



# Civil Resolution Tribunal

Date Issued: May 7, 2020

File: SC-2019-009835

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chima v. Abbotsford Chrysler Dodge Jeep Ram Ltd.*, 2020 BCCRT 502

B E T W E E N :

JESSIE CHIMA

**APPLICANT**

A N D :

ABBOTSFOD CHRYSLER DODGE JEEP RAM LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant Jessie Chima says the respondent Abbotsford Chrysler Dodge Jeep Ram Ltd. was negligent in repairing his 2014 Dodge RAM 1500 (truck). The applicant says the respondent returned the truck with a missing engine cover and an oil leak, and later broke the coolant reservoir cap, contrary to the respondent's "Drive Home Happy Guarantee".

2. The respondent admits it forgot to replace the truck's plastic engine cover. The respondent agrees that the applicant is entitled to benefits for one "Drive Home Happy Guarantee" because its technician forgot to replace the cover. The respondent says the value of the benefits under the guarantee is \$346.39.
3. The applicant brought the truck back to the respondent after noticing oil in his coolant reservoir. During that service the applicant says the respondent broke the coolant reservoir cap and made him pay to replace it. The respondent disagrees, saying the cap was seized to the bottle and had to be broken to access the coolant reservoir. The respondent says the applicant is not entitled to a second "Drive Home Happy Guarantee" because there was no staff failure and the oil contamination issue was unrelated to its earlier repair work.
4. The applicant claims \$1,745.91 broken down as \$405.37 each for 2 loaner vehicle rentals, \$201.60 each for 2 car washes, \$251.99 each for 2 oil changes, and 1 payment of \$27.99 for a replacement coolant reservoir cap.
5. The respondent asks that I dismiss the claim for the oil leak and coolant reservoir cap.
6. The applicant is self-represented. The respondent is represented by business contact MS.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. 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**

11. The issues in this dispute are:
  - a. Was the respondent negligent in the crank sensor and tone ring repair to the applicant's truck?
  - b. Was the respondent negligent in assessing the oil coolant issue on the applicant's truck?
  - c. Is the applicant entitled to 2 loaner cars, oil changes, car washes, and vehicle pick up benefits and 1 coolant cap under the "Drive Home Happy Guarantee" for his November and December 2017 appointments with the respondent?
  - d. What remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

12. 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.

13. The respondent's website advertises a "Drive Home Happy Guarantee" . The guarantee says that if a customer brings in a vehicle and returns home to find that the booked repair is incomplete, the respondent will pick up the vehicle, provide a replacement vehicle while repairs are completed, conduct a "thorough check", clean the vehicle, and provide the next oil change for free.
14. On November 23, 2017, the applicant's truck lost power and its throttle light came on. The applicant had the truck towed to the respondent's shop for repair.
15. The respondent repaired the crank sensor and tone ring on the truck under warranty.
16. On December 1, 2017, the applicant emailed the respondent's service advisor to say that his engine cover was missing.
17. On December 10, 2017, the service advisor emailed to say that a new engine cover had been ordered because the engine cover could not be located at the shop.
18. On December 15, 2017, the applicant brought his truck back into the respondent's shop because he noticed a black sludge in his coolant tank. At the time, the applicant knew the replacement engine cover had yet to be delivered to the respondent's shop.
19. The respondent recommended replacing the oil cooler. The oil cooler functions to remove excess heat from engine oil. Sometimes when an oil cooler fails, engine oil appears in the cooling system. The applicant did not authorize an oil cooler replacement but left his truck at the respondent's shop for some limited diagnostic work until December 19.
20. On December 18, 2017, the engine cover arrived, and the respondent installed it.
21. On December 19, 2018, the applicant picked up his truck. The respondent had installed the engine cover, cleaned out the coolant reservoir, topped up the coolant, and re-pressure tested the radiator, which revealed no signs of leaking or bypass.

### ***Law re: Negligence and Expert Opinion***

22. Proving negligence requires the applicant to show that: the respondent owed him 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 customer.
23. Where a dispute's subject matter is technical or beyond common understanding, it is necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find that the determination of a reasonable standard for mechanical work on the truck, and whether the respondent met that standard, requires expert evidence.
24. 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. I find that the applicant's evidence of a "how to" article from the internet and excerpts from online user forums about a mechanical issue do not meet the criteria for admissible expert evidence.
25. As discussed below, I find that the applicant has not provided any expert opinion proving the standard of care for work on the truck, nor that the respondent fell below the standard.

