



Civil Resolution Tribunal

Date Issued: February 13, 2019

File: SC-2018-001654

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fiorentino v. Stephens*, 2019 BCCRT 175

BETWEEN:

Misty Fiorentino

APPLICANT

AND:

Jack Henry Stephens

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about the installation of a car audio system. The applicant, Misty Fiorentino, says that the respondent, Jack Henry Stephens, installed faulty equipment that did not function properly and drained power from her vehicle's battery. She seeks \$4,978.70 for a refund of the amount paid to the respondent, repair costs, and other expenses. The respondent denies that any of the parts or

service he provided were the cause of the issues with the applicant's car, and takes the position that he should not have to pay the applicant anything.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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. 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.
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 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

7. The issues in this dispute are:
 - a. whether the respondent must refund \$3,400 the applicant paid to him for parts and labour;
 - b. whether the respondent must pay the applicant \$329.03 for car insurance during the period of time she was unable to use her car; and
 - c. whether the respondent must reimburse the applicant \$1,238.17 for repair costs.

EVIDENCE AND ANALYSIS

8. The applicant brought her vehicle to the respondent to install some audio equipment. The parties agreed on a price of \$3,400 for the parts and labour. The respondent's handwritten invoice contained the notation "All labour includes Lifetime Warranty". A text message sent by the respondent to the applicant stated that all parts come with a 1-year warranty from the manufacturer.
9. The applicant says that she was not entirely satisfied with the work performed by the respondent because, among other things, the compact disc player did not function correctly. She also says that there was a hissing noise in the audio and the battery in her vehicle was drained repeatedly. She contacted the respondent about her issues, who advised that there was a problem caused by the car's manufacturer. The respondent declined to address this problem, and also declined to provide the applicant with the receipts for the parts he used.
10. The issues with the battery worsened, and the applicant had to call for roadside assistance on 8 occasions between August 31 and December 6, 2017 because the vehicle would not start. She took her vehicle to the dealership, who advised her that the aftermarket parts installed by the respondent were drawing off the electrical

system when the ignition was turned off. When these parts were disconnected, the problem did not recur.

11. The applicant took her vehicle to another vendor to have the aftermarket parts inspected. The technician determined that there were defects in one of the parts and recommended that they be replaced. The applicant took this recommendation, and had the parts replaced. Since the parts were replaced, she has not experienced issues with the battery and the hissing noise resolved.
12. The applicant seeks a refund of the money she paid to the respondent, as well as reimbursement for expenses she says she incurred as a result of the respondent's work on her vehicle. She says that her vehicle was functioning properly prior to his involvement, and the problems began shortly thereafter. She submits that the statements from the dealership and the other vendor establish that the problem was caused by a part installed by the respondent.
13. The respondent's position is that he is not responsible for the problems with the applicant's vehicle. He stated that he was not aware of the battery draining, but that he determined that the hissing sound was related to a problem with a part that originated with the vehicle manufacturer and would have been covered by the vehicle's warranty. He stated that he is not willing to take on these types of issues. He also noted that the applicant had taken the vehicle elsewhere, and stated that the problems were caused by those technicians or an alarm installed in the vehicle. According to the respondent, the presence of soldering and "mixed matched connectors" in the photos proves that someone else performed work on the vehicle as his wiring does not look like that. The respondent states that he attempted to assist the applicant with the issues in her vehicle, but blocked her number when she began to be "unreasonable".
14. The respondent's one-year warranty was not contained in the invoice that represents the parties' agreement, but was described by him in text messages. I find that the implied warranty provisions in section 18 of the *Sale of Goods Act* (SGA) apply. This section requires that each item is in the condition described and

is of saleable quality and reasonably fit for its purpose. Section 18(c) of the SGA states that there is an implied condition that the goods will be durable for a “reasonable period of time”, taking into account how the goods normally would be used and the circumstances of the sale.

15. Based on the evidence before me, I conclude that the parts installed by the respondent were not reasonably fit for their purpose as contemplated by the SGA. I accept the evidence from the dealership that the problems with battery drain stopped as soon as the parts were disconnected. I also accept the evidence from the other vendor that it attempted to fix a part, but that it was not able to. I acknowledge the respondent’s comments about the presence of unfamiliar connectors and solder, but find that this resulted from the vendor’s attempt to fix the part. This evidence, together with the applicant’s statement that the vehicle functioned properly once the parts were replaced, supports the conclusion that the part installed by the respondent was faulty and required replacement. It is undisputed that a sound system should not drain a vehicle’s battery when the vehicle is off.
16. Although I acknowledge that the respondent made an attempt to troubleshoot the applicant’s problems, I find that he did not make sufficient efforts as he cut off contact with the applicant before a resolution was achieved. Further, he did not provide receipts to the applicant so that she could pursue compensation or a replacement part from the part’s manufacturer. I find that the respondent’s failure to honour his warranty amounts to a breach of the contract with the applicant.
17. Damages for the breach of a contract are intended to put a claimant in the same position that he or she would have occupied had the contract been carried out by both parties (see *Water’s Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at para. 39). I find that the applicant is entitled to the reimbursement of the \$1,238.17 she spent on labour and replacement parts to fix her vehicle.
18. The applicant seeks a full refund of the \$2,800 she paid the respondent for parts, along with the \$600 she paid for labour, for a total of \$3,400. I find that, had the

respondent met his obligation to honour the warranty, he would have replaced the faulty part at no charge to the applicant. She would not have received a refund of the amounts paid to the respondent in these circumstances. I find that if I were to award the applicant the \$3,400 she seeks, I would put her in a better position than she would have been in absent the breach. Accordingly, I decline to make an order for this amount.

19. I also find that the applicant is not entitled to the amount of \$329.03 representing the insurance payment she made during the month of December 2017 when her vehicle was in the shop to address issues relating to the faulty part. It is not clear why it was necessary for the applicant's vehicle to be in the shop for this extended period of time as the evidence does not establish that the vehicle was inoperable despite the issues with the sound system. I make no order for this amount.
20. I have determined that the applicant is entitled to the payment of \$1,238.17 from the respondent. She is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). Calculated from the date the vehicle was repaired, this amounts to \$17.58.
21. 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. As the applicant was largely successful, I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$150.00 in tribunal fees and \$11.05 in dispute-related expenses.

ORDERS

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,416.80, broken down as follows:
 - a. \$1,238.17 as reimbursement for repair costs,
 - b. \$17.58 in pre-judgment interest under the COIA, and

c. \$161.05 for \$150.00 in tribunal fees and \$11.05 for dispute-related expenses.

23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Lynn Scrivener, Tribunal Member