



Civil Resolution Tribunal

Date Issued: December 21, 2018

File: SC-2017-007540

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boe v. 628398 B.C. Ltd., Raedler & Associates Consulting Ltd. dba Mr. Lube Store 93*, 2018 BCCRT 897

B E T W E E N :

Diane Boe

APPLICANT

A N D :

Raedler & Associates Consulting Ltd. dba Mr. Lube Store 93

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about alleged damage to a car during mechanical services.

2. The applicant, Diane Boe, says the respondent, Raedler & Associates Consulting Ltd. dba Mr. Lube Store 93, damaged her 2005 Nissan Altima car through negligence. She says the car would not start after the respondent worked on it, and had to be towed. The applicant seeks a refund for the respondent's services plus the cost of vehicle repairs, for a total of \$607.10.
3. The applicant originally named a 2nd respondent, 628398 B.C. Ltd., dba Mr. Lube store #93. However, the applicant did not serve a Dispute Notice on this respondent, so it is not included as a party to this dispute.
4. The respondent denies liability. It says the problems with the applicant's car were coincidental and not related to the radiator coolant flush the respondent provided.
5. The applicant is self-represented. The respondent is represented by Dimitry Popov, a principal or employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 likely account depends on its harmony with the rest of the evidence. I note that the

respondent has asked for an oral hearing of this dispute. However, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. 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.
9. 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

10. The issue in this dispute is whether the respondent damaged the applicant's car while working on it, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. 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.
12. The parties agreed that on October 20, 2017, the respondent's employees performed a radiator coolant flush on the applicant's car. The applicant says the coolant flush had been recommended by the respondent during an oil change earlier that month.

13. The applicant says there were no problems with her car when she arrived, but after the coolant flush it would not start. She said that the respondent's employees worked on the car after it would not start, and as they did so smoke came from under the hood. The applicant called her mechanic, and then had the car towed to his shop. She says the respondent's manager would not allow the car to be removed until she paid the \$165.15 bill for the radiator service, so she paid it.
14. The respondent's invoice confirms that the car would not start. The invoice also says the failure to start was a gas or "crank sensor" issue that was not related to the coolant service performed.
15. The car was towed to another garage, where it was serviced by mechanic AF on the same day. AF provided a statement in a September 19, 2018 email, which I have summarized as follows:
 - When AF first lifted the hood of the applicant's car, there was antifreeze all over the engine compartment.
 - The battery had been depleted from previous attempts to start the car.
 - AF performed a computer scan, which showed engine code P0335, which indicates no signal from crankshaft sensor to engine control module.
 - AF replaced the crankshaft sensor, and dried out the connector which was full of antifreeze.
 - AF replaced the battery, cleaned the engine compartment, and dried out the wiring harness.
 - When the car started it was running rough and had excessive steam or smoke, but that cleared up after running for a while. Then the car performed fine.
16. AF's email is consistent with his October 20, 2017 service invoice, which lists the same repairs. The invoice also says "crankshaft sensor & connector full of coolant."

17. Mr. Popov, on behalf of the respondent, says he offered to replace the crankshaft sensor while the car was in the respondent's shop. The applicant denies that Mr. Popov made this offer. I make no findings on that issue, as it is not determinative of the issue before me, which is whether the respondent damaged the applicant's car during the radiator service.
18. The parties agree that the car's malfunction was due to a failed crankshaft sensor. This is confirmed by AF and the respondent's invoice. There is no indication that the car had problems before arriving at the respondent's shop. Mr. Popov says that after the car would not start, he determined that this was due to the crankshaft sensor, which he then offered to replace at no charge. Thus, I find that the evidence establishes that the car's crankshaft sensor failed while the car was in the respondent's shop. The respondent says this timing is a coincidence. The applicant says the crankshaft sensor failed due to the respondent's negligence.
19. The general elements of a negligence claim are: the respondent owes a duty of care the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages. I find that the evidence before me establishes that the respondent was negligent, and that this negligence caused the damage to the crankshaft sensor.
20. AF says that the when he examined the car, the engine compartment and the crankshaft sensor's connector were covered in coolant. The respondent denies this. However, the respondent's technician, SW, who performed the coolant flush, does not actually say in her written statement there was no coolant in the engine compartment. She says she lightly rinsed the front end of the car with water, and says there was no coolant "on or around the equipment hookup area", but she did not comment on whether there was coolant present elsewhere.
21. I place significant weight on AF's evidence. I accept that AF is an expert witness on the subject of car repair, as contemplated in tribunal rule 113. I also note that while the respondent asserts AF is a friend of the applicant, this does not mean his

evidence is necessarily biased or inaccurate. Because AF documented the presence of coolant on the written invoice created on the day of the events in question, I accept that evidence and find that there was coolant in the engine compartment on the crankshaft sensor connector.

22. While AF did not explicitly say that the crankshaft sensor failed because of the respondent's actions, I accept that the presence of coolant on the sensor connector, combined with the timing of the sensor's failure, is sufficient to establish that the coolant caused the failure. I also find that the respondent was negligent in allowing coolant to fill the sensor and the connector, as documented by AF. This does not meet the standard of a reasonable mechanical repair. I note that the standard of what constitutes a reasonable mechanical repair was not disputed. Rather, respondent denies allowing coolant to fill the sensor and connector, but does not say it would have been reasonable to do so.
23. The respondent provided an opinion from its mechanic RM. Evidence shows that the RM has been a red seal certified automotive mechanic since 1990. However, RM never saw the applicant's car, and was not present when it failed to start. In his undated statement, RM wrote that it was highly unlikely that a crank sensor could be damaged in any way by servicing the coolant. However, RM did not offer an opinion on whether having coolant "fill" the sensor and connector, as documented by AF, would cause the sensor to fail. It is not clear that RM was aware of this evidence when he wrote his statement. For that reason, I am not persuaded by RM's evidence, and prefer that of AF.
24. Mr. Popov says that a Nissan service representative, D, told him coolant or water should not damage the sensor. However, I place no weight on that evidence because it is unverified hearsay, and because the D did not examine the car. It was also open to the respondent to provide a statement from D and yet the respondent did not do so.
25. Based on AF's evidence, I find that the applicant has met the burden of proving her claim that the respondent was negligent, and that this negligence caused the

crankshaft sensor to fail. For that reason, I find the applicant is entitled to the \$607.10 claimed for repairs and a refund of the respondent's bill. The applicant has provided receipts and invoices to support this amount. The applicant is also entitled to pre-judgment interest on this amount from October 21, 2017, under the *Court Order Interest Act (COIA)*.

26. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

27. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$740.70, broken down as follows:
- a. \$607.10 as reimbursement for repairs and the respondent's bill,
 - b. \$8.60 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees and dispute-related expenses.
28. The applicant is entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

Kate Campbell, Tribunal Member