



# Civil Resolution Tribunal

Date Issued: June 14, 2019

File: SC-2019-000945

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leroux et al, v. Shakthi Holdings Ltd.*, 2019 BCCRT 729

**B E T W E E N :**

JASON LEROUX and RHEA LEROUX

**APPLICANTS**

**A N D :**

SHAKTHI HOLDINGS LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

### **INTRODUCTION**

1. This dispute arises out of an oil change service the respondent, Shakthi Holdings Ltd., performed on a BMW car owned by applicants, Jason Leroux and Rhea Leroux.

2. The applicants claim that the respondent caused damage to their BMW during a faulty oil change service and claim \$2,508.62 for the costs to repair the damage.
3. The respondent agrees that it performed the oil change but denies that it caused the damage.
4. The applicants are represented by Jason Leroux. The respondent is represented by Dharmarajh Thurairajah, who I infer is an employee or principal.

## **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. 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.
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 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.

## **ISSUE**

- 9. The issue in this dispute is whether the respondent's oil change service was faulty, and if so, what remedies are appropriate.

## **EVIDENCE AND ANALYSIS**

- 10. In a civil claim such as this, the applicants bear the burden of proving their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 11. On September 8, 2018, the respondent performed a routine oil change on the applicants' 2013 BMW. The applicants say that immediately after the oil change, the BMW's computer dashboard displayed an engine powertrain failure code warning. The respondent conducted a visual recheck of the engine compartment and could not determine the cause of the fault code.
- 12. On September 9, 2018, the applicants say they followed the fault code instructions and brought their BMW to the nearest dealership, Brian Jessel BMW (BJ) in vehicle "limp mode" for inspection and service.
- 13. BJ inspected the BMW. According to the BJ invoice in evidence, its mechanic found the vacuum pump was leaking oil into the vacuum system and the vacuum line was not connected and saturated with oil. I find the BJ invoice well detailed. To correct the problem, the BJ mechanic removed and replaced the vacuum pump, vacuum lines, pressure divertor, and engine cover/accumulator. BJ also reset the fault memory, conducted a road test and an inspection, performed a new oil change and cleaned the engine and fuel system. The total invoice was \$2,508.62, the amount claimed in this dispute.

***What was the cause of the engine powertrain failure issues?***

14. The respondent argues that there are 57 reasons why the BMW engine powertrain might fail. The respondent submits online forum postings that appear to be discussions of BMW engine powertrain failure issues experienced by others. I attached no weight to this evidence. It contains lay opinion and hearsay from unknown sources discussing other cars. I prefer the evidence of the BJ mechanic, who I infer would have some BMW expertise and who examined the applicants' car. I accept the engine powertrain related issues the BJ mechanic identified in the invoice were caused by the disconnected vacuum lines and leaking vacuum pump.

***Did the engine powertrain failure pre-exist the respondent's service?***

15. The respondent argues that the BMW was leaking oil and the engine powertrain issues existed prior to its oil change service, which the applicants specifically deny.

16. After reviewing all of the respondent's arguments and comparing them to the evidence, I find its arguments are internally inconsistent and therefore, unreliable. While the respondent argues the BMW had pre-existing issues, it also argues that the BMW left its shop with "absolutely no issues", though performed no repairs apart from an oil change. Conversely, the respondent's invoice shows that the BMW had left its shop with issues. The invoice says the BMW was dripping oil upon oil change. I read the word "upon" to mean that oil was dripping after, or as a result of, the oil change and not before. The invoice also shows the respondent conducted an inspection and it lists no issues apart from oil dripping. I find the evidence does not support the respondent's argument that the BMW was either leaking oil prior to the oil change or had a pre-existing powertrain issue.

17. The applicants argue that on being alerted of a potential engine powertrain issue, it is improbable that they would choose instead to bring in their car and pay for an oil change, particularly because Ms. Leroux had a child in the car. I agree.

18. I find the circumstances make it highly improbable that the BMW had a pre-existing engine powertrain failure when the applicant, Ms. Leroux, brought it in for a routine oil change. The undisputed evidence is that the BMW's computer alerts the driver of an engine powertrain failure and displays instructions to bring it to the nearest dealership. I find on the evidence it alerted and instructed Ms. Leroux to do so after the oil change performed by the respondent.
19. Based on the balance of evidence, I find the oil leak and engine powertrain failure did not pre-exist the respondent's oil change.

