



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanyi v. Robert Maga (dba NT Machine Shop)*, 2020 BCCRT 492

B E T W E E N :

MELINDA HANYI

APPLICANT

A N D :

ROBERT MAGA (Doing Business As NT MACHINE SHOP)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Melinda Hanyi says the respondent Robert Maga (doing business as NT Machine Shop), negligently rebuilt the engine in her 2001 Honda Prelude (car) resulting in an ongoing oil leak, and caused the car to be damaged while it was in the respondent's care.

2. The applicant claims \$4,119.32 total, broken down as a \$2,296.00 refund for the engine rebuild, plus subsequent repair expenses.
3. The respondent says the applicant's car was leaking oil before the engine rebuild. The respondent says it quoted the applicant \$2,000 to rebuild the engine, with a 1-year warranty or 20,000 km, whichever came first.
4. The respondent says the applicant used incorrect oil on initial start-up and did not have the rebuilt engine installed by a licensed mechanic. Although the respondent says the applicant was outside the terms of the warranty when she returned for further work on the car, the respondent provided work free of charge to try to fix the car's ongoing oil leak. The respondent says this free work was provided without any guarantee given the car's history, age and mileage. The respondent asks that I dismiss the dispute.
5. The parties are each self-represented.

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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Was the respondent negligent in repairing the applicant's car?
 - b. Did the respondent otherwise damage the car while it had possession of it?
 - c. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
12. On May 10, 2018 the applicant's husband, Z, called the respondent for a quote to rebuild the car's engine. According to a 2013 license card the applicant filed in evidence, Z is an automotive service technician.
13. I find that Z reported that the car had 250,000 kilometers on it and was losing lots of oil, despite repeated repair attempts. I make this finding based on the respondent's undisputed evidence and documents showing attempts to repair oil leaks before the May 2018 engine rebuild.
14. The respondent quoted Z \$2,000 to rebuild the car's engine.
15. The parties disagree about the nature of the warranty for the engine rebuild.

16. The applicant submits that the respondent told her that after he rebuilt the engine it would have “no problems” and that “not a drop” of oil would leak. She says the respondent promised her a “fully rebuilt, like new and trouble free, engine”.
17. On the other hand, the respondent says the rebuild was warrantied for 12 months or 20,000 km, whichever came first, subject to certain maintenance being completed on the car. Because the applicant signed a document titled Warranty Conditions that contained these terms, I find these were the terms of the warranty. I make this finding despite the applicant’s submission suggesting that she did not know how the respondent got her signature on the warranty. I find that she signed the document, particularly given that she filed a signed copy of the warranty in evidence, identical to the one filed by the respondent.
18. I find that the respondent would not have offered an unlimited guarantee that the engine would have “no problems” while at the same time providing a document with much more limited warranty terms. As well, I find the offer of a total guarantee unlikely given the car’s age and mileage.
19. On May 14, 2018, the respondent completed an engine rebuild for the applicant’s car. The applicant paid \$2,296.00 for the engine rebuild. At that time, the car’s odometer read 254,656 km.
20. The respondent also says that it installed an oil pan and valve cover on the car at Z’s request but did not charge him. The respondent says this work would normally cost \$500. The respondent says it provided the service without charge because it could not agree to be responsible for ongoing oil leaks given the car’s leak history.
21. To maintain the warranty, among other things, the applicant agreed to complete oil and filter changes at 800 km and every 4,800 km thereafter, or every 2 months, whichever came first. The respondent submitted that the first oil and filter had to be completed at 500 km, but I prefer the evidence from the signed document that the first interval was 800 km. The applicant suggests that Z performed undocumented oil changes that met the warranty’s parameters. I find it unlikely that the applicant

would have relied on undocumented maintenance to maintain a written warranty. Therefore, I rely on the documented oil change records and find that the applicant did not change the car's oil and filter as frequently as the warranty required.

