



# Civil Resolution Tribunal

Date Issued: April 15, 2019

File: SC-2018-007803

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Douglas v. The Pacific Auto Source Ltd.*, 2019 BCCRT 461

**B E T W E E N :**

Luke Hylands Douglas

**APPLICANT**

**A N D :**

The Pacific Auto Source Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about the October 17, 2017 sale of a used vehicle, a 2004 Mitsubishi Montero Sport. The applicant, Luke Hylands Douglas, says the “transmission

transfer case” was damaged before he took ownership and possession of it from the respondent, The Pacific Auto Source Ltd. The applicant says he was unaware of the damage, until October 3, 2018 when he says the fluid had drained from the transmission case and he narrowly avoided an accident. The applicant claims \$2,100, as the replacement cost of the transmission transfer case.

2. The respondent denies liability, particularly given the 1-year period the applicant drove the car without issue.
3. The applicant is self-represented. The respondent is represented by Kurt Holton, its general manager. For the reasons set out below, I find the applicant’s claims must be dismissed.

## **JURISDICTION AND PROCEDURE**

4. These are the tribunal’s formal written reasons. 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.
5. 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, he 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. 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.

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: 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**

8. The issue in this dispute is whether the applicant has proved the responsible is liable for the damaged transmission transfer case, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The applicant says the respondent sold him a damaged car, and in particular that the car had a small hole in the transmission transfer case, caused by an improper saw cut, which led to the fluid draining out.
11. The applicant bought the 2004 car from the respondent by trading in his old car valued at \$6,500 and paying \$1,000 cash. The car had about 280,000 kilometers on it when it broke down in October 2018, but the applicant says he only added 11,891 kilometers since he bought it. The contract for the car's sale includes the statement "warranty offered – refused".

12. The evidence before me is limited. I find it is uncontested that the car did not have a catalytic converter and so one was installed by the respondent before the applicant drove it off the lot. There were further issues with the catalytic converter over the several weeks following purchase and 2 other converters were installed.
13. The applicant says almost a year after he bought the car from the respondent the vehicle shut down on a busy highway, and he narrowly avoided an accident. The applicant says he discovered that the transmission's transfer case had been "accidentally pierced by a saw cut" leaving a small hole through which, over time, the fluid slowly dripped out. The applicant says that eventually the fluid completely drained and caused his vehicle to shut down.
14. The respondent says if there was a leak it would not take any time for it to empty, and certainly not a year and all that distance driving. The respondent questions whether the applicant had done a transmission service during his year of ownership or even regularly checked his fluids. The respondent also says the applicant said he had been involved in a front-end collision in the car, and questions whether this is a factor. The applicant says that incident was minor and limited to the front bumper, but provided no documentation in support of that.
15. The respondent also says the mechanic who did the catalytic converter work on the car made no mention of any leakage from the transmission box at the time of repair. The respondent denies any warranty should cover this problem, given it occurred a year after the sale.
16. In his reply submission, the applicant says during the year he owned the car before it broke down, he took it to "jiffy lube" twice, February 14 and June 1, 2018, and the transmission fluid was found to be in the normal range. The applicant also says the transmission fluid dipstick is accessed through the hood and so the transmission case damage, underneath, would not have been revealed during normal servicing.
17. The applicant says after it broke down in October 2018 he had it towed to a mechanic who said he did not have to look far to discover the source of the

problem: the transmission transfer case had a diagonal saw cut in it, with fluid dripping from it. The applicant provided what appears to be a copied excerpt from an October 5, 2018 email from the mechanic. The mechanic's email says there was a new piece of exhaust pipe installed and "it looks like" the old exhaust was removed with a power saw, and directly in line with the forward cut is a deep gash in the side of the transfer case. The mechanic states that this cut allowed all the fluid to leak out causing major damage inside the unit, requiring a replacement.

18. In his email, the mechanic does not address the timing of the fluid leak, and in particular whether it is possible it could take a year and over 11,000 kilometers of driving for the case to drain. The mechanic does not expressly state that the removal of the old exhaust pipe was related to installation of a catalytic converter, but I accept they are related and that the applicant's essential submission is that in replacing the catalytic converter replacement the respondent cut an old pipe and sawed through the transfer case.
19. In this case, the respondent is in the business of selling cars. As the sale of the vehicle was not private in nature, the sale was not "buyer beware". Instead, under section 18 of the *Sale of Goods Act* (SGA), there was an implied warranty that the vehicle was in the condition described and was of saleable quality. Section 18 also contains an implied condition that the vehicle would be durable for a reasonable period of time having regard to the use to which it would normally be put and to all the surrounding circumstances of the sale or lease.
20. I find the applicant has not met the burden of proving the car was sold with a damaged transfer case or that the respondent's subsequent catalytic converter installations damaged the transfer case. Therefore, I find the applicant has not established a breach of the SGA. The "looks like" reference in the mechanic's email is speculative with respect to the saw cut. Most importantly, the mechanic did not address the central question of whether it could reasonably take a year for the fluid to drain. There is also no explanation before me as to how the fluid could be in the "normal range" in both February and June 2018, and yet be completely drained by

October 2018, if it indeed was the case that the hole was present at the time the car was sold.

21. Even if I had found the respondent liable, the applicant did not prove the claimed damages. As noted above, the applicant claims \$2,100, being \$900 for a replacement used transfer case plus \$1,200 for labour. The applicant says the claimed \$2,100 is an estimate and that the costs “could be more”. Yet, the applicant provided no evidence to support his claimed amount, such as a quote or invoice from a mechanic.
22. In accordance with the Act and the tribunal’s rules, I find the unsuccessful applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## **ORDER**

23. I order the applicant’s claims and this dispute dismissed.

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Shelley Lopez, Vice Chair