Civil Resolution Tribunal

Date Issued: November 2, 2018

File: SC-2017-007085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DE SOUSA v. POWERMAX AUTOMOTIVE CORPORATION*, 2018 BCCRT 676

B E T W E E N :

WALDEMAR DE SOUSA

APPLICANT

A N D :

POWERMAX AUTOMATIVE CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. In this dispute the applicant, Wildemar De Sousa, alleges that the respondent autobody shop, Powermax Automative Corporation, damaged the applicant's car, a 2002 Saturn LW300 station wagon (car). The applicant seeks $2,477.54 to repair

the car. The applicant is self-represented and the respondent is represented by its operator, Jack Zhang. For ease, I will refer to Powermax Automative Corporation and Mr. Zhang together as the respondent.

JURISDICTION AND PROCEDURE

2. 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.

3. 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.

4. 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.

5. 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

6. The issues in this dispute are:

    a. Is the respondent liable for the damage to the applicant's car?

    b. If so, how much should the respondent pay?

EVIDENCE AND ANALYSIS

Is the respondent liable for the damage to the applicant's car?

7. While I have reviewed all of the materials provided, I have only commented on the evidence and submissions as necessary to give context to my decision.

8. On July 6, 2016, the applicant took his car into the respondent's garage to have winter tires put on it. In order to complete the work, the car needed to be driven onto a hoist. A third person (driver) drove the car onto the hoist. It is not disputed that the driver drove the car too quickly and crashed into the stairs and equipment on the other side of the hoist, causing damage to the car.

9. It is not clear on the evidence whether the driver was an employee of the respondent at the time of the accident. If the driver was the respondent's employee, the respondent is vicariously liable for her negligence. If not, the respondent is only liable for her negligence if she was acting as the respondent's agent, which I address below.

10. The parties disagree about who asked the driver to drive the car onto the hoist. The applicant states that he gave the keys to the respondent, who in turn gave them to the driver and told the driver to drive the car onto the hoist. The respondent states that the applicant gave the driver the keys and that the driver did not have his permission to drive the car. The driver provided a brief signed statement stating that the applicant asked her to drive the car.

11. The applicant provided audio recordings of the interactions between the applicant, the respondent and the driver on the day of the accident. I accept that the audio recordings accurately record what the parties said to each other on the day of the accident. While the respondent suggests that the recordings were edited, he does not explain how or what in the recordings is inaccurate.

12. I prefer the applicant's evidence that it was the respondent who gave the keys to the driver. I rely primarily on the audio recordings of the day of the accident. The respondent's discussion with the applicant is inconsistent with the respondent's allegation that the driver did not have his permission to drive the vehicle. The respondent does not say anything in that discussion to suggest that the respondent is not responsible for the damage and offered to either repair the damage or pay the applicant $100.

13. Therefore, if the driver was not the respondent's employee, I find that the driver was acting as the respondent's agent when she drove and damaged the car. The driver was attempting to drive the car onto the hoist as part of the work that the applicant had hired the respondent to perform.

14. When the applicant handed the keys over to the respondent, the respondent became a bailee of the car.

15. The law of bailment is about the obligations on one party to safeguard the possessions of another party. The bailor is the person who gives the goods or possessions and the bailee is the person who holds or stores them. The respondent was what is known in law as a voluntary bailee for reward, someone who agrees to receive goods as part of a transaction in which the bailee gets paid.

16. A bailee for reward has an obligation to take reasonable care to safeguard the goods entrusted to them.

17. In a civil claim such as this, the applicant generally bears the burden of proving negligence on a balance of probabilities. However, in a case involving a bailee for reward, the burden of proof shifts and the onus falls upon the bailee to disprove

negligence: *Marchuk v. Swede Creek Contracting Ltd*., 1997 CanLII 2115 (BC SC); *Severinson* v. *Holloway*, 2018 BCCRT 42.

18. The respondent has failed to lead any evidence to suggest that the driver was not negligent. Therefore, the respondent is liable to the applicant.

If so, how much should the respondent pay?

19. The applicant provided a quote that estimates the cost of repair at $2,477.54. The respondent disputes the amount claimed by the applicant. I accept that the quote represents the amount it would cost to properly repair the car, but that does not necessarily mean that the applicant is entitled to the full amount.

20. When the cost to repair an item exceeds its market value, the applicant is entitled to receive the cost to repair if it is reasonable to repair the damaged item rather than replace it. The factors in determining whether it is reasonable to repair an item are:

    - How big is the difference between the cost of repair and the market value?
    - How unique is the item? In other words, how easy is it to replace?
    - Does the applicant intend to repair the car?

    See J. Cassels and E. Adjin-Tetty, *Remedies: The Law of Damages*, 3rd ed. (Toronto: Irwin Law, 2014), at pages 121-124.

21. Neither party had led evidence or made submissions about the car's market value.

22. I asked the applicant a number of follow up questions to assist me in determining the appropriate amount of compensation.

23. The applicant stated that the car had approximately 273,918 kilometres at the time of the accident and currently has approximately 308,050 kilometres.

24. The applicant stated that the car had a market value of at least $3,000 at the time of the accident. The applicant came to this value by contacting an insurance agency

and asking the agency estimate the car's market value. The applicant stated that the agency told him that the car's "Gold Book value" is currently around $3,000.

25. The applicant also stated that the car was outfitted with custom wiring to support a number of devices associated with the applicant's work. The applicant did not give any evidence about the cost or difficulty to outfit a replacement car with the same wiring, other than to say that he could not rewire his other vehicle, a Dodge Durango.

26. The applicant states that he intends to repair the car and keep driving it. He feels strongly that despite its age, it is a reliable car that has served him well.

27. I gave the respondent an opportunity to respond to the applicant's estimate of the car's market value. The respondent provided an email from a car dealership stating that they would pay between $150 and $300 as a trade-in value for a similar car. The respondent also provided a new quote from an autobody shop stating that it would cost $560 to repair the car. The quote included a statement that the cost of repair may exceed the car's value.

28. I have not considered the respondent's second quote as evidence of the cost to repair the car because it was outside of the scope of the follow up questions I asked. However, I do accept it as some evidence of the market value of the car.

29. Ultimately, neither of the parties provided ideal evidence about the car's market value, such as advertisements for similar cars currently for sale. That said, I find that the respondent's evidence of the market value of the car is more reliable than the applicant's evidence. I find it unlikely that a 14 year old sedan with nearly 300,000 kilometres is worth $3,000.

30. I accept that the applicant intends to repair and continue driving the car. However, I decline to award the cost of repair as I find that it would be unreasonable for the applicant to repair rather than replace the car. I rely on the fact that the car is now 16 years old and has over 300,000 kilometres on it. While the custom wiring is somewhat unique, I infer that if it can be installed on a typical 2002 sedan, it does

justify the repair costs the applicant claims. I also rely on the fact that the applicant has continued to drive the car since the accident, despite the damage.

31. Bearing in mind that the applicant's car had some after-market wiring improvements, I find that the market value of the car at the time of the accident was $1,000. Accordingly, I award the applicant $1,000, plus pre-judgment interest under the *Court Order Interest Act* (COIA) from July 6, 2016.

32. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. While the applicant was successful, he did not receive as much as he claimed. I find the applicant is entitled to reimbursement of half of the $125 in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

33. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $1,088.78, broken down as follows:

    a. $1,000 for the damage to the car,

    b. $21.28 in pre-judgment interest, and

    c. $67.50 in tribunal fees.

34. The applicant is entitled to post-judgment interest, as applicable.

35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The

time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member