***Did the oil change service cause the vacuum line to disconnect?***

20. The issues that remain are whether the respondent's oil change service caused the vacuum line to disconnect leading to the engine powertrain failure, and whether the respondent is responsible for the resulting loss.
21. The applicants argue that the vacuum lines might have disconnected if the respondent improperly removed or installed the engine cover to perform the oil change. They say BMWs require special tools and removing the engine cover would make it easier to perform the oil change. The applicants provided BMW service instructions and photographs specific to their model, showing that the vacuum connectors are unlocked and pulled off the vacuum accumulator when removing an engine cover.
22. The applicants also point to the mechanic's notes in the BJ invoice under the heading "complaint" that state that the disconnected vacuum line "could be from installation of engine cover on previous oil change or from improper engine cover removal". Because the notes fall under the heading "complaint", I reviewed the rest of the invoice to determine whether the notes are simply restating the applicants' complaint or represent the BJ mechanic's opinion. Each service has its own set of notes. The complaint notes for the oil change, cleaning and inspection are each clearly the BJ mechanic's assessment and service plan rather than the customer's complaint. On that basis, I accept the applicants' submission that the notes

represent the BJ mechanic's opinion that the removal or installation of the engine cover during the oil change by the respondent likely disconnected the vacuum line.

23. Though it had the opportunity, the respondent does not expressly deny it removed the engine cover when it performed the service. Instead, the respondent produced pictures of different oil filter tool kits it has for German vehicles to show that it had the special tools necessary to complete the oil change. I cannot discern from the pictures whether the tools are the ones needed to perform the oil change on the BMW, but I accept the respondent's evidence that they are. Though the proper tools might make it more likely the respondent performed the oil change without removing the cover, possessing the proper tools is not in itself determinative because the respondent might have still removed the cover.
24. The respondent submits a picture showing the top of a BMW engine. The respondent asks, based on the position of the oil filter and cap, how it would be possible to remove the cover to perform the oil change. I am not prepared to make any inferences based on the picture. First, there is no oil filter shown in the picture. Second, the applicants' BMW service instructions clearly show the cover can be removed. Third, I can tell the picture is of a BMW engine, but I cannot tell whether the model or year is the same as the applicant's BMW. Fourth, the picture does not allow me to determine whether the cover was or was not removed for the oil change. Again, the respondent does not specifically deny removing the engine cover. The respondent also submitted no evidence explaining how it performed the oil change on the applicants' BMW, or how it normally performs oil changes on this make and model of car.
25. Since the engine cover can be removed and the respondent did not explain how it performed the oil change or expressly deny removing the engine cover, I am persuaded the respondent removed the engine cover when performing the oil change. I am also persuaded based on the following findings of fact, that the respondent removed or reinstalled the engine cover incorrectly causing the vacuum line to disconnect, and resulting in the engine powertrain failure:

- a. The BJ mechanic found the BMW vacuum line was disconnected, causing the vacuum pump to leak oil and cause the engine powertrain failure,
- b. The BMW was leaking oil only after the respondent's oil change,
- c. The engine powertrain failure did not pre-exist the oil change and the failure code alerted immediately after the oil change,
- d. The BJ mechanic only identified the incorrect removal or installation of the engine cover as the potential cause of the disconnected vacuum line, and
- e. There was almost no gap in timing between the respondent's service and the BJ mechanic identifying the cause of the engine powertrain failure.

26. I find on the preponderance of evidence that the respondent negligently performed the oil change and its negligence was the cause of the applicants' loss. I find the applicants have proven damages of \$2,508.62 as claimed and set out in BJ's invoice dated September 11, 2018. I find all the services listed in the BJ invoice were reasonably necessary to correct the damage. The applicants did not claim reimbursement for the cost of the respondent's oil change service, so I make no award for that expense.

27. The applicants were successful. In accordance with the Act and the tribunal's rules, I find the applicants are entitled to reimbursement of \$125 they paid in tribunal fees. The applicants made no claim for dispute-related expenses.

## **ORDER**

28. Within 30 days of the date of this decision, I order the respondent to pay the applicants a total of \$2,666.66, broken down as follows:

- a. \$2,508.62 as reimbursement for the car repair,
- b. \$33.04 in pre-judgment interest under the *Court Order Interest Act* calculated from September 11, 2018, and

c. \$125.00 in tribunal fees.

29. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
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.

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Trisha Apland, Tribunal Member