



Civil Resolution Tribunal

Date Issued: July 13, 2018

File: SC-2017-005824

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Foden et al v. Vernon Motorsports Ltd.*, 2018 BCCRT 327

BETWEEN:

Ross Foden and Steve Stone

APPLICANTS

AND:

Vernon Motorsports Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about motorcycle inner tubes that deflated during the applicants' 10,000 kilometre adventure ride across the United States. The applicants, Ross Foden and Steven Stone, asked the respondent Vernon Motorsports Ltd. to supply and fit 5 inner tubes to 3 motorcycles, all of which failed over the period of 1 month. One of those motorcycles belonged to B, who is not a party to this dispute.

2. The applicants seek \$2,947 in damages to cover out of pocket expenses and “restitution” for the delays the failed tubes caused to their trip. 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 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 tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issues in this dispute are a) whether the respondent sold defective tubes and/or incorrectly installed them in the applicants’ motorcycles, and b) if so, what is the appropriate remedy.

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 referenced the evidence and submissions as necessary to give context to my decision.
9. The parties agree:
 - a. On around July 24, 2017 the respondent completed service on the applicants' two 2017 KTM690 Enduros motor bikes. This service was to install new tires, heavy duty inner tubes, and tire sealant. The applicants provided the tire sealant for the respondent to install. The respondent sold the inner tubes as part of the installation service package.
 - b. On July 26, 2017, Mr. Foden picked up his motorcycle from the respondent and took it home. Within the same week, Mr. Foden advised the respondent that the rear tire had deflated. The respondent picked up Mr. Foden's motorcycle and repaired it before July 31, 2017. There is no issue about the quality of the repair.
 - c. The failure of the inner tube installed on July 26, 2017, which was repaired before July 31, 2017, was likely the result of the rubber being pinched during installation.
10. I find it is undisputed that the respondent installed 5 tubes installed in the same week on 3 motorcycles, and all 5 tubes failed. In particular, the applicants' 2 motorcycles sustained failure of both front and rear tubes while riding the Continental Divide Trail in the United States. The 3rd motorcycle, owned by the non-party B, had a tube replaced by the respondent and that tire went flat within a month.
11. The applicants describe the chronology of the tubes' deflation during their trip as follows. On August 6, 2017, Mr. Stone's rear tire deflated while travelling about 70 km/hour on a tarmac road in a remote area. Next, on an unspecified date during

the applicants' return journey along Highway 1, Mr. Stone's front tube sustained "instant and catastrophic deflation". On August 26, 2017, Mr. Foden stopped for gas and noticed that his front tire was completely deflated. The applicants say there was no evidence of the tire's penetration, "just a rip in the sidewall". This tube was retained and access provided to the respondent for inspection. The 5th incident involved B's motorcycle, which she left at home while she went on the adventure ride on a different motorcycle, and the tube fitted by the respondent deflated after she returned home from the trip a month after.

12. The applicants say that none of the tires had any evidence of puncture, pinch or otherwise and are still installed on the bikes. For clarity, tires are separate from the "inner tubes" at issue in this dispute. The applicants say the replacement tubes are still providing good service after many kilometers. The applicants submit the only logical explanation is that either the respondent installed the tubes incorrectly, or they were deficient when supplied.
13. The respondent in part relies upon the terms and conditions in its Repair Order. There was no warranty offered for the tubes, and none by the manufacturer at all once the tubes were installed. The applicants say they are not claiming a specific warranty but rather the implied warranty to use reasonable care and skill, do the work in a workmanlike manner, and use reasonable quality materials, as set out in section 18(a) of the *Sale of Goods Act*.
14. The respondent also says that the applicants' trip was an adventure ride and when adventure riding flat tires are "super common". The applicants deny this. What I find most relevant is that the respondent readily concedes it incorrectly installed Mr. Foden's tube on July 24-26, 2017, noting it deflated within hours, and that it repaired by July 31, 2017. The other 4 tubes all deflated long after installation and the applicants' tubes deflated during an extensive adventure ride.
15. The respondent says that all adventure riders take spare tubes with them because of the nature of the terrain and that pinch flats are very common, which is what the applicants did also. The respondent says a pinch flat never had any kind of

perforation, whereas its evidence and opinion from a Jamie Chisholm with the tubes' manufacturer, is that the photos of the applicants' tubes show one had damage to the tube and valve stem that was "so great" that some type of impact or other trauma from the trail or road caused the damage, or a loose spoke or spoke nipple came through from the inside to cause the damage. The second photo showed a pinch flat, which Mr. Chisholm concluded was possibly caused by running too low of air pressure or running on the tire while it was flat. While the applicants deny they did anything on the ride to cause the flats, I have no expert evidence before me to support the applicants' position, as discussed further below. I accept Mr. Chisholm's opinion. Further, while I note the applicants say Mr. Chisholm's opinion is inconclusive and does not say what caused the damage, the material point is that he points to a cause that does not involve a faulty product or faulty installation. As noted above, the applicants bear the burden of proof, not the respondent.

16. The respondent says as far as the tubes being defective, they have no way of checking and neither do the riders. However, the respondent relies upon the supplier's numbers that defects are relatively rare. The respondent submits that if a tube is damaged on installation, the tire will go flat within hours, which is not what happened here. As referenced above, based on the evidence before me I accept this evidence.
17. The respondent says all the flats happened a long way from the respondent's location and that no one can know what the tubes were subjected to on the applicants' adventure ride. I agree. The respondent says tubes are greatly affected by terrain, temperature, and air pressure. I accept this evidence.
18. In reply submission, the applicants say that by the time the 4th tube failed, they had a "strong desire for an experienced professional to be able to inspect the blown tubes and provide an opinion as to why they had failed". The applicants say the tire fitter concluded that there was no penetration of the tire by a foreign object and that the tube was ripped in the sidewall. Yet, I have no such opinion before me,

save for a receipt for the repair of B's tube which noted that the "tube was pinched on previous install". B is not a party and her motorcycle with the respondent's tube did not go on the adventure ride. I find B's receipt therefore does not prove what happened with the applicants' bikes during their adventure ride or that the respondent's installation was responsible for the applicants' tube failures. The fact that there are other receipts in evidence showing tubes were replaced does not prove the respondent installed defective tubes or that the respondent's installation was faulty, as those other receipts make no comment about the cause of failure. As set out above, what I do have before me is Mr. Chisholm's opinion about the likely cause of the tubes' deflation based on his examination of the tubes and photos, and it does not point to either faulty product or installation.

19. I acknowledge the applicants' position that there was a 100% failure rate in that all 5 tubes installed by the respondent failed, and that this seems like too great a coincidence. However, as noted above, the applicants bear the burden of proof. On balance, the timing of the deflation (not within hours but after travel over long distances) and lack of expert evidence does not support the applicants' position. I find the applicants have not proved their claim.
20. Given my conclusion above, I do not need to consider the applicants' damages claims in any detail.
21. In accordance with section 49 of the Act and the tribunal's rules, as the applicants were unsuccessful, I find they are not entitled to reimbursement of tribunal fees.

ORDER

22. I order that the applicants' claims and therefore this dispute are dismissed.

Shelley Lopez, Vice Chair

