



Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-003140

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mackay v. Ikon Kustoms Ltd.*, 2018 BCCRT 388

B E T W E E N :

Laura Mackay

APPLICANT

A N D :

Ikon Kustoms Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a brake repair job the respondent, Ikon Kustoms Ltd., did on the applicant's car in December 2015. The applicant, Laura Mackay, happened to be the respondent's employee at that time. The applicant says the brake job was

defective and had to be redone in May 2017. She wants a refund of \$567.84, which is the cost of the May 2017 brake job. She also seeks an order for \$2,000, as compensation for “emotional distress and endangerment” of herself and her son, given her allegation that the respondent only replaced 1 of the 2 brakes in December 2015.

2. The respondent says the brake job in December 2015 was done properly and there is a limited time warranty of 6 months on brakes, given driving habits and mileage. The respondent says the applicant and her son, a new driver, drove over 31,000 kilometers on the December 2015 brakes and if they had been faulty they would not have worked for that length of time. 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.

ISSUES

7. The issues in this dispute are a) whether the respondent completed a defective brake job on the applicant's car in December 2015, b) if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears 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. Unlike private sales of used vehicles or parts, the respondent's sale of the brakes to the applicant was not 'buyer beware'. This is because the respondent is in the business of selling and installing such things. With certain exceptions that do not apply here, the implied warranty provisions in section 18 of the Sale of Goods Act apply to the respondent, namely that the item is in the condition described and is of saleable quality. The SGA also states that there is an implied warranty that goods will be durable for a reasonable period of time, taking into account the surrounding circumstances.
10. The applicant says that "it appears" only one of the rear brakes was replaced in December 2015, based on photos in evidence. She says the mechanic who did the May 2017 brake job said one brake "looked like" it was the original factory brake shoe and pad. While the applicant provided an invoice for the May 2017 brake replacement, there is nothing in that invoice that is critical of the respondent's December 2015 brake job and nothing that says one brake pad appeared to be a factory original. In response, the respondent says brake pads come in pairs and both were replaced in December 2015. I find the applicant's

photos do not prove her claim. Based on the evidence before me, I am unable to conclude the applicant has proved the respondent installed only one brake pad.

11. The applicant says she complained several times after the original work was completed about a squeal that happened every time she applied the brakes, but the respondent told her that was due to the type of higher-quality brake pad used. The respondent says after the applicant complained about the noise, its mechanic inspected and serviced the brakes and took it for a test drive. The respondent says everything was good, and there were no other complaints from the applicant after that, even though she continued to be employed by the respondent for the next 14 months. The respondent says it did other services for her since then and there was no mention of the brakes being an issue, as if there had been they would have dealt with it. I accept the respondent's evidence in these respects as it has the ring of truth, and I note the applicant did not provide any reply submission, despite being given the opportunity to do so.
12. The respondent says the applicant drove 31,000 kilometers on the December 2015 brakes, and it is undisputed that the applicant's son was learning to drive on that car. Bearing in mind that mileage and the amount of time between December 2015 and May 2017, I find the applicant has not proved the applicant installed defective brakes or that the brakes were not durable for a reasonable period of time.
13. I find the applicant's claim for a brake refund must be dismissed, as I have found the respondent did not install defective brakes as alleged. Given this conclusion, I find I do not need to address the applicant's claim for damages. As the applicant was unsuccessful, I find she is not entitled to reimbursement of her tribunal fees or dispute-related expenses.

ORDER

14. I order that the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair