



# Civil Resolution Tribunal

Date Issued: July 31, 2019

File: SC-2019-002709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rozanski et al v. Jim Pattison Industries Ltd., dba Jim Pattison Volvo of Victoria et al*, 2019 BCCRT 922

B E T W E E N :

ZENON ROZANSKI and GRAZYNA ROZANSKA

**APPLICANTS**

A N D :

JIM PATTISON INDUSTRIES LTD. (Doing Business As JIM PATTISON VOLVO OF VICTORIA) and BILL HARBOTTLE

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute about a vehicle repair. The applicants, ZENON ROZANSKI and GRAZYNA ROZANSKA, say that they took their vehicle to the respondent, JIM PATTISON INDUSTRIES LTD. (Doing Business As JIM PATTISON VOLVO OF

VICTORIA) (JPI) for servicing and, later that day, the transmission failed. The applicants say the transmission repair will cost them \$4,500, and they seek an order that the respondents pay them that amount or perform the repair. The respondent Bill Harbottle is employed by JPI. The respondents deny responsibility for the applicants' claims.

2. The applicants are represented by Zenon Rozanski. The respondent JPI is represented by an employee. The respondent Mr. Harbottle is self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act:
  - 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**

- 7. The issue is whether the respondents should be ordered to repair the applicants' transmission or pay them \$4,500 in damages.

## **EVIDENCE AND ANALYSIS**

- 8. As a preliminary matter, I will address Mr. Harbottle's submission that he is not a proper party to this dispute. It is undisputed that Mr. Harbottle is an employee of JPI and he says that he was acting in that capacity when dealing with this matter. The evidence shows that Mr. Harbottle had no personal involvement with the servicing of the applicants' vehicle and the applicants' claims do not disclose any allegation of personal liability on his part. I find that JPI is the appropriate respondent, and dismiss the applicants' claims against Mr. Harbottle personally.
- 9. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
- 10. The applicants took their 2001 Volvo to JPI on 4 occasions for service of the coolant system. When driving home from the 4<sup>th</sup> servicing on October 25, 2018, the applicants' vehicle broke down. The vehicle was towed back to JPI, where a problem with the transmission was identified. JPI recommended that the transmission be re-built. The applicants report that a different service provider provided them with an estimate of \$5,421 for the repair. It is not clear whether this work has been performed.
- 11. The applicants say they never had any problems with the transmission before this incident, and their vehicle's computer never displayed any computer warnings about

it. The applicants say that they are convinced that JPI damaged their transmission during testing of the leaking coolant system, and that the JPI technician probably knew that coolant penetrated into the transmission but chose not to do anything about it. According to the applicants, the fact that the transmission failed after JPI serviced it is proof that the damage was done inside JPI's garage. The applicants do not accept JPI's explanation for the problems with their vehicle. The applicants provided links to internet articles that they say support the conclusion that it is possible to damage a transmission by adding too much coolant.

12. The applicants seek compensation of \$4,500 or the repair of their transmission. They did not explain the discrepancy between this amount and the amount they were quoted for the repair. The applicants also made submissions about previous problems they say they have had with JPI's servicing of their vehicle, but they did not make specific claims about these issues.
13. JPI denies that its employees caused the failure of the applicants' transmission, and submits that the applicants have not provided evidence to support their allegations. JPI says that the transmission failure was due to normal wear and tear in an 18-year old vehicle with 141,000 kilometres on the odometer. JPI says that its technician identified the problem as a broken driveband (also known as a forward apply band), which is a known problem in vehicles of that age and is not related to the coolant problems in the applicants' vehicle.
14. As noted, the applicants provided links to articles about what can happen if you put too much coolant in a car or what can happen if coolant gets into transmission fluid. While these articles provide general information and support the applicants' view that there is an alternate explanation for their transmission problems, I do not place significant weight on them as they do not comment on the applicants' specific situation.
15. The respondent provided a statement from Mr. P, the technician who worked on the applicants' vehicle, who says that he discovered that a 1-inch piece of the driveband had snapped off. According to Mr. P, the transmission and coolant systems are

separate systems in the vehicle and the transmission problems were not related to the servicing of the coolant system. He explained that, in order for coolant to enter the transmission, the transmission cooler would have to fail and there was no evidence of this in the applicants' vehicle. If excess coolant had been added to the applicants' vehicle during service, Mr. P stated that it would drain from the holding tank in an overflow hose and would not penetrate the transmission.

16. There is no statement before me from a mechanic or other automotive expert that the transmission problem was not related to a broken driveband, that the driveband was not broken as the applicants suggest, or that the problem is related to the coolant service. The transmission's mechanical failure is not within a person's ordinary knowledge such that I can conclude that there was negligence in the absence of expert evidence. As the evidence does not contain a copy of the third-party repair quote, I am unable to ascertain whether the recommended repairs relate to a driveband or another issue.
17. The fact that the transmission failure occurred shortly after it was serviced by JPI is not determinative of the source or cause of the problem. I am not satisfied that the evidence before me establishes that JPI's technician made and concealed an error while servicing their coolant system, as suggested by the applicants. I find that the applicants have not proven that any actions or omissions by JPI's technicians were the cause of the problems with their transmission. Accordingly, I dismiss the applicants' claim for damages.
18. 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. As the applicants were not successful, I dismiss their claim for reimbursement of tribunal fees.

## **ORDER**

19. I dismiss the applicants' claims and this dispute.

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Lynn Scrivener, Tribunal Member