22. After the May 2018 engine rebuild, the car continued to leak oil. The applicant says that her mechanic told her this was due to a leak in the engine's oil pan. It was unclear to me whether the applicant was referring to her husband, Z, or another person who did mechanical work on the car. The only direct evidence filed on this point was a comment in an August 28, 2019 invoice, more than a year later, that the oil pan installation was not "very good" and that silicone was "everywhere." I discuss this evidence further below.
23. The applicant says she repeatedly called the respondent to have the oil issue fixed. The applicant says she dropped off her car at the respondent's shop again on June 22, 2018, but that after picking it up, the engine kept leaking oil and ultimately damaged other parts of her car, including the catalytic converter. I was unable to determine what work was done on June 22, 2018.
24. The applicant says she kept attempting to contact the respondent from July to August 2018 but that the respondent did not pick up her calls or return her messages.
25. On December 13, 2018, the car's odometer read 282,267 km. I find that the applicant had driven over 20,000 km since the engine rebuild and was therefore outside the terms the warranty by this time.
26. The applicant dropped the car off to have the respondent try to fix the oil leak again on August 30, 2018 and January 10, 2019. She says that she then dropped off the car to have the engine taken out "for the 2nd time" on February 4, 2019.
27. On February 4, 2019, based on the respondent's evidence and the applicant's suggestion that the engine was taken out, I find that the respondent rebuilt the engine again, at no charge, applying the warranty to the initial work even though the car was outside the warranty by then.

28. The applicant says the car continued to leak and burn oil. Based on the documents filed in evidence, I accept this evidence and find that Z was also trying to repair the car's oil leak himself.
29. In September 2019 the applicant says she had no choice but to buy another used engine for \$450.00.

Allegation That Car Was Damaged While In The Respondent's Possession

30. One of the applicant's claims is that her car was damaged while in the respondent's possession, as a separate matter from the work completed on it.
31. The applicant went back to pick the vehicle up on February 13, 2019. On pick up, the applicant says she noticed damage as follows:
 - a. scratch on rear passenger side,
 - b. vehicle hood "misaligned",
 - c. cross membrane "bent",
 - d. missing bolt in the oil pan,
 - e. power steering fluid empty, and
 - f. new humming sound while the car idled.
32. Aside from a missing bolt in the oil pan, for which the applicant submitted a photograph, the applicant did not file evidence to prove the other damage she listed was caused by the respondent.
33. I place no weight on the missing bolt photograph, because I do not have evidence about what impact the missing bolt had on the car. That is, there is no expert evidence that the missing bolt caused the oil leak or other claimed damage.
34. I therefore find that that the applicant has not met the burden of proving that these damages were caused by some failure by the respondent.

Negligence Allegation – Repair Work

35. The applicant's primary claim is that the respondent was negligent in repairing her car, causing damages including an ongoing oil leak.
36. Proving negligence requires the applicant to show that: the respondent owed her a duty of care, a reasonable standard of care was not met, it was reasonably foreseeable that failing to meet the standard of care would cause the claimed damages, and the failure caused the applicant's damages. It is undisputed that the respondent owes a duty of care to the applicant.
37. Where a dispute's subject matter is technical or beyond common understanding, it is often necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 129-131. I find that the determination of a reasonable standard for mechanical work in rebuilding a car engine requires expert evidence.
38. The applicant must both prove the standard through expert evidence and demonstrate that the respondent breached that standard. An expert can explain the relevant standard and how the respondent's work fell below that standard. Here, I find that expert evidence would be necessary for the applicant to prove her claims.
39. As discussed below, I find that the applicant has not provided any expert opinion proving the standard of care for an engine rebuild, or that the respondent fell below the standard in rebuilding her car's engine or in its subsequent work.
40. The tribunal's rules explain that written expert evidence must include a statement of the expert's qualifications, which must show that the person is qualified by education, training or experience to give the opinion.
41. I considered the applicant's submission that another machine shop refused to rebuild the newly purchased engine because it knew of the "mistakes" made by the respondent. Because the applicant did not provide evidence from this other machine shop, it is not direct expert evidence and I do not accept it.