### ***Alleged Negligence re: Repair of Tone Ring and Crankshaft***

26. In his Dispute Notice, the applicant alleged that the respondent was negligent in repairing the tone ring and crankshaft on his truck, and that the respondent's negligence caused the truck's oil cooler problem.
27. However, in submissions, the applicant concedes that the November 2017 tone ring and crankshaft repairs are "not connected" to the oil cooler issue. I find they were unrelated issues.

28. Based on the applicant's concession and given that no expert evidence was filed to prove that the respondent's tone ring and crankshaft repair was negligent, I dismiss this claim.

***Alleged Negligence re: Failure to Identify Oil Cooler Problem***

29. The applicant says the respondent was negligent in failing to identify the oil cooler problem in his truck at either the November 2017 or December 2017 appointments. The applicant says there were "obvious signs the Oil Cooler was failing."

30. The applicant submits that the inspection included at the November 2017 visit should have revealed that there was oil in the truck's coolant tank. I have found that the truck was booked for a different repair, unrelated to the coolant tank.

31. The applicant did not file expert opinion that the oil cooler problem should have been identified by the respondent.

32. As well, the problem was not diagnosed fully until December 2018. While the applicant says this was because the respondent wrongly cleaned out the "black sludge" from his coolant tank, he did not provide expert opinion to prove that doing so was negligent or delayed the diagnosis of the oil cooler issue. I also have no expert evidence to prove the applicant's assertion that the respondent was negligent or "dangerous" in adding coolant to his tank in December 2017.

33. The applicant says that the respondent broke his coolant reservoir cap and then charged him to replace it. The applicant did not prove the reservoir cap broke due to negligence. The applicant also did not prove that the cap was in "perfect working condition" beforehand. The applicant filed photographs of the cap, but it was unclear when these were taken. I find the applicant has not proven this aspect of his claim.

34. For these reasons, I dismiss the claim that the respondent was negligent in its repair work on the oil cooler problem.

***“Drive Home Happy Guarantee”***

35. The applicant submits that because he did not “drive home happy”, the respondent should give him certain benefits for both his November and December visits to their auto repair shop.
36. The “Drive Home Happy Guarantee” does not apply whenever the customer is unhappy for any reason. I find that it only applies when a repair is left incomplete.
37. Here, I find that the November 2017 appointment was to address the throttle light and loss of power. When the applicant arrived home, he discovered that his engine cover was missing. The respondent admits this repair was incomplete and that it failed to provide benefits under the “Drive Home Happy Guarantee”. Because having the cover replaced would require a 1-day appointment, under the guarantee I find that the applicant was entitled to vehicle pick up, a loaner vehicle, car wash and a future complimentary oil change.
38. I find that the guarantee does not apply to the December 2017 visit where the applicant says he left unhappy because the precise problem with his coolant tank had not been identified. I say this because the applicant turned down further work on the truck. Among other things, he declined to have the engine cooler replaced. I find that the applicant did not permit a sufficient scope of work to fully address the problem. In the circumstances, I find the respondent provided complete service per the applicant’s request.
39. I find that the applicant was entitled to one set of benefits under the Drive Home Happy Guarantee, not two. Since the parties agree the benefits were not provided, I turn to the question of placing a value on them.
40. Because the oil change, staff pick up and car wash would have been performed in house by the respondent, I prefer the respondent’s evidence as to their value.
41. I find that the guarantee did not specify the class of replacement vehicle, but only a replacement vehicle. In one email, the respondent’s employee EB wrote that

“Chrysler Guidelines” specified a maximum of \$40 per day rental assistance. The “Chrysler Guidelines” were not filed in evidence. I find this does not apply to the applicant’s situation with the guarantee. The guarantee did not limit the dollar amount of rental assistance. Since a customer may need a particular class of replacement, I find the applicant’s claim for a rental truck reasonable.

42. The evidence is that the truck could be driven without the engine cover, and that cover replacement would only have taken one day. For these reasons, I decline to order the applicant’s claimed \$405.37 for a 5-day loaner vehicle. For a replacement truck for one day, on a judgement basis and extrapolating from the 5-day rental quote the applicant provided, I find \$150 would cover the rental cost.
43. I find that the respondent owes the applicant \$346.39, being the respondent’s value for a loaner vehicle (\$150), staff pick up (\$16), complimentary oil change (\$162.39) and car wash (\$18), to fulfil the guarantee.
44. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$346.39 from December 18, 2019 the date of the truck service pick up to the date of this decision. This equals \$2.61.
45. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

## **ORDERS**

46. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$474.00, broken down as follows:
  - a. \$346.39 for the benefits required by the guarantee,
  - b. \$2.61 in pre-judgment interest under the *Court Order Interest Act*, and



c. \$125 tribunal fees.

47. The applicant is entitled to post-judgment interest, as applicable.
48. 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.
49. 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.

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Julie K. Gibson, Tribunal Member