



Civil Resolution Tribunal

Date Issued: April 30, 2020

File: SC-2019-008818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Glaser v. Valley Fuel Injection Ltd.*, 2020 BCCRT 470

B E T W E E N :

HEINZ WALTER GLASER

APPLICANT

A N D :

VALLEY FUEL INJECTION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Heinz Walter Glaser, says the respondent, Valley Fuel Injection Ltd., installed a faulty exhaust brake on his Ford F350 diesel pickup (truck).
2. The applicant says the exhaust brake repeatedly caused his engine to stall, and in 2017 caused an accident. He says the respondent repaired the exhaust brake in

2019, but it continued to stall the engine. He seeks \$4,413, which includes a refund for the exhaust brake and related repairs, \$300 for his insurance deductible for the 2017 accident, and travel expenses. He also seeks an order that the respondent remove the exhaust brake.

3. The respondent denies that the exhaust brake was defective. It says the truck was experiencing issues unrelated to the exhaust brake, but the applicant did not want it to conduct further tests on the truck.
4. The applicant is self-represented. The respondent is represented by a principal or employee.
5. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
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 or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Is the applicant entitled to a refund for the exhaust brake or the respondent's repair work?
 - b. Is the applicant entitled to compensation for his insurance deductible?
 - c. Is the applicant entitled to an order that the respondent remove the exhaust brake from the applicant's truck?

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. It is undisputed that on June 8, 2010, the applicant purchased an exhaust brake from the respondent and had the respondent install it in his truck.
13. The applicant says the exhaust brake has malfunctioned since he bought it. He says the exhaust brake chokes the engine into stalling. This in turn causes immediate loss of power brakes and power steering. He says this makes it nearly impossible to control the fully loaded truck with a trailer, particularly on hills.
14. The respondent provided a summary of all the work performed on the truck, supported by detailed service records dating back to 2011.
15. Many of the service records do not relate to the exhaust brake and I have not summarized them here. In brief, the applicant complained about the exhaust brake

causing engine stalling and loss of power steering and brakes in May 2011, August 2012, September 2016, and several times between July and September 2019.

16. The respondent's invoices show that in most cases it determined that the truck's problems were unrelated to the exhaust brake. In July 2019 the respondent found a failed exhaust brake valve assembly, which was replaced at the applicant's cost as the warranty expired in 2012. It later found a leak in that valve and, in September 2019, replaced it under warranty at no charge. Often, the respondent adjusted the "back pressure" of the exhaust brake. Although in submissions the applicant questions why the respondent did this, he does not say that it was inappropriate or caused harm.
17. The applicant says the exhaust brake caused an accident in 2017, which I discuss below. He also says in August and September 2019 the exhaust brake continued to fail and he narrowly avoided another accident. He says the "final episode" was a September 2019 partial stall at a traffic light, which caused a great amount of black smoke. The truck had to be towed to the respondent's shop.
18. The September 25, 2019 invoice said the respondent was unable to duplicate the stalling symptoms and found no issues when it inspected the exhaust brake system. The truck did not have any running concerns when road tested, the exhaust brake was not sticking, and the engine was not stalling. A scan of the truck showed 3 "dealer trouble codes" that required further investigation. The respondent says the applicant did not want the respondent to diagnose the issue.
19. The applicant demanded removal of the exhaust brake and refund for the purchase price. The respondent refused.

Refund for exhaust brake

20. In order to succeed in his claim for a refund, the applicant must show that the exhaust brake was faulty or defective and was covered either under the respondent's warranty or an implied warranty.

