



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hughes et al v. Alancar Holdings Ltd. dba Campbell River Hyundai et al,*

2019 BCCRT 876

B E T W E E N :

Aaron Hughes and Angie Hughes

APPLICANTS

A N D :

Alancar Holdings Ltd. dba Campbell River Hyundai and OPENROAD
AUTO GROUP LIMITED dba Open Road Hyundai – Richmond

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. In August 2017 the applicants, Aaron Hughes and Angie Hughes, bought a used 2012 Hyundai Santa Fe (car) from the respondent OPENROAD AUTO GROUP

LIMITED dba Open Road Hyundai – Richmond (Open Road). Shortly after buying the car the applicants drove it to Campbell River, British Columbia, where they now live. During the drive to Campbell River the applicants say they noticed several problems with the car and brought it to the respondent Alancar Holdings Ltd. dba Campbell River Hyundai (Alancar) for service. Between October 2017 and March 2018, Alancar serviced the car on several occasions, and the applicants say Alancar’s service was substandard and caused more problems with the car.

2. The applicants want the respondents to reimburse them \$2,120.76 for the cost of repairing the car and \$850 in damages for the stress and time they have spent dealing with this issue, for a total of \$2,970.76.
3. The applicants are represented by Mr. Hughes and Alancar is represented by a principal. As discussed further below, Open Road did not participate in this dispute.

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. Some of the evidence in this dispute amounts to a “they 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.

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 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.

ISSUES

8. The issues in this dispute are:
 - a. Is Open Road in default?
 - b. Are the applicants entitled to reimbursement of \$2,120.76 for the cost of repairing the car or \$850 in damages for time and stress?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities. This means I must find it is more likely than not that the applicants' position is correct.
10. As discussed below, Open Road did not participate in the tribunal process. Alancar made submissions but chose not to provide evidence, despite having the opportunity to do so. I have only addressed the parties' submissions and the

applicants' evidence to the extent necessary to explain and give context to my decision.

Is Open Road in default?

11. The tribunal issued the applicants' Dispute Notice on November 8, 2018. The address for Open Road on the Dispute Notice is an address in Richmond. On November 8, 2018 the tribunal sent the applicants the BC Company Summary for Open Road and indicated that it appeared that Open Road's correct address was an address in Vancouver.
12. On November 16, 2018, the applicants delivered the Dispute Notice to Open Road by registered mail to the Richmond address. The applicants did not explain why they did not use the Vancouver address that the tribunal gave them. Open Road has not filed a Dispute Response or participated in the tribunal process.
13. Under tribunal rule 62, which was in force at the time the applicants started this dispute, a Dispute Notice delivered to a respondent company by registered mail must be delivered to the address shown for the respondent's registered office with the Registrar of Companies. Open Road's registered office on its BC Company Summary is the Vancouver address, not the Richmond address. Therefore, I find the applicants did not properly serve Open Road in accordance with rule 62.
14. Since the applicants failed to properly serve Open Road with the Dispute Notice despite the tribunal notifying them of Open Road's correct address, I dismiss the applicants' claims against Open Road.

Are the applicants entitled to reimbursement of \$2,120.76 for the cost of repairing the car or \$850 in damages for time and stress?

15. The applicants bought the car from Open Road in Richmond in August 2017 and promptly drove it to Campbell River where they moved with their family.

16. During the applicants' drive from Richmond to Campbell River, and while driving the car locally around Campbell River, the applicants noticed there was a vibration while driving the car at high speeds, the car was pulling to the right, there was a shudder in the steering wheel when driving in town, and there was a knocking sound coming from the front of the car when shifting into gear from a parked position or when turning at lower speeds.
17. On October 17, 2017 the applicants paid Alancar \$236.98 for a 4-wheel alignment and balancing, and a re-torque of the front axle hubs. The invoice shows measurements before and after Alancar performed the work. The applicants say Alancar overcharged them for this work, as it was \$21.23 more than its October 11, 2017 estimate. However, the applicants say Alancar later credited their account, and therefore I decline to address this issue further.
18. The applicants say the only improvement to the car after Alancar's servicing on October 17, 2017 was to the knocking noise when shifting the car out of park. The applicants say the car still pulled to the right, but they were unable to bring the car back to Alancar immediately given their work schedules. The applicants allege that Alancar failed to check for out-of-round tires or bent rims and failed to spin the right rear tire on the rim during its service on October 17, 2017 but provided no evidence that such work was necessary or that Alancar failed to perform this work.
19. Alancar says its certified technicians completed the work on October 17, 2017 using a "recently-purchased, state-of-the-art wheel balancing system." It also says the applicants did not bring the car back to Alancar complaining about the issue immediately after it completed the work. It says the most likely cause of any future misalignment with the car is from hitting a pothole or other road obstacle.
20. On November 17, 2017 the applicants brought the car back to Alancar complaining that it still vibrated at higher speeds and pulled to the right. The applicants had arranged for Open Road to pay for Alancar to re-diagnose the problems with the car. Alancar's notes from that date indicate that one of its representatives test-drove the car with Mr. Hughes and confirmed his complaints. The notes say Alancar

