



Civil Resolution Tribunal

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File: SC-2018-002822

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chua v. BIMMER HAUS ENTERPRISES INC.*, 2018 BCCRT 563

B E T W E E N :

Hui Lin Cheryl Chua

APPLICANT

A N D :

BIMMER HAUS ENTERPRISES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Hui Lin Cheryl Chua¹, brought her car to the respondent for repairs. The applicant says the respondent mechanic shop, BIMMER HAUS ENTERPRISES INC., intentionally caused damage to her BMW car after disputes about the repairs' cost. The applicant says she brought her car in for replacement of the "cork and spark plugs" and left with a "dead car".
2. The applicant wants \$3,987.07 from the respondent, as reimbursement of its invoice, the BMW dealership's invoice, plus a towing invoice. She also wants an order that the respondent "be shut down" and an order that "justice is provided for what he has done to me and others". The applicant is self-represented and the respondent is represented by its principal, Koosha Rezaei.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most

¹ While the Dispute Notice listed the applicant as "Chua Hui Lin Cheryl", it is clear from the parties' evidence and submissions the applicant's name is "Hui Lin Cheryl Chua", and I have amended the style of cause above accordingly.

likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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: 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 damaged the applicant's BMW, and 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. On December 4, 2017, the respondent issued its \$896 invoice, which the applicant paid by credit card that day. The invoice read:

Check engine for rough running check DME for faults replace [ignition] coils and spark plug clean fuel injection system

Alternator is faulty and it makes intermittent noise, pulleys and tensioner needs to be checked, oil leak from the oil cooler housing and oil filter housing

10. The applicant submits in her reply submission that there “was no diagnostic provided” by the respondent. Yet, that is exactly what the respondent provided, as set out in its invoice, quoted above. It may not have been as detailed as the applicant would have liked, but she did not want to pay the respondent for a detailed diagnostic report.
11. In the Dispute Notice that started this proceeding, the applicant said that there were disagreements on prices and service details and that Mr. Rezaei “unhappily agreed to a price”. The applicant did not want to have the respondent do further repairs on her car, and said that when she went to pick her car up, she paid and proceeded to drive away with her car. She said her car was completely dead and not able to start at all. She said Mr. Rezaei refused to explain what he had done with her car and locked the doors and would not let her inside. I accept the respondent’s evidence, which the applicant did not refute in her reply submission, that the applicant was yelling and so the respondent called the police. Nothing turns on this. The applicant had her car towed to a BMW dealership.
12. As proof of her claim that the respondent intentionally damaged her car, the applicant relies on the repairs done by the BMW dealership, as set out in their December 19, 2017 invoice. It shows:
 - a. The respondent told the applicant the alternator was noisy and the battery may be “aftermarket”.
 - b. The dealership jump started the applicant’s car and charged the battery, and found an oil leak, the alternator was faulty and contaminated with oil, and the battery was aging.
 - c. The applicant needed a new battery and alternator, which the dealership replaced.

13. The applicant also points to repairs she had done in recent years as proof her car was in good shape, and that the alternator and battery problems, and the oil leak, must have been intentionally caused by the respondent. I cannot accept this argument. The allegation of intentional harm is serious and the applicant has provided no proof to support intentional damage. The BMW dealership's invoice does not make any finding of intentional damage. Instead, that invoice confirmed that the ignition coils had been replaced, which is work the applicant paid the respondent to do.
14. The respondent submits that the oil leak it found, as described in its invoice, can cause the very sort of problem the applicant experienced with her alternator, which in turn can cause the battery to die. This is what happened to the applicant. The fact that there were various prior repairs, some 2 months before the repair at issue, does not prove the respondent must have intentionally caused an oil leak, as alleged by the applicant. The applicant has not provided any evidence to refute the respondent's explanation of how the oil leak likely damaged the alternator and in turn the battery. As noted above, the applicant bears the burden of proof, which she has not met. I find her claims must be dismissed.
15. While I have dismissed the applicant's claims on their merits, I would note that the tribunal has no jurisdiction to "shut down" the respondent, as requested by the applicant. Similarly, I have no jurisdiction to order justice "for others" who are not parties to this dispute.
16. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I find she is not entitled to reimbursement of tribunal fees.

ORDER

17. I dismiss the applicant's claims, and therefore this dispute.

Shelley Lopez, Vice Chair