



Civil Resolution Tribunal

Date Issued: September 18, 2018

File: SC-2017-006699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mundi v. Park Avenue Enterprises Ltd. et al*, 2018 BCCRT 534

B E T W E E N :

Navjot Kaur Mundi

APPLICANT

A N D :

Park Avenue Enterprises Ltd., Harmony Auto Sales Ltd., and Honda Canada Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Navjot Kaur Mundi, seeks \$804.62 for vehicle repair charges, which she paid to a private garage which fixed a ratting sound problem. The applicant says she did so because her Honda 2012 Odyssey vehicle (Odyssey) was not properly diagnosed or repaired, despite her having brought it in multiple times to the respondents, between 2012 and 2015. The applicant also seeks \$550 in legal fees and for the applicant's personal assistant's time.
2. The respondent Park Avenue Enterprises Ltd. (Park Avenue) operates The Honda Way, which serviced the Odyssey in 2012, 2013, and on November 5, 2015. The respondent Harmony Auto Sales Ltd. operates Harmony Honda in Kelowna, which also serviced the Odyssey in 2014 and in July and August 2015. The respondent Honda Canada Inc. offered the warranty on the Odyssey, which expired after 3 years or 60,000 km.
3. The parties are self-represented.

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.
6. 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 I can fairly resolve it based on the documentary evidence and submissions before me.

7. 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.
8. 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

9. The issue in this dispute is to what extent, if any, the respondents must reimburse the applicant for \$804.62 in vehicle repair charges the applicant incurred at another garage.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons.
11. The applicant says he first reported a rattling/cracking sound (sound) to The Honda Way on July 30, 2012 and again on September 5, 2013, but that both times they failed to properly fix and diagnose the problem. The applicant says he reported the problem again to Harmony Honda in Kelowna on July 7, 2015 and August 11, 2015, and again the problem was not diagnosed or repaired. The applicant took the Odyssey again to the Honda Way on November 5, 2015, and says they kept the vehicle for a couple of days but were again unable to fix or even diagnose the problem. In her application for dispute resolution, the applicant described the ongoing nature of the sound and that “finally I grew tired of being

told there was nothing wrong when I could clearly hear a rattling/crackling noise”. In her submissions, the applicant says that despite her repeated efforts to resolve the problem she spent “years dealing with the same noise and rattling sound”.

12. First, I will deal with the expiry of the limitation period. The *Limitation Act* applies to disputes before the tribunal. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. Section 6 of the *Limitation Act* says that the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which the claim is discovered.
13. The tribunal issued the Dispute Notice on November 20, 2017, which stopped the limitation period from running. In order to have filed the dispute in time, the applicant’s claim had to have arisen after November 20, 2015. Yet, the evidence before me makes it clear that the sound was ongoing, and after multiple attempts to have the respondents diagnose and repair the problem, it remained unrepaired after the November 5, 2015 repair that took “a couple” days to complete.
14. The applicant says she “finally” had a private garage diagnose the problem and complete the repairs in September 2016. In particular, they replaced the C.H.S. Axle, the front struts, and the R.H.S. axle cut joint at the boot, which cost her \$1,441.61, as the warranty expired in February 2015. This description supports a conclusion that the applicant knew the problem was ongoing, and that she lived with the sound until she had an opportunity to have another mechanic address it. However, the timing of the Odyssey’s ultimate repair in September 2016 does not necessarily determine when the applicant’s cause of action against the respondents arose. This is not a case where the applicant did not realize until later that there was a problem that could be fixed or did not know until later who was responsible.
15. Given the background outlined above, I find the applicant knew or ought to have known she had a claim against the respondents before November 19, 2015. Therefore, I find the applicant did not start her tribunal proceeding in time.