rotated the tires from side to side which helped with the pulling to the right, and also checked and adjusted the alignment. They also checked the rear wheel balance and found it was “okay.” The representative then test-drove the car again and noted the “pull is gone.” The representative noticed “when under power at the correct steering angle the front outer C.V. joints start to click,” and they recommended replacing the front C.V. axles as well as servicing the brakes.

21. The applicants say the car still vibrated at high speeds after this work. On March 9, 2018, at Open Road’s direction and expense, Alancar replaced the car’s front drive axles and resurfaced the front rotors to attempt to reduce the vibration. The applicants say that after Alancar completed this work they immediately noticed a new vibration coming from the front of the car when driving it at low speeds between 20 and 60 kilometers per hour, and the vibration at high speeds persisted. However, because of their schedules the applicants were unable to return the car to Alancar immediately to address the problem. On March 11, 2018, Mr. Hughes notified Alancar by email of the new low-speed vibration and asked if its technician had performed a tire rotation or test driven the car after servicing on March 9, 2018.
22. On March 13, 2018, Alancar responded that its technician did not report the new vibration Mr. Hughes complained about. The email also said that vibration on acceleration is a characteristic of the older models of the car. It said Hyundai calls the condition “torque steer” and does not have a repair for the issue.
23. On March 14, 2018 at the applicants’ insistence, a representative of Alancar test drove the car with Ms. Hughes and confirmed the low-speed vibration they complained of. This is confirmed in an email from Alancar to Mr. Hughes dated March 21, 2018.
24. The applicants say they were frustrated with Alancar, so on March 16, 2018 they paid Kaltire \$120.06 for a 4-wheel balance and retorque. The Kaltire invoice indicates that before the balance the left front tire was out 0.75 oz, the right front tire was out 1.50 oz, the right rear tire was out 1.25 oz, and the left rear tire was out

1.00 oz. It also says the right front, right rear, and left front tires “had some minor hop.”

25. The applicants say Kaltire did not want to get involved in this dispute, but that one of its representatives told them that Alancar had not properly balanced the wheels because of incorrectly placed weights. However, this evidence from Kaltire is hearsay and in the circumstances, I place very little weight on it since there is direct evidence before me from multiple mechanics and none of it states that Alancar’s wheel balance service in the fall of 2017 was substandard. The applicants submitted photos of the car’s wheels with red arrows indicating where the wheel weight placements occurred, however without an expert report or explanation of these photographs I cannot discern their significance.
26. Given the technical nature of Alancar’s work in this case, I find its standard of care in the circumstances is beyond the knowledge and experience of an ordinary person, and I find expert evidence is necessary to establish the standard of care (see *Bergen v. Guliker*, 2015 BCCA 283 (CanLII)). In the absence of such evidence, I find I am unable to determine a standard of care in aligning or balancing the wheels, or whether Alancar breached that standard.
27. I also note that Kaltire’s service was several months after Alancar performed any wheel balancing or adjustment on the car, and it is reasonable that the applicants’ use of the car over that time period or some other intermediary cause affected the wheel alignment. For these reasons I find there is insufficient evidence to establish that Alancar’s wheel balance and alignment work in the fall of 2017 was substandard. Therefore, I find the applicants are not entitled to a reimbursement for the cost of this work.
28. The applicants say that when they test drove the car after the service from Kaltire they still noticed the same vibration at both low and high speeds. Therefore, even if I found that Alancar’s wheel balance in the fall of 2017 was substandard, which I have not, the applicants would not be entitled to reimbursement of the \$120.06 they paid Kaltire, because that work did not repair the car’s vibrations.

