



Civil Resolution Tribunal

Date Issued: May 31, 2019

File: SC-2018-008680

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fulcher v. MILLENNIUM INSURANCE CORPORATION/LA CORPORATION D'ASSURANCE MILLENNIUM et al*, 2019 BCCRT 665

B E T W E E N :

Joely Fulcher

APPLICANT

A N D :

MILLENNIUM INSURANCE CORPORATION/LA CORPORATION
D'ASSURANCE MILLENNIUM and Foundation Squamish Chrysler
Dodge Jeep Ram

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about car repairs and insurance/warranty coverage for them, specifically a transmission replacement.
2. The applicant, Joely Fulcher, owns a 2015 Jeep Rubicon. The applicant says the respondent car dealership, Foundation Squamish Chrysler Dodge Jeep Ram (Foundation), did faulty repairs dating back to 2016 (although at that time the dealership was under different ownership). The applicant says that the respondent insurer, MILLENNIUM INSURANCE CORPORATION/LA CORPORATION D'ASSURANCE MILLENNIUM (Millennium), failed to provide insurance coverage under the warranty, but also says that Millennium inaccurately said there was no coverage available. The applicant claims \$2,000 in damages, \$240.73 for rental car charges, and an order that they may terminate their contract with "First Canadian Warranty" (Millennium) if the dispute is not settled with full reimbursement.
3. Foundation says the applicant has not proved its predecessor did anything improper, either at the time of the May 2016 repairs or in June 2018 when the applicant brought the car back after the transmission failed again. Foundation says the applicant added a lift to the Jeep that voided the insurance, that the applicant has not shown they had a transmission service done as recommended, and that the applicant had done a lot of driving on possibly rough roads since the repairs. Foundation also says the warranty had expired due to mileage by the time the transmission needed repairs in 2018.
4. Millennium says its insurance coverage covers parts that mechanically fail, but in this case the components in question were covered with rust, which was not covered. Plus, the applicant's installed lift kit was a breach of the policy.
5. The applicant is self-represented. Foundation and Millennium are each represented by an employee. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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

10. The issue is whether the respondents are responsible to pay for the applicant's car repairs, under warranty or otherwise.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. For the purposes of this decision, it is not disputed that Foundation is responsible for its predecessor's conduct, in that the business was sold as an 'asset sale'. Therefore, for ease of reference below I will refer to the repairs being done by Foundation, even if they were done under the dealership's prior ownership.
13. The applicant bought the Jeep new on February 17, 2015. At the time of sale, she also bought insurance from "First Canadian Protection Plans", with Millennium as the underwriter. The policy period ran for 5 years until 2021, or 160,000 kilometers, whichever occurred first. Under the Schedule of Coverage, the policy provides a powertrain warranty for 5 years or 100,000 kilometers, which includes the transmission.
14. Exclusions from coverage included: parts or components that were due for regular scheduled maintenance or that had exceeded a maintenance interval. Rust is expressly excluded under section 3.2(h). Section 3.2(o) of the policy excludes breakdowns attributable to an alteration or custom add-on, such as a lift kit. The policy also states in section 6.3(k) and 6.4 that installation of a lift kit voids the warranty unless certain conditions were met, which the applicant did not meet. In particular, "lift kit" was not checked off on the face page of the policy, which was one of the conditions.
15. Foundation did transmission repairs on the applicant's Jeep, according to a May 26, 2016 invoice. At the time, the Jeep would not move in any gear. As the invoice to the applicant was \$0.00, I infer it was done under warranty. At the time of repair, the odometer read 47,365 kilometers. The cause of the transmission failure was identified as "extension adapter stripped".

