



Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2017-005250

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hallam v. Key Imports Ltd.*, 2018 BCCRT 368

BETWEEN:

Dave Hallam

APPLICANT

AND:

Key Imports Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Penelope Pearson

INTRODUCTION

1. The applicant, Dave Hallam, claims \$4,846.00. The applicant says he spent \$4,658.00 on replacing two radiators and a transmission. He alleges that the respondent, Key Imports Ltd., provided two defective radiators. The applicant says

the defective radiators leaked antifreeze into the transmission of his van, destroying the transmission. The applicant claims \$188.00 for towing his van, after one of the radiators failed.

2. The respondent denies it provided defective radiators. It says the van had a defective transmission. It says the transmission delivered more pressure to the radiators than they were designed to handle, causing the internal coolers to rupture. The respondent asks for the claim to be dismissed.
3. The applicant and the respondent represented themselves.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. Under tribunal rule 126, 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

8. The issues in this dispute are:
 - a. Was the respondent negligent or in breach of its contract with the applicant in providing and installing two radiators?
 - b. If so, what is the appropriate remedy?
9. The main factual issue is whether the radiators were defective and caused damage to the transmission or whether the transmission was defective and caused damage to the radiators.
10. The applicant must prove the respondent was negligent or breached its contract with him on a balance of probabilities.

EVIDENCE AND ANALYSIS

11. I have reviewed all of the evidence and documents provided by the applicant and respondent. I find the following facts:
 - a. The applicant owned a 1995 GM Safari van (the “van”).
 - b. In July 2016 the applicant was having problems with the radiator (“radiator #1”) in his van. The applicant took his van to the respondent to have the problems with radiator #1 investigated and that radiator replaced.

- c. On July 12, 2016 the respondent replaced radiator #1 with radiator #2. The cost of replacing the radiator, along with some other minor work, was \$501.88.
 - d. In March 2017, the applicant's van had problems with radiator #2. He took the van back to the respondent, who replaced radiator #2 with radiator #3. The respondent did not charge the applicant any money to install radiator #3.
 - e. In May 2017, radiator #3 developed problems. The van was taken to Mr. Transmission. Mr. Transmission determined there was damage to the transmission. The van was towed from Mr. Transmission to Townline Road, Abbotsford and from there to Mertin GM Service at a cost of \$188.00.
 - f. On June 16, 2017 Mertin GM Service replaced radiator #3 with radiator #4 and replaced the transmission, at a cost of \$4,157.18.
 - g. The applicant's van has had no further problems with radiator #4, nor with the transmission. This does not assist me in determining the factual issue of whether the radiators or the transmission caused the mechanical problems, as both were replaced.
12. The applicant's evidence is that the transmission in his van was relatively new when the problems with the radiators started. The van's transmission had only been driven 10,000 kilometers when it was replaced by Mertin GM Service. There is no evidence to the contrary and I accept this as a fact.
13. The applicant has provided various letters and emails from transmission and radiator shops. These letters\emails set out opinions concerning radiators and transmissions, including their likelihood for defects and failure. I have considered the evidence of Dolphin Radiators & Automotive Repairs, Bob's Driveline, Christian Brothers Automotive, A & B Transmissions, and Stans Transmission. Their expert opinions are summarized as follows:

- a. Dolphin Radiators: They tested one of the radiators in October 2017 and found it was leaking. This does not assist me in determining why the radiators were leaking.
 - b. Bob's Driveline: He says that they do not see defects in transmissions. It is rare but possible to have a radiator defect causing antifreeze to flow into the transmission fluid.
 - c. Christian Brothers: They advised they did not know what caused the applicant van's mechanical problems. They comment on usual inline pressures. I find Christian Brothers' opinions do not assist in determine what caused the radiator and transmission problems.
 - d. A & B Transmissions: They say that there is very low pressure in a transmission line and it is unlikely to blow the cooler\ radiator apart. If there is cross contamination it comes from another point of entry.
 - e. Stans Transmission: They say that "the problem should be the radiators fault".
14. None of these experts examined the van's transmission or radiators, except Dolphin, as noted above. The opinions are based on what is usual or normal transmission and radiator function.
15. The applicant has also provided an expert report from Mr. Transmission. On May 26, 2017 they examined the van's transmission. They stated that they found engine coolant in the transmission pan. They also said that this is typically caused by the radiator failing and cross contaminating the transmission fluid. They said that they had never seen the transmission cause this type of failure. The respondent says that they spoke to Mr. Transmission and it withdrew its opinion letter, because they had not been given the full vehicle history. The respondent has not provided a letter from Mr. Transmission withdrawing its opinions, nor any

explanation as to why it did not get such a letter. I accept the opinions of Mr. Transmission as set out in their statement of evidence. I note however, there is no evidence that Mr. Transmission examined the pressure delivered by the transmission to the radiator, or even if this was possible at that date, given the extent of cross contamination.