42. The applicant also submits that L Machine Shop wrote her “report papers” proving that the engine block was damaged, cylinder head valves needed replacement, a 3rd cylinder and piston were damaged, and that the engine contained damaged threading. I reviewed the applicant’s document titled L Report papers. It shows typed notes of the deficiencies the applicant identified. The list of deficiencies is not signed, nor is there text to indicate that the list was prepared by anyone from L. I find that it is not admissible expert evidence.
43. The applicant also submits that JF at another auto motor shop “noticed all the damage” to the car. She did not file any evidence from JF. Again, this is not expert evidence proving damage to the car caused by the respondent.
44. The applicant filed several photographs of engine components. Based on these photographs alone, without expert evidence to interpret them, I am unable to reach any conclusions about the respondent’s repair work.
45. The applicant submitted a photograph of a diagnostic read out showing that the car had a “Cylinder 1 Misfire”. The applicant did not prove when this reading was taken nor whether it was a reading for the engine the respondent rebuilt. The applicant also did not file expert evidence to explain whether or how a cylinder misfire was caused by the respondent’s repair work.
46. The applicant also filed a video in which someone points to a valve and says “that’s what they should look like”. On this basis, the applicant submits that I should find that the valves in the engine rebuilt by the respondent were not as they should have been. I find that the video is not admissible expert evidence because the person speaking is not identified, has not provided their qualifications, nor can I determine whether they are examining the respondent’s work that is the subject of this dispute.
47. On August 28, 2019, the applicant took the car to a Honda dealership for diagnosis of an oil leak. The mechanic who worked on the car that day noted:

Oil near rear main seal. Recommend starting with doing oil pan gasket, as whomever did the oil pan install did not do a very good job and rtv silicone is

everywhere. If oil leak is still present after pan is resealed then replacing rear main seal required.

48. The Honda dealership provided a \$159.46 quote for an oil pan gasket replacement.
49. Because the Honda record was made more than a year after the initial engine rebuild, and given the evidence that Z and perhaps others were working on the car in the interim, I find that Honda's note does not prove that the respondent fell below an acceptable standard in installing the oil pan. As well, I cannot tell if the Honda mechanic was told that the car was leaking oil before and after both engine rebuilds.
50. The applicant also referred to Z being a mechanic. The tribunal rules state that an expert giving evidence before the tribunal must not advocate for any side in a dispute. I have no written statement from Z. Even if one were provided, I would not accept an expert opinion from Z because he has an interest in the dispute's outcome.
51. Because the applicant has not filed admissible expert evidence, I find that she has not met the burden of proving that the respondent breached the standard of care of a reasonably competent mechanic in the work completed on her car.
52. Even if the applicant had proven that the respondent was negligent, I find that she did not prove her claimed damages. I say this because, based on the auto parts invoices filed in evidence, \$794.05 of her claimed parts costs were for parts purchased in 2011 and 2013, before the respondent rebuilt her car's engine. She also claims \$484.38 for parts and work done on the car before the respondent first rebuilt the engine in May 2018.
53. As well, several of the invoices were for items unrelated to the engine. The applicant did not file any expert opinion to prove that an oil leak caused these damages. For example, the applicant claimed for an alternator, automatic transmission fluid, front brake rotors, wheel nuts and labour to fix the brakes, a cabin air filter, a timing belt with water pump, a catalytic converter and rear brake pads. Based on the invoices, I calculate that the applicant claims for over \$2,000 in

repairs unrelated to the oil pan or oil leak. I have also found that she is not entitled to a refund for the \$2,296 she paid to have the engine rebuilt, because she has not proven that the rebuild was negligent or deficient.

54. For these reasons, I dismiss the applicant's claims.
55. 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. The respondent was the successful party but did not pay tribunal fees and did not claim dispute-related expenses. I make no order for them.

ORDER

56. I dismiss the applicant's claims and this dispute.
57. 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.

Julie K. Gibson, Tribunal Member