



Civil Resolution Tribunal

Date Issued: June 3, 2019

File: SC-2018-007564

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Luo v. Nissan Canada inc.*, 2019 BCCRT 672

B E T W E E N :

Qingsheng Luo

APPLICANT

A N D :

Nissan Canada inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. In October 2016, the applicant Qingsheng Luo bought a new Nissan Altima SV (car).
2. In October 2018, a mechanic told the applicant that the car's the rear brake pads were nearly worn out.

3. The applicant says the respondent Nissan Canada inc. (Nissan) sold him the car with defective, incorrectly designed or incorrectly installed brake pads.
4. Nissan says the New Vehicle Limited Warranty (warranty) does not cover brake pads, because brakes require repair due to wear and tear. Nissan says the applicant is solely responsible for the brake repair costs. Nissan asks that the dispute be dismissed.
5. The applicant asks for a total of \$3,000 in damages, broken down as,
 - a. \$400 to cover the cost of replacing the rear brake pads,
 - b. \$1,600 for the extra cost for future early brake pad replacements,
 - c. \$800 in compensation for Nissan's failure to disclose the defect in the design and manufacture of the rear brake pads, and
 - d. \$300 compensation for the time taken to resolve this dispute.
6. The applicant is self-represented. The respondent is represented by paralegal and employee Sadiyya Edo.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Is Nissan liable for the replacement of the rear brakes on the car and,
 - b. if so, to what extent, if any, is the applicant is entitled to the remedies he seeks?

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
13. On October 28, 2016, the applicant bought the car.

14. The contractual warranty does not cover brake pads, shoes or rotors unless the replacement is required due to a warrantable defect. The warranty does not cover repairs needed due to normal wear and tear.
15. Section 18 of the *Sales of Goods Act* implies a warranty that the car is reasonably fit for purpose of driving, and that it will be durable for a reasonable period of time having regard to the use to which it would normally be put.
16. On October 11, 2018, a mechanic at a Burnaby Nissan dealership assessed the car's rear brakes as having 5-10% remaining. The mechanic recommended replacing the rear brake pads and machining the rotors for a total of \$340. At the time, the car's mileage was recorded as 30,624 kilometers (km).
17. The applicant argues that brakes on a new vehicle should last a minimum of 50,000 km before requiring repair.
18. The applicant relies, in part, on Nissan's recommended maintenance schedule for a 2016 Nissan Altima. The maintenance schedule recommends brake inspections, at the 24,000, 32,000 and 40,000 km services. It also recommends brake fluid replacement at 32,000 km. The maintenance schedule does not recommend brake replacement at these intervals.
19. Aside from the applicant's assertion, there is no evidence before me that an owner should expect at least 50,000 km before a brake replacement is needed. I find that the applicant has not proven a breach of the *Sale of Goods Act* implied warranties. The brakes needed replacement after 2 years and that is not so short a period of time that I am prepared to infer they were not reasonably durable.
20. There is also no evidence to establish that the brakes have a "warrantable defect."
21. Brake repairs depend not only on mileage, but also on how a car is driven. While the applicant says the car was used only for commuting, there is no expert opinion before me saying that the brakes wore out before they should have, given that use.

22. The applicant has the burden of proof. I find that the applicant has also not proven that rear brake replacement on the car at 30,000 km is a breach of any warranty provided with the car. Given my conclusion the respondent is not liable for the applicant's claims, I do not need to address the applicant's requested remedies in any detail.
23. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicant did not succeed, and therefore I make no order about tribunal fees.

ORDER

24. I dismiss the applicant's claims, and this dispute.

Julie K. Gibson, Tribunal Member