



Civil Resolution Tribunal

Date Issued: May 8, 2019

File: SC-2018-008206

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hood v. Smart Gas and Auto Detailing Ltd.*, 2019 BCCRT 546

B E T W E E N :

Susan Hood

APPLICANT

A N D :

Smart Gas and Auto Detailing Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Susan Hood, purchased gasoline from the respondent, Smart Gas and Auto Detailing Ltd., on October 15, 2018. She says the gasoline was contaminated with diesel fuel, and damaged her car. She seeks \$1,174.22 in damages.

2. The respondent denies liability. It says all its fuel pumps are self-service, so the applicant may have filled her car from the diesel pump by mistake. The respondent also says that no other customers complained about contaminated gasoline, which would have occurred if its supply was contaminated since it sold 5,700 litres of regular gasoline that day.
3. The applicant is self-represented. The respondent is represented by MQ, who I infer is its 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 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. 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 9.3(2), 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 issues in this dispute are:
 - a. Did the respondent sell the applicant contaminated gasoline?
 - b. If so, what remedies are appropriate?

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 addressed the evidence and arguments to the extent necessary to explain my decision.
10. The applicant says her car was operating perfectly on October 15, 2018, before she bought a full tank of gasoline from the respondent. The applicant says she drove a short distance after purchasing the gasoline, and that evening she noticed that the car hesitated after she stopped at the bottom of her street. The applicant says the next day her car stalled repeatedly, it “struggled” to drive up the street, and when she looked in the rearview mirror she saw plumes of smoke coming from the rear of the car. She had the car towed to a mechanical shop, Perform-X Automotive (Perform-X), where they said the problem was due to contaminated gasoline.
11. The Perform-X invoice contains the following information:
 - a. The car was brought in on October 17, 2018 for “hard starting and very poor running conditions”, with reported heavy smoke.
 - b. The mechanic performed full scans and tested all engine systems, and based on the results suspected improper fuel burning.

- c. The invoice says the mechanic took a fuel sample, and used a “fuel burning test process” to determine that the fuel was contaminated.
 - d. The mechanic drained 60 litres of “contaminated fuel (suspect diesel)”. The mechanic then installed clean fuel, and purged the fuel lines.
 - e. Further scans showed “random sporadic misfire”. The mechanic replaced “oil fouled spark plugs”, performed a fuel injection flush, and changed the oil and oil filter.
12. The total bill for this work was \$1,088.78, including taxes.
13. I place significant weight on this evidence, which is uncontradicted by other information about the car’s condition. I find that the Perform-X invoice establishes that there was contaminated fuel in the applicant’s car. Based on the timing of the repair, the fact that the applicant’s car had a locking gas cap to prevent tampering, and the large amount of fuel purchased by the applicant from the respondent on 2 days earlier, I accept that the preponderance of evidence supports the conclusion that the contaminated gas came from the respondent.
14. The respondent says the Perform-X invoice is unreliable because the applicant did not provide proof of how she paid the bill. MQ says he spoke to the mechanic at Perform-X and he said the applicant paid by credit card on the day the car was picked up, but the mechanic refused to provide a copy of the invoice, which is suspicious. I do not agree. I find it was reasonable in the circumstances for Perform-X to refuse to provide a copy of customer’s invoice to an unrelated third party. I find that the Perform-X invoice is detailed and specific, and I rely on it. While the respondent says the Perform-X invoice is “fake”, he has provided no evidence to support that assertion, and no contrary expert evidence.
15. The respondent says it is suspicious that the applicant did not provide a towing bill. I disagree, as the applicant said the BC Automobile Association (BCAA) towed the car to Perform-X, and BCAA provides free towing to members.

16. The respondent also disputes the reliability of the October 15, 2018 gas receipt provided by the applicant. He says the receipt shows the applicant was at the gas station at 1:30 pm, when she was actually there at noon. I disagree with this submission, as the receipt states that the purchase of \$86.44 was made at 12:03 pm. Also, it was open to the respondent to provide his own copies of the relevant receipts, but he did not. For that reason, I accept that the applicant purchased \$86.44 in fuel at noon on October 15, as shown on the receipt.
17. The applicant says she bought a full tank of fuel from the respondent on October 15, as her fuel light was on before she filled up. I find that the receipt showing the \$86.44 purchase confirms this evidence. The applicant's car is a Chrysler Sebring sedan, and \$86.44 worth of fuel would be almost a full tank. Again, I find this evidence supports the conclusion that the contaminated fuel came from the respondent's facility.
18. The respondent says the applicant could have put the diesel fuel in her car by mistake. However, the applicant provided video evidence showing that the respondent's diesel fuel nozzle does not fit in her car. The video shows that the respondent's employee tested the nozzle by trying to fit in the car's filler pipe, and could not do so. The employee verbally agreed that it did not fit. The respondent provided no contrary evidence. For these reasons, I do not accept the respondent's suggestion that the fuel contamination could have been due to the applicant's error.
19. Based on the printout provided by the respondent, I accept that it sold just over 5,700 litres of regular gasoline on October 15, to 207 different customers. The respondent says that no other customers complained, so the gas could not have been contaminated. While I accept the respondent's evidence on this point, I find that the absence of other complaints is less persuasive than the direct evidence of contamination provided by the applicant, including her videos and the Perform-X invoice. Having weighed the evidence before me, I find that it proves, on a balance of probabilities, that the respondent sold the applicant contaminated gasoline.

20. The respondent says if the applicant's car was contaminated as she says, it would not have moved a single kilometer from the gas station, and the fuel pump would have been affected. The respondent provided no evidence from a mechanic or other expert to support those assertions, and I therefore place no weight on them.
21. For all of these reasons, I conclude that the respondent sold the applicant contaminated gasoline on October 15, 2018.

Remedy

22. The applicant claims \$1,175.22 in damages. This is made up of the \$1,088.78 Perform-X invoice, and the \$86.44 gasoline purchase.
23. I find that in the circumstances, the applicant is entitled to a refund of the \$86.44 she paid for the gasoline. I order the respondent to refund that amount.
24. The respondent says the Perform-X invoice contains charges unrelated to the dispute. I agree. For example, there is a \$3.20 charge for washer fluid. There are also \$96.53 in parts and labour charges for a "lube, oil, and filter" service. While it is possible that the need for an oil and oil filter change was related to the contaminated fuel problem, that is speculative, as there is no explanation of that on the Perform-X invoice. Since the burden of proof is on the applicant, I find she is not entitled to reimbursement for the washer fluid or oil change service. However, I find that the remainder of the invoiced charges relate to the contaminated fuel problem, and the applicant is therefore entitled to reimbursement. The remaining charges, including taxes, equal \$970.30. I order the respondent to pay that amount.
25. Taken together, the Perform-X charges and the fuel refund total \$1,056.74. The applicant is entitled to pre-judgment interest on this sum under the *Court Order Interest Act* (COIA), from October 17, 2018. This equals \$10.32.
26. As the applicant was successful in this dispute, in accordance with the Act and the tribunal's rules I find she is entitled to reimbursement of \$125 in tribunal fees. The applicant claimed \$10.50 for mailing the Dispute Notice, which I find reasonable in

the circumstances, so I order reimbursement of that amount as a dispute-related expense.

ORDERS

27. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,202.56, broken down as follows:

- a. \$1,056.74 in damages,
- b. \$10.32 in pre-judgment interest under the COIA, and
- c. \$135.50 as reimbursement for tribunal fees and dispute-related expenses.

28. The applicant is entitled to post-judgment interest under the COIA, 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