



Civil Resolution Tribunal

Date of Original Decision: July 12, 2019

Date of Amended Decision: July 17, 2019

File: SC-2018-006904

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Callender et al v. Bennett et al*, 2019 BCCRT 845

B E T W E E N :

Ashley Callender and Jason Chittick

APPLICANTS

A N D :

Kevin Bennett, Mainland Transmission Services LTD., and Rebecca Bennett

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Ashley Callender, purchased a 2008 Jeep Liberty from the respondent, Rebecca Bennett, in November 2016. The respondent, Kevin Bennett, is Ms. Bennett's spouse and he cracked the transmission casing while performing a

fluid change on the Jeep after Ms. Callender's purchase. The respondent, Mainland Transmission Services LTD. (Mainland Transmission), performed a repair of the casing. The co-applicant, Jason Chittick, is Ms. Callender's spouse.

2. The applicants claim \$4,000, which they say is the cost to replace the damaged transmission casing. They also ask for orders that the transmission casing be repaired by a "licensed shop" and that Mr. Bennett perform another fluid change.
3. The applicants are represented by Ms. Callender. Mr. Bennett and Ms. Bennett are self-represented but their submissions are substantively the same. Mainland Transmission is represented by an employee.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not

necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 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.

PRELIMINARY ISSUE

8. As described in detail below, it came to my attention after I made my original decision that all the parties' evidence and submissions may not have been before me.
9. By way of background and explanation, the parties to tribunal disputes provide their evidence and submissions by uploading them directly to an online portal. Once the dispute has been assigned to a tribunal member, the online portal is closed and the parties are unable to directly upload further evidence or submissions.
10. When this dispute was initially assigned to me, some of the documents that Ms. Callender had uploaded were blank. On June 7, 2019, at my request, the tribunal staff asked Ms. Callender to email that evidence to the tribunal staff to ensure that all the evidence she had tried to upload to the portal was before me.
11. On June 13, 2019, the tribunal staff uploaded the evidence into the portal. The tribunal staff asked Ms. Callender to review the evidence on the portal and confirm

that it was all there. The respondents were also given the opportunity to provide supplementary submissions in case there was evidence that they had been unable to view when they made their initial submissions.

12. The initial deadline for the parties to complete these tasks was July 7, 2019. On July 8, 2019, at my request, the tribunal gave the parties an extension until July 10, 2019.
13. On July 9, 2019, Mainland Transmission emailed the tribunal staff to provide supplementary submissions. Through an inadvertent error, the tribunal staff did not upload these submissions to the portal.
14. On July 10, 2019, Ms. Callender emailed the tribunal staff that she was concerned that some of her evidence had not been uploaded to the portal. Again through inadvertence, the tribunal staff did not immediately alert me to the communication.
15. I made my decision on July 12, 2019, without being aware of either Mainland Transmission's July 9 supplementary submissions or Ms. Callender's July 10 email. After the tribunal staff provided my decision to the parties, the tribunal staff informed me of Ms. Callender's email and provided me with Mainland Transmission's supplementary submissions. Shortly thereafter, Ms. Callender emailed the tribunal staff 5 photographs that she believed had not been uploaded to the portal before I made my decision.
16. At common law, an administrative tribunal may reopen a proceeding to cure a jurisdictional defect, which is reflected in section 51(3) of the Act.
17. The British Columbia Court of Appeal discussed the scope of the power to reopen a hearing to cure a jurisdictional defect in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. Among other things, it is a jurisdictional defect for an administrative tribunal to fail to provide the parties with procedural fairness.

18. In the context of the tribunal's online system of gathering evidence and submissions, I find that in the circumstances here it would be a breach of procedural fairness for me to make a decision without having seen all the parties' evidence and submissions that they had provided. In this dispute, there are 2 potential breaches of procedural fairness.
19. First, with respect to the 5 photographs, the tribunal administrator has confirmed that the 5 photographs that Ms. Callender emailed to the tribunal staff on July 12, 2019, had been properly uploaded before I made my decision. I conclude that I reviewed and considered these 5 photographs prior to making my decision. Therefore, I find that there was no breach of procedural fairness.
20. However, with respect to Mainland Transmission's supplementary submissions, I find that it was a breach of procedural fairness for me to make a decision without considering them. Therefore, I decided under section 51(3) of the Act to reopen this dispute to address the above exchange with Ms. Callender and to correct this error in jurisdiction by considering Mainland Transmission's supplementary submissions.
21. That said, Mainland Transmission's supplementary submissions essentially repeat its initial submissions about the repairs it performed on the Jeep and whether it caused damage to the Jeep when performing those repairs. In short, Mainland Transmission's supplementary submissions do not change the substance of my reasons or the outcome of this dispute.

