



Civil Resolution Tribunal

Date Issued: June 4, 2019

File: SC-2018-005802

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roth v. Toyota Canada Inc. et al*, 2019 BCCRT 676

B E T W E E N :

Laura Roth

APPLICANT

A N D :

Toyota Canada Inc. and Toyota Motor Manufacturing Canada Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Laura Roth, owns a 2016 Toyota Corolla (car) which was under warranty at all relevant times. The respondent, Toyota Motor Manufacturing Canada Inc. (TMMC) manufactured the car, and the respondent, Toyota Canada Inc. (Toyota Canada), distributed the car.

2. There are several areas of paint damage on the applicant's car which she says were caused by a manufacturer's defect and should be covered under her warranty. The applicant has withdrawn her claim for \$5,000 for emotional distress, but now asks for \$5,000 to have her car repainted elsewhere.
3. The respondents say the applicant cannot establish that the paint damage was caused by the manufacturer, and therefore they are not required to cover any related repairs under the warranty.
4. The applicant is self-represented and the respondents are represented by employees or principals.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018

BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. 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

9. The issue in this dispute is whether the paint damage on the applicant's car was caused by a manufacturer's defect, and therefore covered by her warranty.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove her claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. 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.
12. It is undisputed that there are several areas of paint damage on the applicant's car. The applicant says the damage was caused by a manufacturer's defect as well as glue residue from the protective cover which comes on new cars from the manufacturer, and which the applicant says the respondents failed to properly remove.

13. The applicant bought her car in the summer of 2016. It is undisputed that the applicant has a warranty on her car which covers repairs of any Toyota parts in the car that are defective in material or workmanship up to the first of 36 months or 60,000 kilometers (warranty).
14. Page 6 of the warranty manual states that the owner must properly maintain the car in accordance with the warranty manual and owner's manual. Page 12 of the warranty manual says the warranty does not cover damage or failures resulting either directly or indirectly from any abuse, negligence, repairs or adjustments caused by improper maintenance or lack of required maintenance, airborne chemicals, bird droppings, tree sap, other environmental conditions and water contamination. Page 420 of the owner's manual say the car must be washed to protect and maintain its condition. Page 422 of the owner's manual lists certain circumstances when the car must be washed immediately to prevent paint deterioration including if tree sap, dead insects, insect droppings or bird droppings are present on the paint surface and if the car becomes heavily soiled with dust or mud.
15. In July 2017 the applicant noticed paint peeling on the roof of her car. She says that prior to this she had properly maintained, regularly washed and meticulously cleaned her car, and always parked it under cover.
16. On August 15, 2017 she brought it to Granville Toyota where E.M. inspected it. A case print report in evidence from Toyota Canada indicates that at the time of inspection the car "had clear evidence of bird droppings," was "very dirty," and that the applicant was advised that "current conditions not consistent with defect." A later statement from E.M. says that when he first inspected the car it looked as though it had not been washed in some time and there was a layer of green "algae" on it. The applicant denies that there has ever been algae on her car, and there are no photographs in evidence from this inspection. E.M. said it appeared the paint damage was caused by environmental causes including bird droppings or tree droppings, thought he could not conclusively confirm that.

17. On September 21, 2017, the applicant brought her car to Destination Toyota Burnaby (dealership), where a service manager, A.M., inspected it. A.M. and 2 other service managers who viewed the photographs from the inspection, D.P. and L.H., all thought the damage was environmental. A.M. said there was evidence of glue from the protective guard left on the car, but that some of the damaged areas were outside of the areas where the guard would have been applied to the car.
18. On November 30, 2017 the applicant phoned the respondents to notify them of the paint damage. She told them she also noticed that there was glue on the roof from the protective cover that came with her new car.
19. On January 5, 2018 the respondents informed the dealership that P.R., a field warranty consultant at Toyota Canada with over 30 years of experience in the industry and 10 years of experience reviewing warranty claims, determined that the photographs of the car's paint damage showed the paint damage was caused by exposure or environmental fall out. The respondents told the dealership that the car's paint damage was not a factory-related defect, and therefore any associated repairs would not be covered by the warranty.
20. In January 2018 the dealership had its body shop manager and paint technician conduct a second inspection of the paint damage on the applicant's car. They determined the paint damage was environmental. The dealership notified the respondents that they found no evidence of a manufacturing defect. On January 25, 2018 the dealership notified the applicant that the paint damage was not covered under the warranty.
21. The owner submitted a June 27, 2018 letter from someone at Hi-Light Auto Body (Hi-Light) which states that the paint damage on the car "is not caused by bird's waste" and that "this problem could be from the manufacturer itself." In July 2018 the applicant took her car back to Granville Toyota for another inspection from E.M. The applicant showed E.M. the letter from Hi-Light and E.M. submitted a warranty claim to the respondents. The applicant says this shows E.M. changed his mind about the cause of the paint damage, but the respondents say his opinion had not

changed and that he submitted the warranty claim as a goodwill gesture. I find there is no evidence to suggest E.M. changed his mind about the cause of the paint damage at that time. In August 2018 E.M. notified the applicant that the respondents had denied her warranty claim.

22. The applicant submitted 3 estimates she received in January 2019 which indicate that the paint damage on her car was caused by a factory defect. The applicant cited multiple court and tribunal cases which she says state that a car's paint is defective if it cannot withstand reasonable environmental conditions, and that paint should not peel before 15 years of use. However, none of these cases involve the respondents or Toyota-branded vehicles, and therefore they do not address the specific warranty at issue in this dispute.
23. On balance, I find the applicant has not established that the paint damage was caused by a manufacturer's defect. The respondents submitted 3 statements from service managers at the dealership who all determined the damage was caused by environmental factors, likely dirt and bird droppings. These statements are consistent with the opinions of E.M. at Granville Toyota and P.R. in the respondents' warranty department. All of these statements are from experienced professionals who explained the reasoning behind their opinions. On the contrary, the only opinion the applicant provided with any explanation for their conclusion is the January 7, 2019 estimate from Malibu Collision. However, the extent of the qualifications or experience of the person who provided this opinion is unclear, and I find the respondents provided a reasonable explanation to refute that opinion.
24. The applicant says she asked "Toyota" on several occasions to remove the glue residue on her roof which was left from the protective cover. However, her submissions indicate that she asked the dealership to remove this glue, not the respondents. The respondents say the dealership is responsible for properly removing the protective cover, which the applicant does not deny. The applicant has not named the dealership as a party to this dispute, so I decline to determine whether they were negligent in failing to properly remove the protective cover. On

the evidence before me I find that neither of the respondents was responsible for removing the protective cover. I also find there is insufficient evidence to establish that the glue residue caused any damage to the car.

25. For these reasons, I find the applicant has not established that the paint damage was caused by a manufacturer's defect. Therefore, I find the respondents are not liable to pay the applicant any compensation to have her car repainted elsewhere. I dismiss the applicant's claims.
26. The applicant also asks for punitive damages in her submissions, despite not having articulated this claim in her Dispute Notice. Punitive damages are an extraordinary remedy to deter malicious, reprehensible or high-handed misconduct. There is no evidence that the respondents did or failed to do anything entitling the applicant to punitive damages. I dismiss this claim.
27. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find she is not entitled to reimbursement of her tribunal fees or dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member