21. The applicant did not argue that the exhaust brake was covered by the respondent's warranty. I find on the evidence the exhaust brake had a 2-year warranty which expired in 2012.
22. The applicant says the exhaust brake malfunctioned from the start, and specifically in 2011. If that is the case, then his claim for breach of warranty is barred by the *Limitation Act*, which sets a 2-year time limit for bringing breach of contract claims.
23. A second possible warranty is the *Sale of Goods Act* section 18(c) implied term that the exhaust brake would be durable for a reasonable period of normal use.
24. However, I find the applicant's claim for breach of the implied warranty fails for 2 reasons. First, the evidence does not support the applicant's position that the exhaust brake failed or was defective. The invoice evidence indicates the exhaust brake did not fail, other than a valve issue that was repaired. The applicant provided no independent evidence that the exhaust brake was defective to refute the respondent's diagnosis, such as a diagnosis from another mechanic. I discuss below the need for such expert evidence.
25. Second, the applicant led no evidence about the reasonable durability of an exhaust brake. Even if the exhaust brake did fail in 2019, that is 9 years after purchase. I am unable to find on the evidence 9 years is not a reasonable period of durability.
26. For the above reasons, I find the applicant is not entitled to a refund for the exhaust brake.

Refund for repair work

27. The applicant says the respondent failed to identify the issues with the exhaust brake, and instead continued to blame other engine parts.
28. Although the applicant does not use these words, I find his claim is rooted either in negligence or a breach of the implied term in all contracts to perform obligations honestly: see *Bhasin v. Hrynew*, 2014 SCC 71.

29. Proving negligence requires the applicant to show that the respondent owed him a duty of care, the respondent failed to meet the standard of care, it was reasonably foreseeable that failure to meet the standard of care would cause damages, and the failure caused the applicant's damages.
30. In tribunal disputes, like court cases, independent expert evidence is generally required when an issue is outside of the scope of knowledge and expertise of an ordinary person. In cases of professional negligence, an expert can explain the standard of care in a particular industry. The expert can also explain whether certain conduct fell below that standard. I find that whether a competent mechanic ought to have identified a problem with the exhaust brake or taken different steps to repair the truck is outside the knowledge and expertise of an ordinary person. The applicant has not provided another mechanic's assessment of the exhaust brake or the invoices. Therefore, I find that the applicant has not proved that the respondent breached the standard of care of a reasonably competent mechanic.
31. As for breach of the duty of honest performance, the applicant provides an example from August 2019 that he says demonstrates the respondent's dishonesty. He says the respondent advised that his exhaust manifold was beyond repair because of distortion and excessive pitting, and told him he had to purchase a new manifold for over \$800. He told the respondent to wait until he could inspect the manifold. He found the distortion was within grindable tolerance and the pitting was of no concern. He had the manifold ground for \$125 and returned it to the respondent for installation. He says the respondent admitted it did not have the proper fixture to grind the manifold.
32. The respondent did not challenge the applicant's evidence about the exhaust manifold, so I accept it. However, I find it does not demonstrate that the respondent tended to be dishonest. Many customers are not as resourceful as the applicant and may have no interest in taking their manifold to a grind shop and returning it to the respondent to save money. Moreover, there is no connection to the exhaust brake. I

find the applicant has failed to prove a breach of the respondent's duty to honestly perform its obligations.

33. Because I find the applicant did not prove a breach of contract or negligence, I also dismiss the applicant's claim for compensation for travel expenses. The applicant did not explain them or provide receipts, so I would not have awarded travel expenses in any event.

Insurance deductible

34. The applicant says on July 18, 2016, the exhaust brake stalled the engine, cutting power and leading to an accident with \$12,000 repair costs. The damage was covered by insurance and the applicant paid a \$300 deductible. The applicant says the accident could have been deadly.

35. I find the applicant has not proved that the accident was caused by an exhaust brake failure. There is no accident report or independent evidence to that effect. Moreover, as noted above, the September 2016 repair invoice says the respondent found no defect in the exhaust brake, and rather there was a faulty camshaft position sensor. For those reasons, I dismiss this aspect of the applicant's claim.

Removal of exhaust brake

36. The applicant asked for an order that the respondent remove the exhaust brake from his truck. Under section 118 of the CRTA, the tribunal has jurisdiction to resolve claims for relief in the nature of debt or damages, recovery of personal property, and specific performance of an agreement relating to personal property or services. The applicant's requested remedy does not fall within section 118. The tribunal does not have jurisdiction to order injunctive relief (to order a party to do or stop doing something). I therefore decline to grant this remedy, which I would have refused in any event given my conclusions above.

Tribunal Fees

37. Under the CRTA and tribunal rules, as the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees.

ORDER

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

Micah Carmody, Tribunal Member