ISSUES

22. The issues in this dispute are:
 - a. Is Mainland Transmission responsible for the cost to repair the Jeep's transmission casing?
 - b. Are either of the Bennetts responsible for the cost to repair the Jeep's transmission?

- c. Are the applicants entitled to any of the other orders they request?

EVIDENCE AND ANALYSIS

23. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
24. Ms. Callender purchased the Jeep from Ms. Bennett on November 10, 2016 for \$3,000. The parties agreed that once the Jeep had 250,000 kilometers, Mr. Bennett, who is a mechanic, would change the fluids. The parties dispute whether the parties agreed that Mr. Bennett would change the oil or the transmission fluid, but I find that it does not matter to the outcome of this dispute.
25. On January 7, 2017, Ms. Callender told Ms. Bennett that the Jeep had hit 250,000 kilometers.
26. On January 29, 2017, Ms. Callender took the Jeep to the Bennetts' house for the fluid change. Unfortunately, Mr. Bennett cracked the transmission casing while he was tightening a bolt. When Ms. Callender went back to the Bennetts' house to talk about the damage, she took a video of the encounter. Mr. Bennett offered to either take the Jeep back and give a full refund or arrange for the transmission casing to be repaired. Ms. Callender did not want a refund. Mr. Bennett told her that it might be possible to repair it but it might need a new transmission casing. Either way, he promised Ms. Callender that he would "deal with it" at no cost to Ms. Callender.
27. Mr. Bennett arranged for the Jeep to get towed to Mainland Transmission for repairs on January 30, 2017.
28. Mainland Transmission says that it was unable to source a new or used transmission casing, so it told Mr. Bennett that it would be 3 to 4 weeks to import a new casing from the United States. Mr. Bennett told them to repair rather than replace it. Mr. Bennett says that Ms. Callender told him to get the repair done

quickly because she needed the Jeep. Ms. Callender denies this. I address this conflict below.

29. Mainland Transmission sent the casing off-site to have it welded and re-tapped and then sealed the weld with an epoxy. Mainland Transmission says that this repair was not an “ideal fix” but it was the best it could do given the time constraints. Mainland Transmission says that it provided no warranty for the work for this reason, which is reflected on its invoice. Mr. Bennett paid Mainland Transmission \$940.80 to repair the casing.
30. While Mainland Transmission had the Jeep, Ms. Callender had the clutch replaced. She made these arrangements directly with Mainland Transmission and paid for it separately.
31. In June 2017, Ms. Callender took the Jeep back to Mainland Transmission because the transmission was leaking again. Mainland Transmission replaced a washer to try to stop the leak.
32. Ms. Callender took the Jeep back to Mainland Transmission again in September 2017 because the transmission was still leaking. Mainland Transmission says that it offered to give her a used transmission casing free of charge, but Ms. Callender refused. Ms. Callender says that Mainland Transmission quoted her \$800 plus labour for a used casing.

Is Mainland Transmission responsible for the cost to replace the Jeep’s transmission?

33. The applicants argue that Mainland Transmission should not have tried to repair the transmission casing and should have waited for a new one. Mainland Transmission says that it was acting on Mr. Bennett’s instructions and is not responsible for the consequences of the decision to choose a quick fix.