29. In a March 21, 2018 email, Alancar told Mr. Hughes it was willing to work with him to diagnose and repair the issues with the car, but that the applicants would be required to pay for its service. Alancar said it suspected the vibration was caused by tires or wheels and suggested replacing them.
30. The applicants say they were frustrated with Alancar, so on March 28, 2018 they took the car to Gord Knight Motors to address both the low-speed and high-speed vibration issues. The invoice from that date indicates the right front axle was loose at the inner spline which caused most of the vibration when accelerating. It also states that the left front axle “has approximately .080 run out” and could be contributing to the vibration. The applicants submitted video evidence of the axles, but without an expert report or explanation I am unable to discern the significance of this evidence. The invoice also indicates that the tires felt as if they may have had “too much run out causing vibration on the highway,” and the mechanic suggested a road force balance if one had not been done already. Gord Knight Motors charged the applicants \$106.66 for the inspection and diagnostics.
31. On May 8, 2018 the applicants paid Gord Knight Motors \$1,894.04 to remove and replace the intermediate shaft assembly. The invoice from that date indicates the left front axle was bent and replaced, the right front axle had “play in spline” and was replaced, but the new axle was still loose and required “intermediate shaft and axle – int shaft splines work do to excessive play in axle.” Gord Knight Motors also removed and replaced the C.V. joint. The applicants say this work eliminated the low-speed vibration and Alancar does not dispute this.
32. The applicants say that at some point after Gord Knight Motors resolved the car’s low-speed vibration issues they bought new tires which eliminated the high-speed vibration issue.
33. On the evidence before me, I find that prior to Alancar’s work on March 9, 2018 the applicants had never complained of a low-speed vibration with the car. On March 9, 2018 Alancar replaced the car’s front drive axles and resurfaced the front rotors. The evidence indicates that immediately after Alancar completed this work the

applicants noticed the low-speed vibration and notified Alancar within 2 days. Alancar confirmed this new issue with the car during its test drive with Ms. Hughes on March 14, 2018 and in an email on March 21, 2018.

34. Alancar suggested the low-speed vibration could have been caused by the tires or wheels, but it did not address the fact that the car did not experience the same vibration before its March 9, 2018 work. Alancar says the applicants did not address the wheel alignment issue in a timely manner and that any misalignment could have been caused by hitting a pothole. However, the applicants specifically allege that the new low-speed vibration was caused by Alancar's work replacing the front drive axles and resurfacing the front rotors, not from its work aligning the wheels in the fall of 2017. The applicants' evidence is that they noticed the low-speed vibration immediately after the work on March 9, 2018, but because it was late on a Friday and they had other obligations, they did not report the concern to Alancar until Sunday. In the circumstances I find the applicants addressed this new issue in a timely manner. Alancar says the work it conducted on March 9, 2018 was at Open Road's direction, however it is undisputed that it was Alancar, not Open Road, who performed the work. At no point in its submissions does Alancar specifically address the new low-speed vibration observed after March 9, 2018. On balance, I find the evidence establishes that Alancar's work on the car on March 9, 2018 caused the new low-speed vibration.
35. While I have found that expert evidence is required to determine Alancar's standard of care, I find that returning a customer's car in worse condition than it was in before performing mechanical work falls below any acceptable standard for a mechanic. Therefore, I find Alancar is responsible for the cost of resolving the low-speed vibration issue with the car, which Gord Knight Motors repaired on May 8, 2018.
36. I find Alancar must pay the applicants \$2,000.70 as reimbursement for their expenses for Gord Knight Motors to diagnose and repair the car's low-speed vibration issue, which Alancar caused. The applicants are also entitled to pre-

judgment interest on this amount under the *Court Order Interest Act*, calculated from May 8, 2018, which is the date Gord Knight Motors repaired the car.

37. The applicants also claim \$850 for the time and stress of dealing with this dispute. However, they have provided no medical or other evidence to indicate that this dispute has caused either of them stress to an extent that would be compensable at law, and I dismiss this aspect of their claim. Further, the tribunal does not generally reimburse parties for their own time spent on a dispute. This is consistent with the tribunal's practice of generally not awarding legal fees. I see no reason in this case to depart from the general practice. I dismiss this claim.
38. 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. Since the applicants were generally successful I find they are entitled to reimbursement of \$125 in tribunal fees. They claim \$21.71 in dispute-related expenses for registered mail costs which I find reasonable in the circumstances. Therefore, I find they are also entitled to reimbursement of \$21.71 in dispute-related expenses.
39. Alancar has claimed \$704 in dispute-related expenses, but since it was unsuccessful I find it is not entitled to reimbursement of this amount. I note that even if Alancar had been successful, it provided no evidence or explanation to support the amount claimed, and therefore I would not have allowed the claim in any event.

ORDERS

40. Within 14 days of the date of this order, I order Alancar to pay the applicants a total of \$2,186.96, broken down as follows:
 - a. \$2,000.70 as reimbursement for car repair expenses,
 - b. \$39.55 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$146.71 for \$125 in tribunal fees and \$21.71 for dispute-related expenses.

41. The applicants are entitled to post-judgment interest, as applicable.
42. I dismiss the remainder of the applicants' claims against Alancar.
43. I dismiss the applicants' claims against Open Road.
44. 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.
45. 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.

Sarah Orr, Tribunal Member