



Civil Resolution Tribunal

Date Issued: July 31, 2019

File: SC-2018-004701

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hammersmark v. ICBC et al*, 2019 BCCRT 927

B E T W E E N :

Allen Hammersmark

APPLICANT

A N D :

ICBC and Gestions Jonathan Gagne Ltee/Jonathan Gagne Holdings
Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Allen Hammersmark, says that the brakes in his vehicle failed as a result of contamination in the brake fluid. He attributes this problem to work done on his vehicle by the respondent Gestions Jonathan Gagne Ltee/Jonathan Gagne

Holdings Ltd. (Gagne). The applicant asks for orders that Gagne compensate him for the labour portion of his repair costs and investigate who contaminated his brake fluid. He also asks for an order that the respondent, ICBC (formally known as Insurance Corporation of British Columbia), provide coverage for the replacement parts under the comprehensive portion of his insurance policy and acknowledge his mental and emotional stress. The respondents deny responsibility for the applicant's claims.

2. The applicant is self-represented. The respondent ICBC is represented by an employee. The respondent Gagne is represented by Jonathan Gagne.

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.
7. In this case, the respondent Gagne made an application to the British Columbia Provincial Court under section 12.1 of a previous version of the Act for an order that the tribunal not adjudicate this claim. On April 18, 2019, the court dismissed the application as it was not established that, for reasons of justice and fairness, the tribunal should not adjudicate the claim. Accordingly, the dispute remains with the tribunal for adjudication.

ISSUES

8. The issues in this dispute are:
 - a. whether Gagne should be ordered to pay the applicant for \$2,040.22 for repair costs;
 - b. whether Gagne should be ordered to investigate who contaminated the applicant's brake fluid;
 - c. whether ICBC should be ordered to provide insurance coverage for the \$1,382.47 cost of replacement parts; and
 - d. whether ICBC should be ordered to acknowledge the applicant's mental and emotional stress.

EVIDENCE AND ANALYSIS

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 respective 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 respondent Gagne operates a Canadian Tire franchise. The applicant had his oil changed by the respondent on January 20, 2018. On March 13, 2018, the applicant's brakes failed while he was driving his vehicle. He says that when he pushed on the brake pedal it "went to the floor" and he was unable to stop his vehicle for a red light. Fortunately, the applicant was able to avoid a collision.
11. The vehicle was taken to a dealership for assessment and a sample of the brake fluid was sent to a laboratory. The test results confirmed the presence of oil in the brake fluid. The laboratory report also stated that oil in the brake system will cause all rubber components to swell and fail, and recommended that all oil be purged from the system. The dealership replaced a number of parts, after which the brakes on the applicant's vehicle functioned properly. The applicant paid \$1,397.20 for parts and \$2,040.22 for labour for a total (with taxes) of \$3,422.69. The applicant seeks reimbursement of the labour costs from Gagne and wants ICBC to provide coverage for the \$1,397.20 parts portion.

Claims against the respondent Gagne

12. The applicant says the contamination of his brake fluid had to have occurred when his vehicle was being serviced by the respondent Gagne. He states that the brake fluid reservoir is very close to the anti-freeze reservoir and not far from the power steering reservoir. He says that the respondent Gagne was the only one to service his vehicle. The applicant states that he "cannot pinpoint who did what" or whether the damage was by design or default, but submits that Gagne failed in its duty of care to him as a customer. The applicant also states that, on a previous occasion when Gagne serviced his vehicle, he suspects that it put the wrong fluid in his power steering unit. However, there is no claim before me about that fluid.
13. Gagne denies that it was responsible for the contamination and submits that the applicant has not established a "proper nexus" between it and the damages he

claims. Gagne says that its employees did not perform any work to the brake system or brake fluid. It submits that the applicant has not provided evidence to show what effect the oil would have on the brake fluid or how long the vehicle would remain driveable after the contamination occurred. Gagne says that the oil change was performed in a good and professional manner, and in no way caused or contributed to the contamination of the brake fluid or brake failure.

14. I find the evidence establishes the presence of oil in the applicant's brake fluid. I must consider whether the evidence also shows how it got there. The applicant's belief that incorrect fluid was used in his vehicle on a previous occasion is not relevant to my analysis.
15. The invoice from the January 20, 2018 service of the applicant's vehicle shows that Gagne performed only an oil change with no mention of assessment or service to other aspects of the vehicle, including the braking system. The laboratory report does not indicate whether the oil in the brake fluid was consistent with the type of oil placed in the applicant's vehicle by Gagne during the oil change process.
16. The applicant provided evidence of the approximate number of hours and kilometres he drove between the January 2018 oil change and the March 2018 brake failure incident. However, there is no statement from a mechanic or other automotive professional about whether this would correlate with the contamination occurring at the time of Gagne's service of the vehicle.
17. The fact that the oil was discovered in the applicant's brake fluid 2 months after Gagne performed an oil change does not, by itself, establish that Gagne is responsible for the problem. Based on the evidence before me, I am unable to determine how the oil entered the applicant's brake fluid. I find that the applicant has not proven that the contamination of his brake fluid was the result of an act or omission by Gagne.
18. As the applicant has not established that Gagne was responsible for the contamination of his brake fluid on January 20, 2018, I dismiss his claim for

reimbursement of \$2,040.22 in labour costs. Further, I dismiss his claim for an order that Gagne investigate the matter.

Claims against the respondent ICBC

19. The applicant made a claim with the respondent ICBC for reimbursement of expenses under the comprehensive portion of his insurance policy. ICBC denied the claim as there is no coverage for mechanical failure.
20. According to section 5.9(a)(ii) of the applicant's optional insurance policy, ICBC is not liable to indemnify any person under comprehensive or collision coverage for loss or damage "consisting of, or caused by, mechanical fracture, failure or breakdown of any part of a motor vehicle". I am satisfied that the brake failure experienced by the applicant falls within this exclusion.
21. I acknowledge the applicant's statement that the agent did not explain any of the exceptions in coverage when he bought his policy. It is not clear whether the agent to whom he refers is an ICBC employee or a third party who is not a party to this dispute. In any case, as this clause does not go to the heart of the insurance contract, I find that the presence or absence an explanation would not alter the terms of the policy purchased by the applicant.
22. The applicant also describes the contamination of his brake fluid as vandalism. ICBC does not dispute that vandalism would be addressed by the comprehensive coverage, but says that there is no evidence of vandalism.
23. As discussed above, I am unable to determine how the oil entered the applicant's brake fluid. It follows that I am unable to conclude that the introduction of oil into the applicant's brake fluid was a deliberate act of vandalism. As the applicant has not proven that vandalism occurred, he is not entitled to coverage from ICBC for the \$1,397.20 he spent for replacement parts. I dismiss this aspect of the applicant's claim.

24. I find that the applicant's request for an order that ICBC acknowledge his mental and emotional stress is, in effect, a request for an apology. While I do not doubt that the applicant found this experience to be unpleasant, I decline to make the order he seeks. The tribunal generally does not order apologies as forced apologies are not productive or helpful, and the tribunal does not have jurisdiction over such injunctive relief. Further, in order for this type of claim to be successful, there must be medical evidence to establish mental distress (see *Eggberry v. Horn et al*, 2018 BCCRT 224). The applicant did not provide any evidence in this regard.
25. 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. As the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member