34. These arguments raise 2 issues. First, was Mainland entitled to rely on Mr. Bennett's instructions even though Mr. Bennett did not own the Jeep? Second, was Mainland Transmission negligent in how it repaired the transmission casing?
35. First, the applicants say, in effect, that Mainland Transmission should have ignored Mr. Bennett's instructions, presumably because it was Ms. Callender's decision to make.
36. There is no evidence that Ms. Callender specifically told Mainland Transmission that Mr. Bennett had the authority to make decisions about repairing the Jeep. However, if Mr. Bennett had apparent authority (also called ostensible authority) to act on Ms. Callender's behalf, then Ms. Callender is bound by Mr. Bennett's decision to have the transmission casing repaired.
37. The burden is on Mainland Transmission to prove that Mr. Bennett had apparent authority from Ms. Callender. The legal test is that Ms. Callender must have represented through her words or actions that Mr. Bennett had the authority to instruct Mainland Transmission about the repairs. See *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295.
38. I find that Mr. Bennett did have apparent authority to instruct Mainland Transmission. I find that Ms. Callender made 2 representations to Mainland Transmission that support this conclusion. First, she gave Mr. Bennett the keys to the Jeep and had him make the arrangements to get the Jeep to Mainland Transmission for repairs. Second, she had Mainland Transmission replace the Jeep's clutch at her own cost and there is no evidence that she talked to Mainland Transmission about the transmission casing. Therefore, I find that Mainland Transmission was entitled to take Mr. Bennett's instructions to repair the transmission casing.
39. As for the repair itself, Mainland Transmission admits that it was not the best way to fix the damage to the transmission casing. However, I find that this does not necessarily mean that Mainland Transmission was negligent. As part of the general

test for negligence, the applicants must prove that Mainland Transmission's actions failed to meet the applicable standard of care. In this case, the applicable standard of care is that of a reasonably competent mechanic.

40. In claims of professional negligence, it is generally necessary for the applicants to prove a breach of the applicable standard of care with expert evidence. (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside of the knowledge or expertise of an ordinary person. I find that in this dispute, I would require expert evidence to prove that Mainland Transmission's work fell below the standard of a reasonably competent mechanic.
41. The applicants provided no expert evidence to prove that a reasonably competent mechanic would not have attempted to repair the transmission casing or that Mainland Transmission's repairs were not done to a reasonable standard. For that reason, I find that their negligence claim against Mainland Transmission must fail.
42. For these reasons, I find that Mainland Transmission is not liable for the cost of repairs.

Are either of the Bennetts responsible for the cost to replace the Jeep's transmission?

43. The applicants argue that Mr. Bennett should not have told Mainland Transmission to repair rather than replace the transmission casing and is therefore responsible for any problems that followed. The applicants also argue that because Mr. Bennett caused the initial leak, he should be responsible for making sure that the leak is permanently fixed.
44. With respect to the first argument, Mr. Bennett says that the repair was Ms. Callender's decision because she needed the Jeep back immediately. With Ms. Callender's time constraints, he says that Mainland Transmission had no choice but to repair the casing. In other words, he says that Ms. Callender agreed to the repair. Ms. Callender disputes that Mr. Bennett made this decision with her input and says that she was willing to wait.

45. On this issue, I must determine whose evidence is more credible. One aspect of assessing credibility is determining whose version of events is more probable in the circumstances. On that basis, I prefer Mr. Bennett's evidence on this point. In the video taken of Ms. Callender and Mr. Bennett discussing how to deal with the broken transmission casing, Ms. Callender was concerned that she would be without the Jeep because she needed it to get to work. In contrast, there was no reason for the Bennetts to be in a hurry to have the Jeep fixed because it did not impact them at all. Therefore, I find that it is more likely that Ms. Callender made the decision to have Mainland Transmission repair rather than replace the transmission. As such, I find that Mr. Bennett is not responsible for the consequences of that decision.
46. As for the applicants' argument that Mr. Bennett should be responsible for whatever it takes to fix the transmission that he broke, Mr. Bennett says that he did the right thing by arranging for a mechanic to repair the leak. He says that any problems after that are not his responsibility.
47. I find that the applicants overstate the extent of Mr. Bennett's responsibility. Assuming that Mr. Bennett was negligent in breaking the transmission casing, his obligation is to pay any reasonably foreseeable damages. I find that he did so by paying a professional to fix the damaged casing according to Ms. Callender's instructions. I find that any subsequent issues with the transmission, which did not arise for another 5 months after the initial repair, are too remote from the initial damage.
48. For these reasons, I dismiss the claims against Mr. Bennett.
49. As for the applicants' claims against Ms. Bennett, none of the applicants' arguments explain why she should be held liable. There is no suggestion that she had any involvement in the initial damage to the transmission casing or the subsequent decisions about its repair. I dismiss the claims against Ms. Bennett.

50. 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. The applicant has not been successful so I dismiss their claim for reimbursement of tribunal fees and dispute-related expenses. The respondents did not claim any dispute-related expenses.

ORDER

51. I dismiss the applicants' claims, and this dispute.

Eric Regehr, Tribunal Member