote that there was no need to cut or modify any connection.
16. On April 27, 2017, the respondent replied and told Mr. Heidary that it could not refund him for the engine because it was not returned in the state it was in when shipped out. The respondent told Mr. Heidary he was welcome to pick up the engine as it sat in the respondent's shop. Mr. Heidary replied and again said he had TSS take pictures and he had them in his files, though he did not send them to the respondent. That same day, the respondent asked Mr. Heidary to send the photos or come down and look at the incomplete engine.
17. On November 14, 2017, TSS emailed Mr. Heidary that the pictures it had sent Mr. Heidary at the time it tested the engine were taken right before shipping it away and loading onto the pallet. TSS wrote that the wiring on the engine was already cut, which TSS said was not an issue because it could test the engine using Mr. Heidary's vehicle's "plug and play" wire. TSS wrote that everything on the engine "is how we received it and we have not kept any components that came with the engine".
18. Yet, the courier's waybill indicates that when it was called to pick up the engine from TSS, it was told "the engine was not ready" on their first attempt to pick it up.

Mr. Heidary says that he called the courier when he heard from TSS and asked TSS to “put the engine in the exact condition as they received it”. He says that could be the reason why the engine was not ready for pick-up. I find this explanation unsatisfactory. Further, there is no explanation before me why Mr. Heidary gave such an explicit instruction to TSS, bearing in mind the engine being not in its exact condition is the very issue in this dispute. Mr. Heidary declined to provide the detailed breakdown of how TSS conducted the test, and instead suggested the tribunal facilitator contact TSS directly.

19. On November 17, 2017, Mr. Heidary sent the respondent photos of the engine, which I infer were those taken by TSS. Later that day, the respondent replied and noted the following from TSS’ photos: the intake manifold is shown as completely unbolted, and there was no reason for TSS to have done that; the oil filter is missing; the A/C compressor is unbolted; the coil packs are missing, but the coil pack writing is intact. The applicants have not specifically responded to these comments.
20. For clarity, if the entire engine had been returned to the respondent, it says it would have provided the applicant with a full refund.
21. I am not prepared to go so far as to find TSS “robbed” the engine of its parts in order to repair Mr. Heidary’s own engine, as alleged by the respondent. Of note, TSS is not a party to this dispute. However, as noted above, the applicants bear the burden of proof here.
22. On balance, I find the applicants are not entitled to the claimed refund because I find the applicants have not proved the engine was returned to the respondent in its original condition. The fact that the engine was in TSS’ possession does not change the applicants’ obligation to ensure the engine was returned in its original condition if they wanted a refund. I find that a conclusion that the engine was not returned in its original condition is most consistent with the overall evidence, including that the courier had to make a second attempt at pick-up from TSS and the respondent’s observations of missing parts from TSS’ photos of the engine,

which the applicants did not address. I note nothing turns on the photos the respondent says it took before it shipped the engine to TSS, bearing in mind the applicant's objection to those photos.

23. As the applicants were unsuccessful in this dispute, I find they are not entitled to reimbursement of tribunal fees or their claimed dispute-related expenses.
24. The respondent still has the returned engine in its possession, which I accept is in exactly the same condition as it was when it received it from TSS. The respondent says the engine has been incurring \$50 per month in storage, for a total of \$450. I have no counterclaim before me. Moreover, the respondent has not explained how it arrived at the \$50 per month fee for what appears to be a relatively small car's engine. Further, in April 2017, the respondent invited Mr. Heidary to pick up the engine, and he chose not to do so. The respondent has not explained why it nonetheless felt compelled to continue to store the engine. Under section 49 of the Act and the tribunal's rules, I decline to make an order for payment of storage fees.

## **ORDERS**

25. I order that the applicant's dispute is dismissed.
26. I order that the respondent's claim for \$450 in dispute-related expenses is dismissed.

---

Shelley Lopez, Vice Chair