16. However, even if I am incorrect about the application of the *Limitation Act*, I find the applicant's claims must be dismissed, for the following reasons.
17. I accept that the applicant complained of a rattle from the front passenger tire in 2012 and 2013. In September 2013, in response to the "noise from pass tire" complaint, the Honda Way re-torqued all mounting bolts and strut bolts and "went through front suspension and steering" in response to this complaint. There was no particular fee assigned for this work however, as it was included in the 'maintenance minder type A' service provided at the time. Given nothing further happened with the noise issue until July 2015, despite a service in August 2014, I find nothing turns on what the respondents did in 2012 or 2013. In other words, there is insufficient evidence before me to prove that the Honda Way's approach at the time was unreasonable, and thus I cannot find they acted negligently or in breach of the parties' contract for vehicle service.
18. In July 2015, Harmony Honda performed "type A maintenance" on the Odyssey again. Its invoice notes the applicant said there was a "creaking noise from RH front when turning at city speeds". Again, there was no charge for this particular aspect, and the invoice noted that the car was road tested and they could not confirm the concern. Harmony Honda noted the steering/suspension was all tight, with no faults found.
19. The applicant took the Odyssey back to Harmony Honda a week later. Its invoice for this visit notes an 85,961 odometer reading and that during a test drive the mechanic found a rattling noise from the front of the van when turning. Upon investigation, they found a lot of loose gravel, which they cleaned out. Still hearing a bit of a rattle, they found a screw driver bit rolling around in a storage bin under the radio, and after that was removed the rattling could not be heard. On balance, I find that Harmony Honda's efforts appeared to solve the rattling problem at the time, and thus I find the applicant has not proved it acted negligently or in breach of contract. I note the warranty had expired at this point.

20. An August 11, 2015 invoice from Harmony Honda noted the applicant's report of a rattle in the vehicle's front when hitting bumps, which is different from the prior description of the sound occurring when the car turned. Harmony Honda performed a complimentary multi-point inspection. Its invoice noted the struts mounts squeaked when turning, and they were checked and lubricated. It is undisputed that the applicant did not return to Harmony Honda and did not report any further problems to it. I find Harmony Honda was not negligent or in breach of its contract.
21. A November 5, 2015 invoice from the Honda Way showed a 97,676 odometer reading, which noted a noise coming from the passenger front wheel, a "cracking" sound. In response, the Honda Way applied barrier cream on top of the front struts at no charge, and noted "**if doesn't correct noise will req proper info and diag**" (my bold emphasis added). The Honda Way also recommended at that time that the outer CV boot be replaced along with shock absorbers, which is what the private garage did in September 2016.
22. On January 7, 2016, with 101,957 kilometers on the odometer, the Odyssey received an oil change. The Honda Way recommended that the applicant replace the left rear shock and outer boot. Yet, the applicant did not do so.
23. I accept that the private garage did certain repairs on the Odyssey in September 2016, some of which appear entirely unrelated to the noise issue (such as an oil change). In any event, this fact does not prove that the respondents' various repair efforts were negligent in 2015 or earlier in 2012 and 2013. An August 8, 2014 invoice from Harmony Honda does not mention a noise complaint, and I therefore conclude that the rattle sound problem either was not happening at the time or it was so minor as not to bother her. The applicant drove the Odyssey a lot between each repair, and her description of the noise differed from time to time.
24. On balance, I accept that the Honda Way and Harmony Honda each acted reasonably at the time they each assessed the Odyssey. Perhaps most importantly, in 2015 the Honda Way told the applicant that if the noise problem did

not resolve, they would need further information to provide a diagnosis. The applicant chose not to do that, and instead did nothing about the noise until September 2016.

25. Given my conclusions above, I do not need to address the applicant's request for expenses. However, I would note that the tribunal generally reimburses legal fees only in extraordinary cases, and I do not find this is such a case. Further, the tribunal does not ordinarily reimburse a party for "time spent". In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees.

ORDER

26. I order the applicant's claims, and therefore this dispute, dismissed.

Shelley Lopez, Vice Chair