



Civil Resolution Tribunal

Date Issued: May 29, 2019

File: SC-2018-009363

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CONNOLLY v. COLEMAN LUBE AND OIL CORP.*, 2019 BCCRT 654

B E T W E E N :

THOMAS CONNOLLY

APPLICANT

A N D :

COLEMAN LUBE AND OIL CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, THOMAS CONNOLLY, brought his car to the respondent COLEMAN LUBE AND OIL CORP for service. The applicant says the respondent failed to properly tighten the bolt on the transmission fluid plug, causing the fluid to leak and the applicant's transmission to seize and break. The applicant wants the respondent

to pay him \$2,000 to repair the transmission, and to reimburse him \$669 for towing expenses and \$205 for mechanic bills, for a total of \$2,874.

2. The respondent says they did not cause the applicant's transmission to break and they do not owe the applicant anything.
3. The applicant is self-represented and the respondent is represented by an employee or 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*. 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. 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.
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 in this dispute is whether the respondent is required to pay the applicant \$2,874 for the cost of repairing his transmission and towing expenses.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. The facts in this dispute are largely undisputed. The applicant owns a 2009 Honda Civic (car). On December 18, 2017 he brought his car into the respondent for a full fluid service, including transmission service, at which point his odometer was at 128,032 kilometers.
12. The respondent's invoice for this service indicates that it double-checked its work. The respondent says this means that, in accordance with its policy, it conducted a quality control 2-person double check procedure. The respondent says it conducted this procedure in front of the applicant, and he signed the invoice. The applicant does not dispute this, although the copy of the receipt in evidence does not show the applicant's signature.
13. The applicant says after this service he made limited use of his car over the next 8 months, only using it to commute to school.
14. On August 1, 2018, the applicant bought 4 gallons of oil, an oil filter, and brake pads from Lordco and brought them to New West Auto Care (New West) who installed the brake pads and oil filter and changed the oil. The invoice states, "labour to change oil and prepare pads only service provided" and indicates that the car had

138,002 kilometers on its odometer at the time of service. The applicant says New West is not a lube shop and does not check transmission oil, differential oil, windshield fluid or radiator fluid.

15. Approximately 1 month later the applicant drove his car to the Okanagan. He says he “firmly believes” the bolt on the transmission fluid plug loosened and fell out during the 400-kilometer trip on long winding roads, causing the transmission fluid to drain and the gears inside the transmission to fail.
16. The applicant submitted an August 27, 2018 report from Open Road Honda Burnaby (Open Road), which states that they found transmission fluid all over the bottom of the car and that they “traced the leak to a missing transmission fill plug. Common cause, due to insufficient torque applied to drain bolt” (quote reproduced as written). This report shows the car’s odometer at that time was at 139,361 kilometers.
17. The evidence indicates that after the respondent serviced the applicant’s car, he drove it at least 10,000 kilometers before the transmission failed. The respondent’s representative is a certified Red Seal Automotive Technician, and he says that if the transmission check plug was loose or missing after the respondent’s service, failure or leaks would have become evident within 1,000 to 3,000 kilometers of driving. He says the applicant’s car uses a straight threaded check plug which relies on a sealing washer to prevent leaks, and that the plug must be tight on the washer to create a seal. He says the threads of the plugs provide no sealing function on their own because they are not tapered. Therefore, the respondent says that if the check plug was loose after their service, transmission fluid would have leaked immediately.
18. The respondent also says New West is a full-service mechanical shop and they would have had the applicant’s car up on a hoist to install the brake pads. The respondent says that if the transmission fluid was leaking or if the check plug was loose or missing at that time it would have been obvious, and New West would have reported this to the applicant. The respondent notes the car’s transmission failed

within 1,000 kilometers after service with New West. They say it is common practice to inspect a car's vital fluids during an oil change, and that it is likely that New West failed to reinstall the check plug or failed to double check their work before returning the car to the applicant.

19. I accept that the respondent had a duty of care to ensure the transmission fluid check plug was tightened after its service. However, I find that, aside from the applicant's assertion, there is insufficient evidence that the respondent was negligent in failing to properly tighten the plug. The respondent's receipt is the only documentary evidence of the work the respondent conducted on the car, and it shows the respondent double-checked its work. My conclusion is supported by the fact that after the respondent's service the applicant drove the car 10,000 kilometers over an 8-month period before the fluid leak occurred. On balance, I am not satisfied that the respondent caused the applicant's transmission to fail.
20. The applicant is required to prove his claims, and I find he has not done so. I dismiss his claims.
21. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find he is not entitled reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

ORDER

22. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member