



Civil Resolution Tribunal

Date Issued: April 23, 2020

File: SC-2019-003944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Glasson v. Nelu Anghel (dba J.A. Transmission)*, 2020 BCCRT 439

BETWEEN:

STEPHEN GLASSON

APPLICANT

AND:

Nelu Anghel (Doing Business As J.A. TRANSMISSION)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a transmission repair.
2. The applicant, Stephen Glasson, says the respondent, Nelu Anghel (doing business as J.A. Transmission), failed to adequately repair the transmission in his 2004

Dodge Dakota. The applicant says as a result of the respondent's faulty work, he had to have the entire transmission rebuilt at another shop. The applicant seeks \$3,613.18, the amount he paid the respondent for the repairs, plus \$150.91, the amount he paid to another service shop to replace a leaking transmission cooling hose. The respondent does not deny that the transmission replacement was unsuccessful, but says that he was willing and able to repair the transmission under warranty.

3. The parties are each self-represented.

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* (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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to a refund of \$3,764.09 for a faulty transmission repair, or, whether the applicant should have given the respondent the opportunity to remedy the issues under warranty.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that on March 11, 2019, the applicant took his 2004 Dodge Dakota (truck) to the respondent for a complete rebuild of the transmission. On March 26, 2019, the applicant picked up his truck, and paid the respondent in full. The March 26, 2019 invoice for \$3,613.18 included removing, rebuilding and replacing the transmission, transmission cooler installation and parts, an "o/h kit", torque converter, and solenoid pack. The invoice indicates a 2-year warranty on the transmission.
11. On March 28, 2019, the applicant took the truck to another shop, VM, to repair an unrelated oil leak and replace a gasket. While servicing the truck, VM noted the transmission cooler hose was leaking. The applicant says that to save time from

having to go back to the respondent shop, he paid VM \$150.91 to repair the leak that day, including parts and labour.

12. Over the next few days, the applicant noticed issues with his new transmission. He notified the respondent who told him to bring the truck back in, which he did on April 2, 2019. The respondent says the problem was the solenoid pack. The respondent continued to work on the truck's transmission, unsuccessfully. On April 12, 2019, the applicant decided he had lost confidence in the respondent's work and had his truck towed to another transmission shop.
13. Neither party submitted any expert evidence about the issues with the truck's transmission. However, the respondent does not dispute that the transmission rebuild was unsuccessful, but says he should have been given the opportunity to fix the issues. Therefore, I find the respondent's initial rebuild was faulty.
14. So, the question is whether the applicant was entitled to have the faulty transmission repaired by someone else. Here, I find that he was. Although the respondent says he was not given the opportunity to repair the issues, he indeed had the truck for an additional 10 days after the issues were reported. Additionally, there is no evidence about how long the required repairs were going to take, as the respondent had not yet diagnosed the ongoing issues.
15. In the circumstances, I find it was reasonable for the applicant to have sought advice from other mechanics and ultimately have his truck towed to another service centre for further repairs. The applicant says the repairs took only 3 business days and cost a total of \$4,309.08. The applicant does not seek the cost of the additional repairs, but only the amount paid to the respondent (\$3,613.18) plus the cost of VM's transmission cooling hose repair (\$150.91).
16. Based on the evidence, I find the respondent's transmission repairs were not completed to a satisfactory standard. I find the applicant is entitled to a full refund of the \$3,613.18 he paid to the respondent. I say this because despite giving the respondent the opportunity to correct the issues, the respondent was unable to do

so in a timely manner. In fact, when the applicant had his truck removed from the respondent's shop, the respondent had completely replaced the applicant's original, rebuilt transmission with a spare, used transmission from his shop that was also not functioning. The new transmission shop had to start from scratch and completely rebuild the entire transmission. I find the applicant received no benefit from the money he paid to the respondent for the transmission rebuild and is therefore entitled to a full refund.

17. As for the cooling hose repair, I find this repair was specifically included in the respondent's March 26, 2019 invoice, yet only 2 days after the rebuild was completed, the applicant had to have the hose replaced. The respondent's March 26, 2019 invoice stated that any warranty work must be completed by the respondent, or with the respondent's approval. However, I find it was an implied term of the parties' agreement that the transmission rebuild would be completed in a good and professional manner. The respondent breached this term by failing to adequately repair the transmission. Due to the respondent's breach, the applicant was not obligated to have the repair done by the respondent, or with the respondent's consent. In the circumstances, I find it was reasonable to have VM do the repair, given the relative cost of the repair and that the applicant was already there for service. On balance, I find the applicant is entitled to reimbursement of \$150.91 to repair the transmission cooling hose.
18. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$3,764.09 from April 12, 2019, the date he removed his truck from the respondent's shop. This amounts to \$76.22.
19. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. Tribunal records show the applicant ultimately paid \$175 in fees, and that the parties' respective fees for a default decision that was set aside were refunded. As the applicant was successful, I find

that he is entitled to reimbursement of the paid \$175 he paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

20. Within 30 days of the date of this decision, I order the respondent, Nelu Anghel (doing business as J.A. Transmission), to pay the applicant, Stephen Glasson, a total of \$4,015.31, broken down as follows:

- a. \$3,764.09 in debt for faulty transmission repairs,
- b. \$76.22 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$175 in tribunal fees.

21. The applicant is also entitled to post-judgment interest, as applicable.

22. Under section 48 of the CRTA, 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

23. Under section 58.1 of the CRTA, 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.

Andrea Ritchie, Vice Chair