Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dadswell v. Enterprise Auto & R.V. Ltd.*, 2020 BCCRT 428

B E T W E E N :

ALAN DADSWELL and MARGUERITE ALSTON

APPLICANTS

A N D :

ENTERPRISE AUTO & R.V. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a dispute over repairs to a 2013 motorhome.

2. The applicants, Alan Dadswell and Marguerite Alston, say they paid the respondent, Enterprise Auto & R.V. Ltd., to diagnose and fix issues with their motorhome. They say the respondent failed to fix the issues. The applicants also say that the

respondent installed the motorhome's windshield improperly, causing it to crack. The applicants claim a total of $1,475.07 for the "improper" repair work and $2,958.85 for the cracked windshield.

3. The respondent denies the applicants' claims. It says it properly diagnosed and addressed each of the motorhome's issues and that it is not responsible for the cracked windshield.

4. The applicants are self-represented. The respondent is represented by an employee.

5. For the reasons set out below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

8. 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.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

10. As a preliminary issue, the applicants requested an additional 20,000 to 30,000 characters to reply to the alleged inaccuracies in the respondent's statements. Under the tribunal's rule 7.3, the character limit for a reply is 10,000 characters per claim. One purpose of rule 7.3 is to meet the tribunal's mandate of speedy resolutions of disputes. I found in the circumstances, that the applicants had not justified their need for 3-4 times the character limit. However, I did allow the applicants an additional 10,000 characters for their reply argument. On reading the parties' arguments, I find the applicants were reasonably able to reply to the respondent's statements.

11. As another preliminary issue, the applicants object to the respondent's late evidence. The respondent had submitted several pieces of evidence after the tribunal's deadline. The respondent's late evidence included copies of the parties' own emails, a copy of its invoice, "troubleshooting" guides, and a manual. In their reply submission, the applicants say they decided not to comment on the respondent's late evidence because they presume the tribunal would not accept it without giving them a further chance to respond. The applicants do not explain why they could not respond to the late evidence, considering they had an extra 10,000 characters to do so. At any rate, the invoice and some of the emails were duplicates of evidence that the applicants submitted. Also, the applicants were parties to all of the emails, and so, I find it unlikely that they were taken by surprise. I have accepted the respondent's late evidence. However, I put no weight on the

"troubleshooting" guides or manual because they were not necessary for my decision.

12. I am mindful of the need to balance the tribunal's mandate described above with administrative fairness. After reviewing the respondent's late evidence and the extra character limit, I decided the applicants had a fair opportunity to be heard. On balance, I decided it was appropriate to hear this dispute without further submissions from either party.

ISSUES

13. The issues in this dispute are:

    a. Did the respondent fail to properly diagnose and repair the applicants' motorhome? If so, to what extent if any, are the applicants entitled to a refund?

    b. Did the respondent's installation cause the motorhome windshield to crack? If so, must the respondent reimburse the windshield replacement cost?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicants bear the burden of proving their claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

15. The applicants say that they took their motorhome to the respondent on multiple occasions and the respondent never properly diagnosed or repaired all the issues. They argue that the respondent should refund what the applicants had paid for the alleged "improper" work. In the Dispute Notice, the applicants claimed a total refund of $2,308.55 for this work. However, the applicants now submit that some of the claimed repair costs were covered under a third-party warranty. So, the applicants reduce their claim to account for the warranty and they now request a total refund of $1,475.07. The applicants also increase their claim for replacing the cracked

windshield from $2,691.45 to $2,958.85, which is the invoiced amount for the new windshield.

Front screens, Aqua-Hot, Leveling Jacks, and Backup Camera

16. The applicants say that the respondent "improperly" diagnosed and repaired the motorhome's front screens, "Aqua-Hot" water heater, leveling jacks, and backup camera and claim a refund for these items. The respondent disagrees. It says it diagnosed and repaired the issues according to the relevant "Operation Manual" or "Troubleshooting Procedure" for each of the disputed items. The respondent says that each item performed properly after its repair and when tested in its shop.

17. Based on the invoices in evidence, I accept the respondent's evidence on this point. The invoices were created at the time of the service and describe the performed work and the testing results. However, based on the parties' submissions, emails, and invoices I accept that each of the above items subsequently failed and required further adjustment or repair.

18. The applicants argue that the legal doctrine of "*Res Ipsa Loquitur*" (the thing speaks for itself) applies. The applicants argue that I should find the respondent is negligent because the motorhome's issues persisted despite the respondent's repeated repairs. They assert that the issues were "finally" repaired by themselves, and "Traveland RV" (another repair company). I disagree with the applicants' position.

19. The Supreme Court of Canada in *Fontaine v. British Columbia (Official Administrator),* 1998 CanLII 814, said at paragraph 27, that the legal doctrine of *Res Ipsa Loquitur* has expired. It is no longer a separate component of negligence actions. The law requires that I consider all the circumstances, and weigh the circumstantial evidence with the direct evidence, to determine whether the applicants have established a *prima facie* case of negligence. The legal term "*prima facie*" means a case that appears on its face to have merit. If the applicants establish a *prima facie* case, in practical terms, the burden shifts to the respondent to show it was not negligent. The mere fact that the motorhome's problems

persisted and were later repaired, does not establish a *prima facie* case of negligence.

20. To establish negligence, the applicants must prove the following elements on a balance of probabilities: the respondent owes a duty of care, the respondent failed to meet the applicable standard of care, it was reasonably foreseeable that the respondent's failure to meet the standard could cause the claimed damages, and the failure did cause the claimed damages.