16. Considering all of the expert evidence provided by the applicant, I find that it is rare to have a defective transmission. A properly functioning transmission has a valve which delivers fluid to the radiator at low pressure and will not cause leaks or damage to the radiator. I also find it is rare to have a defective radiator which would leak antifreeze into a transmission (see opinion of Bob's Driveline above).
17. The applicant's position is that because a transmission normally will not cause damage to a radiator, and that each of radiators #1, radiator #2 and radiator #3 leaked, then the respondent must have been providing defective low quality radiators to him.
18. Mr. Fred Key is the contact person for the respondent. He is a fully licenced and trained master technician with 40 years experience. He is fully trained in automatic transmission theory, operation and repair. I accept that Mr. Key is an expert mechanic in the area of radiators and transmissions.
19. The respondent and Mr. Key's evidence is that:
 - a. Each of radiators #1, #2 and #3 were from different manufacturers.
 - b. Therefore, he suspected there was a mechanical problem, somewhere else in the van, causing the radiators to fail.
 - c. Sometime after they installed radiator #3, they checked the oil pressure for the transmission cooler.
 - d. The pressure should have been no more than 45 psi.

- e. They used a gauge that measures pressures to 100 psi.
 - f. During the test, the psi of the oil pressure exceeded 100 psi, destroying the gauge.
 - g. The transmission was defective. It delivered too high fluid pressure to the radiators, causing damage to them.
20. Mr. Key also gave evidence he told the applicant “to not drive the van until he got the faulty radiator repaired. Once the transmission repair was done he was to return the vehicle to Key Imports and we would install a fourth radiator for free”. I have assumed when Mr. Key said “faulty radiator” he meant faulty transmission. Given that the respondent offered to install a fourth radiator for free, I find that the respondent checked the transmission for the cause of the radiator failures after radiator #3 had developed problems.
21. I reject the applicant’s position that the radiators provided by the respondent must have been defective. The applicant’s experts and evidence were based on norms, and none of them, except Dolphin, examined any of the radiators. None of the applicant’s experts said what caused the leaking in the radiators; a defect, damage by the transmission, age or another cause. None tested the transmission function and its pressure. The applicant’s internet information about leaking radiators related to specific Nissan products, not to any of the radiators installed in the applicant’s van. I accept the respondent’s evidence. Although it is rare, I find that the transmission was defective. It delivered fluid pressure to the radiators that exceeded the norms, damaging the radiators. The respondent has provided a reasonable explanation as to why the radiators failed.
22. The respondent says that there was no antifreeze in the transmission at any time when he examined it. I do not accept this evidence. Mr. Transmission found antifreeze in the transmission pan. The respondent took the position that the high pressure caused the rupture of radiator #1 and radiator #2. I accept this and find

that the excessive fluid pressure had occurred for a long period of time, damaging radiator #1 and radiator #2, and then radiator #3. Since the cause of the damage to radiators #1, #2 and #3 was the same, I find that it is more probable than not that there was antifreeze entering into the transmission from radiator #1 and radiator #2, during the time the respondent was working on it.

Was the respondent negligent or in breach of its contract with the applicant in providing and installing two radiators?

23. A contract is an agreement between 2 parties, which sets out the rights and obligations of each party. It is an implied term of a contract for goods and services that the goods will be reasonably fit for their purpose, and will be durable for a reasonable period of time considering their normal use. It is an implied term that the services will be performed in a good and workmanlike manner.
24. I find that the radiators provided by the respondent were fit for their purpose. They were not inferior or defective. The transmission was not working properly. The respondent's installation of the radiators met the standard of care of a reasonable mechanic and did not cause the problems with the radiators or the transmission function.
25. The transmission, though relatively new, was defective. The transmission caused all three radiators to become damaged, causing antifreeze to flow into the transmission. As a result of antifreeze contaminating the transmission, the transmission became damaged. This was not the respondent's fault. The applicant has failed to prove that the respondent was negligent or in breach of their contract. Therefore, I dismiss the applicant's claim. The applicant is not entitled to recovery of any amounts paid to G. Mertin Service or for towing.

26. The tribunal's rules provide that the successful party is generally entitled to recovery of their fee and expenses. The respondent is the successful party. It did not pay any fees and there were no dispute related expenses claimed by it.

ORDERS

27. I dismiss the applicant's claim and this dispute.

Penelope Pearson, Tribunal Member