



Civil Resolution Tribunal

Date Issued: August 13, 2019

File: SC-2019-000958

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. Kube's Kustom Transmissions Ltd.*, 2019 BCCRT 962

B E T W E E N :

AUSTIN ROBERTSON

APPLICANT

A N D :

KUBE'S KUSTOM TRANSMISSIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a repair to a GMC pick-up truck.
2. The applicant, Austin Robertson, claims that the respondent, Kube's Kustom Transmissions Ltd., performed a faulty repair on his truck's rear differential. The applicant says the work had to be redone by another repair shop. The applicant

claims a refund of \$2,293.39, the amount he paid the respondent to repair the truck's rear differential.

3. The respondent denies that its repair was faulty. It says that if the truck's differential failed, it was the applicant's fault. It alleges that the applicant towed a trailer too soon after the repair without first breaking in the gears. It says the applicant drove the truck about 1,000 km despite noise from the gears warning him that damage was occurring. It also says the applicant is claiming for parts that work and are still in use.
4. The applicant is self-represented. The respondent is represented by Michael Kube, who I infer is a principal of the respondent.

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* (CRTA). 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, where permitted under section 118 of the CRTA:
 - 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondent perform a negligent repair to the applicant's truck?
 - b. If so, to what extent, if any, is the applicant entitled to a refund of the \$2,293.39 he paid for the initial repairs?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The respondent operates a repair shop in Dawson Creek. On January 2, 2019, the respondent repaired the applicant's truck. The respondent's repair invoice states it "rebuilt rear differential incl." The rear differential is a component of the drivetrain system. The invoice shows the applicant paid the respondent \$2,293.39, the amount claimed in this dispute. The truck had 240,599 km on the odometer at the time of the repair.
12. At some point within January 2019, the applicant says he drove from Dawson Creek to Kelowna. The applicant says he experienced a problem with the rebuilt differential making noise. On January 31, 2019, the applicant brought his truck to Cutting Edge Automotive & Performance in Kelowna. The applicant submitted the

Cutting Edge invoice that shows it “removed and replaced” the “differential bearing” for a total of \$1,890.08. The applicant claims this is the same part that the respondent rebuilt on January 2, 2019. The invoice shows that the truck’s odometer reading was 241,519, about 1,000 km more than when the respondent did the repair.

13. The respondent disputes that the Cutting Edge invoice is for the same truck. The respondent says the Cutting Edge invoice shows no VIN or license plate number. The respondent says depending on the route, the distance between its shop and Cutting Edge was between 1,082 km and 1,172 km, as shown on Google Maps. The two odometer readings on the invoice would mean the truck was only driven 920 km between repairs. The applicant does not explain the discrepancy of 162 km to 252 km. The respondent says it is because it is not the same truck. I am not confident, without additional evidence, that Google Maps is precisely accurate. However, I find the even an extra 162 km is a relatively large discrepancy. As mentioned, it is the applicant who carries the burden of proof. Without additional evidence to identify the truck, I find the applicant has not established that the second repair is for the same truck.
14. In any event, even if I accept that the two invoices were for the applicant’s truck and the same rebuilt differential failed, I find that the applicant has not established that the respondent is responsible for the loss. My reasons follow.
15. The respondent’s invoice shows that it warranties its work. However, the warranty only applies if the customer contacts it for authorization before any warranty work is done. The respondent says the applicant did not contact it for authorization and it did not authorize any work. It says the applicant did not contact it about the failed differential until February, after the second repair. I accept the respondent’s evidence on this issue as the applicant did not show otherwise. I find the exclusion applies and the respondent is not liable under the warranty.
16. Apart from what is covered by warranty, the courts have held that mechanics are not expected to guarantee that a vehicle will be free of problems after its repair,

(see for example *Le Bel v. Insurance Corp. of British Columbia* 2016 BCPC 126). Even if the rebuilt parts failed shortly after the respondent's repair, this does not in itself, prove that the respondent is liable. To prove liability absent a warranty, the applicant must establish that the respondent's repair was negligent and that its negligence caused the rear differential to fail.

17. There are three essential elements in a negligence claim that the applicant must establish on a balance of probabilities. These elements are:
 - a. the respondent owed the applicant a duty of care,
 - b. the respondent breached that duty, and
 - c. the applicant suffered damages that resulted from the breach.
18. There is no question that the respondent owed the applicant a duty of care when repairing the truck.
19. To prove the respondent breached its duty of care, the applicant must first establish what the standard of care is of a reasonably prudent mechanic. The applicant must then establish that the respondent failed to meet that standard. I find the applicant provided no evidence to establish either the standard of care or a breach of that standard.
20. I infer the applicant's position is that the respondent's repair must have been faulty because the differential failed so soon after it was done. However, I find this is not necessarily the case since the applicant admits to driving about 1,000 km and towing a trailer. Something other than a faulty repair might have caused the differential to fail, such as overloading the gears while towing.
21. The applicant argues that Cutting Edge confirmed on its invoice that the differential issue was caused by the respondent's improper repair. However, I find the invoice includes no opinion on the cause of the failed rear differential. The Cutting Edge invoice mentions only "filings" that it found stuck in the axle tubes. It says these "filings" might not have been cleaned out of the tubes after the previous differential

failure. The respondent says the “filings” do not affect the function of the differential. The Cutting Edge invoice does not state that the “filings” caused the differential to fail. I find that the Cutting Edge invoice does not establish that it was the respondent who previously repaired the differential on this particular truck or if it was the same truck, that the respondent was negligent in its repair. The applicant provided no other evidence in support of his claim. I find the applicant has not established that the respondent was negligent.

22. The parties made submissions about whether the respondent had warned the applicant not to tow his trailer until the gears were broken in. As the applicant has not proven his claim, I find that it is not necessary to deal with these submissions.

23. Under section 49 of the CRTA, 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 applicant was the unsuccessful party in this dispute, I dismiss his claims for tribunal fees and dispute-related expenses.

ORDER

24. I dismiss the applicant’s claims and this dispute.

Trisha Apland, Tribunal Member