21. I find the respondent owed a duty of care to the applicants to perform its work to the standard of a reasonably competent mechanic. The law does not require perfection.

22. I find the question of whether the respondent competently diagnosed and repaired the above items is outside the knowledge and expertise of an ordinary person. This means that the applicants require expert evidence, such as an opinion from a mechanic, to prove the second element of their negligence claim.

23. The applicants provided no expert evidence that the respondent's work fell below the applicable standard. Without explanation, the applicants also provided no statement from Traveland RV about the respondent's work. Traveland RV's invoice in evidence says nothing about the respondent's work. The applicants have not shown that they themselves have the mechanical expertise to provide an opinion on the above items. Therefore, I put no weight on their assertion that the respondent's work was "improper". For these reasons, I find there is insufficient evidence that any of the respondent's work fell below the standard of a reasonably competent mechanic.

24. I find that the applicants have not proven on a balance of probabilities that the respondent's work on the above items or on any item was negligent. Therefore, I dismiss the applicants' refund claim.

Windshield

25. The motorhome's prior owners undisputedly had the respondent install a new windshield in the motorhome in about 2017. At some point, the windshield developed a crack. The crack is documented in the parties' emails. I have no photographs of the crack and I do not know its size. The applicants assert that the windshield eventually needed replacement because of the crack. The invoice in evidence shows the applicants had the windshield replaced in Arizona by "Auto Boss Glass". The applicants assert that an Auto Boss Glass employee told them that the previous installer incorrectly glued the windshield into the rubber gasket using a "black caulking product". They say the glued windshield could not "float" in its casing and developed a crack when torqued by the leveling jack problem.

26. The respondent says it subcontracted the windshield installation to "Leading Edge Glass". The respondent says Leading Edge Glass would have used caulking to prevent a water leak because of the "climate and conditions" that exist here. It says Leading Edge Glass would not have "glued" the windshield into the casing. It is possible that the black caulking is a product specific to British Columbia weather conditions. However, the respondent provided no statement from Leading Edge Glass and so, I do not know the product or how it was used.

27. On the other hand, apart from their hearsay evidence, the applicants provided no opinion from Auto Boss Glass about the windshield. The applicants did however, submit Auto Boss Glass's invoice with a hand-written note that says "w/s Glued in caused stress crack". The applicants assert that the note was written by Auto Boss Glass's technician who gave them the opinion above. I find it would have been fairly easy to obtain a written statement from Auto Boss Glass confirming the note's author and its opinion on the stress crack. I find that neither the applicants' hearsay statement nor the note meet the rules for expert evidence under tribunal rule 8.3. I find the applicants are missing key information such as the facts that Auto Glass Boss relied on in diagnosing the crack, the technician's qualifications, and their level of inspection. I find the applicants have not met the burden of proof that a faulty

windshield installation caused the crack or that the windshield was negligently installed.

28. I have not discussed the applicants' allegation that the respondent is liable for the cracked windshield because of the leveling jack issue. For the reasons explained above, I find the respondent did not negligently diagnose or repair the leveling jacks.

29. For all these reasons, I dismiss the applicants' windshield replacement claim.

Breakers

30. The applicants claim that the respondent charged them $156.80 in October 2018 to "turn on" breakers. However, the invoices show that the respondent charged the applicants for its work in diagnosing and repairing the air conditioner and tank sensors, not for turning on breakers. The applicants speculate that the air conditioner and tank work was only required because the respondent turned off the breakers during an earlier service. The respondent denies turning off the breakers. The respondent says the air conditioning breakers could have "tripped" (turned off) if the air conditioning unit had frozen or if the motorhome had been plugged into a poor power supply. As for the tank, the respondent says the issue was not a tripped breaker. As shown on the invoice, the tank problem was with the display panel. I find the applicants have not corroborated their assertion that the respondent turned off the breakers or that it caused the above problems. I dismiss the applicants' claimed refund for this work.

Parts and Labour

31. In their submission, the applicants "question" the amount the respondent charged for shop supplies, parts, and labour on each of the 3 invoices in evidence. The applicants say some charges are "unknown" and not well described. I disagree. I find the invoices are well detailed. Each invoice describes the cost of the performed work and the parts for each applicable item.

32. The invoices also include a charge for shop supplies. The applicants speculate that the respondent's shop supplies cost less than the invoiced amount and "question the integrity" of the charge. The respondent says the shop supplies were billed as a percentage of its labour. The applicants paid 3 invoices that included shop supplies. The shop supplies were not raised as an issue in the parties' emails over the years. The evidence does not suggest that the parties agreed the applicants would pay the actual costs. I find it more likely than not that the parties had a mutual understanding that the applicants would pay the respondent's shop supplies on a percentage of its labour.

33. The applicants "question why" the respondent charged them more on the first invoice for a screen adjustment and less on the subsequent adjustments. It is undisputed that the respondent was not familiar with the motorhome or the screen issue prior to the first service. I find it could reasonably take more time to diagnose and repair a novel issue than perform the subsequent adjustments. I find the fact that the respondent charged less for subsequent adjustments suggests its billing was fair.

34. I dismiss the applicants' refund claim for parts and labour.

Fees and Dispute-Related Expenses

35. 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 applicants were unsuccessful in this dispute, I dismiss their claim for tribunal fees and dispute-related expenses. The respondent claimed no dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member