



Civil Resolution Tribunal

Date Issued: May 17, 2019

File: SC-2018-007887

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *COAST CYLINDER DISPATCH LTD. v. Alfonso Cabebe, dba A & A Transmission, 2019 BCCRT 600*

B E T W E E N :

COAST CYLINDER DISPATCH LTD.

APPLICANT

A N D :

Alfonso Cabebe, Doing Business As A & A Transmission

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an alleged faulty transmission repair in the applicant's truck, a 2004 Ford F-150. The applicant, COAST CYLINDER DISPATCH LTD., says the respondent, Alfonso Cabebe, Doing Business As A & A Transmission, replaced the

truck's transmission on July 25, 2018, but by October 3, 2018 the truck had developed a rattling noise. The respondent refused to fix the truck under warranty.

2. The applicant claims \$2,723.23, which is what it says it paid Mainland Ford to fix the transmission. The respondent denies liability.
3. The applicant is represented by Trevor Felton, who I infer is an employee or principal. The respondent is self-represented.

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 issue is whether the respondent is responsible for the applicant's truck needing further transmission repair, 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. On February 23, 2017, the applicant brought his truck to the respondent because of a "reverse problem". The respondent overhauled the truck's transmission and replaced all defective parts. The applicant says the truck was still not engaging in reverse after that repair, and after over 4 further visits to the respondent, "the reverse issue was not fixed".
11. On July 25, 2018, at 219,479 kilometers on the odometer, the respondent replaced the truck's transmission and all seals, torque converter, friction filter, and installed a shift kit.
12. On October 3, 2018, less than 1,000 kilometers later, the applicant returned the truck again to the respondent, saying there was a rattling noise. The respondent's handwritten note on their invoice says "possible crack on flex plate". Because the respondent said it never worked on the flex plate before, it was not responsible for damage to the flex plate or the associated rattling noise. The respondent refused to fix the truck under warranty from the prior transmission replacement.

13. On October 9, 2018, the applicant had Mainland Ford diagnose the rattling, and they found multiple problems with the respondent's transmission installation that caused damage to the "flex plate" and other parts of the transmission.
14. On October 22, 2018, Mainland Ford fixed the transmission and the truck was working properly.
15. The respondent denies liability, saying he told the applicant in October 2018 the problem was the flex plate and his work had not touched the flex plate. The respondent says the applicant's driver may have damaged the flex plate by abusing the vehicle or driving in non-favourable conditions.
16. There is no dispute the truck had a damaged flex plate, as the respondent queried as much on October 3, 2018. There is also no dispute the truck had developed other problems, which the applicant says were caused by the broken flex plate. Therefore, the central issue in this dispute is whether the respondent damaged the flex plate in February 2017 or in July 2018. The applicant says it was caused by the respondent's errors in its prior truck repairs. The respondent says it was caused by overuse or other issues unrelated to its repair work.
17. The applicant provided several photos of the various damaged parts. In some, it is apparent that there was damage, such as a melted cable or a visible crack on what the applicant says is the fly wheel. However, I am unable to infer any negligence by the respondent based on these photos.
18. The applicant submits the respondent did not align the transmission properly, as it was missing a dowel, and that this is what caused the broken flex plate. The applicant relies on Mainland Ford's evidence that he submitted, which was to the effect that the transmission wiring melted to the exhaust, because an electrical clip that holds the wiring harness away from the exhaust was not installed properly. The applicant says the missing dowel, stripped nuts, bolts not replaced, and the broken electrical clip all contributed to the truck's need for another transmission replacement.

19. The applicant provided Mainland Ford's October 19, 2018 invoice for \$2,723.23 that set out the transmission replacement costs, following the applicant's complaint there was a loud rattling noise and the transmission had been previously replaced. Mainland Ford found that upon removal of the transmission, there was a missing "line up block dowel" that would cause the transmission to not line up properly to the block, which will "break the flexplate **in a matter of time** due to misalignment" (my bold emphasis added).
20. The applicant also provided a video from Mainland Ford which it created at the time of its repair, to explain "why the flex plate has broken". It referenced the earlier transmission replacement and stated the missing dowel was the original problem, as well as "mistakes" in the missing or improperly installed parts referenced above.
21. The respondent says it is impossible for the "dowel pin" to be missing, because if it was it would be impossible for the transmission to be installed at all. The respondent says the backing plate, which is sandwiched between the flex plate, transmission and engine, must be placed on the dowel pin for installation to happen. However, the respondent does not address Mainland Ford's video that shows the dowel was missing after the transmission was removed. Based on Mainland Ford's invoice description and its video showing the nature of the problem, I prefer Mainland Ford's assessment.
22. The respondent says if the wiring was melted, due to a broken electrical clip, then the transmission would not have worked right away, rather than driving for several months. The respondent says all these issues are also evidence of the driver exerting too much load on the flex plate. Yet, the evidence is that it took a few months for the rattling noise to start, which based on the evidence was a sign the flex plate had cracked. There is no real dispute the wiring was melted, and that the applicant had been driving the truck until it took it to the respondent for the rattling noise. The truck had not completely broken down, it was still driveable. The respondent does not explain how driver "abuse" could cause the damage in less than 1,000 kilometers of driving.

23. The respondent also does not explain how it could replace the entire transmission but not notice a broken flex plate, to the extent the respondent argues the flex plate was damaged prior to its repairs. For all these reasons, I do not accept the respondent's evidence.
24. On balance, I prefer Mainland Ford's detailed evidence and observations of the truck's damage and the cause of it, namely a missing dowel. I also accept its evidence about the other problematic installation issues. I further accept its evidence that the flex plate could be damaged "in a matter of time" rather than showing an immediate break-down, and in this case, it was around 2 months.
25. Given the relatively short timing of the respondent's transmission replacement and when the applicant had Mainland Ford replace it again, and given Mainland Ford's evidence that I accept, I find the respondent negligently installed the applicant's transmission.
26. I find the applicant has proved damages of \$2,723.23, as claimed and as set out in Mainland Ford's invoice. The applicant is entitled to pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), from October 19, 2018.
27. The applicant was successful. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,876.17, broken down as follows:
 - a. \$2,723.23 in damages,
 - b. \$27.94 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
29. The applicant is entitled to post-judgment interest as follows.

30. 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.

31. 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.

Shelley Lopez, Vice Chair