16. The applicant brought the Jeep back to Foundation on June 15, 2018, when the odometer read 105,322 kilometers. As noted above, the powertrain warranty expired at 100,000 kilometers. Foundation's invoice here was also \$0.00, but it was only a diagnosis of a suspected internal transmission or transfer case problem. Foundation recommended "rebuilt transmission" (quote reproduced as written).
17. Foundation says the Jeep was due for a transmission fluid and filter change at 96,000 kilometers, and it had no record of that service being performed. The applicant has not addressed this or provided any evidence that the required service was done. As noted above, if a required service interval is missed, repairs related to that part are not covered under the warranty.
18. It is undisputed the applicant had a lift kit installed on the Jeep. Foundation and Millennium both say that this can adversely impact the transmission as it changes the angle of the driveshaft. Due to the steeper angle, it can cause different types of wear inside the transmission. Both Foundation and Millennium say that a lift kit modification will void a powertrain warranty, and any repairs that are related to it. I find this interpretation is consistent with the insurance policy in evidence.
19. Millennium says that the part that ultimately failed was the "axle stub shaft and transmission coupler the shaft fits into were stripped out". As shown in the photos in evidence, the part was severely rusted, which caused the steel to deteriorate that in turn caused the splines to deteriorate and strip.
20. Ultimately, the applicant questions why the transmission part rusted in 2016 and again in 2018, and says she did not do anything wrong. I acknowledge her submission that she spent \$50,000 on a new Jeep and the same problem arose twice in 3 years.
21. The difficulty is that the applicant's speculation does not mean Foundation failed to properly repair the Jeep or that Millennium breached its insurance policy. The applicant has provided no expert evidence from a mechanic suggesting Foundation did anything improperly. The applicant drove the car for 3 years after purchase, with

Foundation's repairs in 2016 and 2 years later in 2018. Given that passage of time, I am not prepared to infer that Foundation must have done something wrong. I find the mechanical issues involved are beyond the knowledge of an ordinary person and require evidence from an appropriately qualified mechanic showing Foundation failed to meet the standard of care. While the applicant had the Jeep's transmission repaired by Hunters Automotive, their October 4, 2018 invoice is not critical of Foundation.

22. The applicant also says Foundation lied to her and said it had called about her extended warranty for the new transmission, but she has provided no proof of this. In any event, the applicant says if Foundation had called, Millennium would have said the issue was rust and that would have prompted the applicant to pursue coverage based on mechanical failure. The problem for the applicant is that Millennium says it would have denied coverage based on rust and the presence of the lift kit. I find the applicant knowing the reason was rust would not have changed the outcome, which was that her insurance coverage would not cover the repair.
23. For all the above reasons, I dismiss the applicant's claims against Foundation.
24. As for the applicant's claims against Millennium, the evidence shows that for the 2018 transmission repair, there were multiple reasons why the insurance coverage was not available: the mileage had exceeded 100,000 kilometers, she had failed to have a regular service done on the transmission at 96,000 kilometers, the lift kit had voided the warranty, and the cause of damage (rust) was excluded under the policy. For all these reasons, I find the applicant's claim against Millennium must be dismissed.
25. I acknowledge the applicant's statement that "Tony" from either First Canadian or Millennium told her the insurance would cover the repair in 2018. However, I find the weight of the evidence does not support that conclusion, as there is no indication of Tony's last name, the date she spoke to them or if on that date the mileage was under 100,000 kilometers, or whether Tony was aware of all the relevant facts. The applicant does not explain why Tony would make such a

statement before Foundation made its diagnosis on June 15, 2018, when the odometer was over 100,000 kilometers. While the applicant alleges Tony told her that the lift kit had nothing to do with the transmission's failure, she provided no evidence to support that assertion, such as from a mechanic. On balance, I prefer to rely on the written policy that I find governs the applicant's insurance coverage by Millennium.

26. Given my conclusions above, I find the applicant's claims must be dismissed. I therefore do not need to address her damages claims in any detail. However, nothing in this decision prevents the parties from terminating the insurance policy under its terms.

27. In accordance with the Act and the tribunal's rules, as she was unsuccessful I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

28. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair