



Civil Resolution Tribunal

Date Issued: November 8, 2018

File: SC-2017-006294

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. No. 1 Collision (1993) Inc.*, 2018 BCCRT 703

BETWEEN:

JIZHOU ZHANG

APPLICANT

AND:

NO. 1 COLLISION (1993) INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

- 1) The applicant, Jizhou Zhang, seeks an award of \$4,500 for the loss of use and enjoyment of their motor vehicle while it was being repaired at the respondent No. 1 Collision (1993) Ltd.'s repair shop. The applicant says that they were told the

vehicle would be repaired within 2 months, and that due to an inordinate delay by the respondent they were without their vehicle for 7 months.

- 2) The respondent says that the vehicle was repaired in a reasonable period of time, and that there was no promise about when the vehicle would be repaired. They say they are not responsible for any loss of use and enjoyment of the vehicle.
- 3) The applicant is represented by Wendy Zhang, a family member or friend. The respondent is represented by Robert Walker, an employee or principal.

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 requiring 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:

- 1) order a party to do or stop doing something;
- 2) order a party to pay money;
- 3) order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 8) The issue in this dispute is whether the respondent is responsible for the applicant's loss of use and enjoyment of their motor vehicle while it was undergoing repairs with the respondent? And if so, what remedy should be ordered?

EVIDENCE AND ANALYSIS

- 9) In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all of the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.

Background

- 10) The essential facts of this claim are not in dispute. The vehicle in question was delivered to the respondent around February 9, 2017. The repairs were completed satisfactorily and the vehicle returned to the owner near the middle of September 2017, approximately 7 months later.
- 11) The applicant provided a copy of a text message exchange with the respondent. I note that the exchange was translated, but that neither party took any issue with the translation or the dates of the exchanged messages. On February 28, 2017, the parties exchanged messages that stated, it "takes about two months to repair once the parts are ready." On May 13, 2017 the parties exchanged further messages. In

that message, the respondent advised that the vehicle will be ready in two weeks. The applicant says that this text message exchange shows that the respondent had made representations that the vehicle would be complete well before September 2017.

- 12) The applicant says that they brought the vehicle to the respondent because they were told their vehicle could be repaired in two months. They say the text messages above confirm this. The applicant, says they would not have brought the vehicle to respondent but for that timeline. The applicant says because of this, the respondent is responsible for its loss of use and enjoyment of the vehicle for the further approximately 4 months in the amount of \$4,500. The applicant does not explain how they arrived at this figure.
- 13) In appropriate circumstances, a person who has been deprived of the use and enjoyment of their vehicle can be compensated, but the applicant must prove the respondent wrongfully did so. (See *Miller v. Brian Ross Motorsports Corp.*, 2015 BCSC 1381).
- 14) The respondents do not dispute that the vehicle was returned to the applicant some 7 months after delivery. However, they say that there were delays in receiving parts and approvals from the applicant's insurer. I note that the respondent did not address the May 13, 2017 text message that indicated the vehicle would be complete in 2 weeks. However, the respondent provided insurance documents showing that the vehicle in question had extensive damage and that they ordered parts some which arrived approximately 2 weeks before the vehicle was delivered back to the applicant.
- 15) The applicant's claim is essentially that the respondent made representations about the timing of the vehicle repair and that this convinced them to bring their vehicle to this repair shop. By law, this is a claim about negligent misrepresentation.

Negligent Misrepresentation

- 16) A negligent misrepresentation occurs when: (1) there is a duty of care based on a “special relationship” between the service provider making the representation and the client, (2) the representation in question was untrue, inaccurate, or misleading, (3) the service provider acted negligently in making the representation, (4) the client relied in a reasonable manner on the negligent representation, and (5) the reliance must have been detrimental to the client (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
- 17) I accept that the applicant and respondent were in a special relationship. The respondent owed the applicant a duty of care to provide the appropriate level of skill and diligence of a vehicle repair shop.
- 18) I also accept that the applicant brought the vehicle to the respondent believing that they would receive the vehicle back in approximately 2 months.
- 19) I accept that the respondent provided information about the expected repair timelines when they told the applicant that the vehicle would be ready within two weeks of the May 13, 2017 text message exchange.
- 20) There is no other evidence from the applicant or respondent about communications on the expected timeline for repairs after May 13, 2017. I would expect that the applicant would have contacted the repair shop or vice-versa after May 13, 2017 when a delay became evident. The applicant only relies upon the May 13, 2017 and earlier exchange as the basis for the respondent being responsible for its loss of use and enjoyment of the vehicle.
- 21) The issue here is whether the respondent failed to meet the required standard of care by providing untrue, inaccurate or misleading information about repair timelines. In other words, the applicant must prove the respondent was negligent in representing the expected repair timelines and the applicant relied upon this causing them to lose the use and enjoyment of their vehicle.

- 22) In February the respondent had explained that it would take approximately 2 months from when the parts arrived. By May, they had revised that estimate to 2 weeks. However, the respondent's evidence is that the last parts were not available until September 2017. That evidence does not specifically show when the parts were received. However, it does show that some repairs were completed by a third party approximately 2 weeks before the vehicle was returned. The applicant did not dispute this nor did they provide any evidence of further communications between themselves and the respondent between May and September 2017.
- 23) I find that the respondent provided at most an estimate of the amount of time that the vehicle would take to be repaired. When the vehicle was first provided to the repair shop, the respondent relied upon the estimate that the vehicle would be complete within 2 months of receiving all of the parts. The applicant has not provided evidence that the later text message explaining that the vehicle would be ready in 2 weeks was relied upon to their detriment. The vehicle was already in the repair shop, though the further estimate of 2 weeks was plainly incorrect, there is no evidence that the applicant was disadvantaged by it. In particular, there is no evidence that had they gone to any other repair shop at that point that the repairs would have been completed any earlier. Rather, the original estimate of two months after all parts were received appears to have been adhered to when considering when the last repairs were completed by the third party.
- 24) I find that the respondent exercised the appropriate level of diligence and care expected of a motor vehicle repair shop in estimating the timelines for repair of the vehicle. Though there were estimates made of times, I do not find that they amounted to a promise as to when exactly the vehicle would be ready. I find that the applicant has not proven on a balance of probabilities that the respondent negligently misrepresented the timelines for repairs. Further, even if they had shown that, I find the applicant has not proved that they relied upon this information to their detriment.

25) In accordance with section 49 of the Act and the tribunal's rules. I find the applicant is not entitled to reimbursement of their tribunal fees because they were unsuccessful in this dispute.

ORDER

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

Samuel A. Hyman, Tribunal Member