



Civil Resolution Tribunal

Date Issued: May 8, 2020

File: SC-2019-008826

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Currie v. Nissan Canada Inc*, 2020 BCCRT 508

BETWEEN:

DARLENE CURRIE

APPLICANT

AND:

NISSAN CANADA INC. and APPLEWOOD NISSAN INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Butch Bagabuyo

INTRODUCTION

1. This dispute is about warranty coverage for a transmission repair.
2. The applicant, Darlene Currie, says that on May 7, 2013 she bought a used 2013 Nissan Sentra from the respondent, Applewood Nissan Inc., (Applewood). Over 6 years later, on August 2, 2019, her car had stopped accelerating so she had it

towed to Applewood's service shop for diagnostics. Applewood informed her that it was a transmission problem.

3. The applicant wants the respondents, Applewood, and the car's warranty provider Nissan Canada Inc., (Nissan), to cover the transmission repair under her vehicle's warranty. She said the warranty should apply because the car has less than 100,000 kilometers and is only 6 years old. The applicant seeks \$4,263.11 from the respondents for transmission repairs.
4. Applewood says it did not sell the vehicle to the applicant, so it is not liable. Nissan says the applicant's warranty expired on April 1, 2018, and her transmission failed in August 2019. So, Nissan says her vehicle is no longer covered under a warranty.
5. The applicant is self-represented. The respondents are each represented by an employee.

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. In this dispute, 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 find that an oral hearing is not necessary, and 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.

ISSUE

10. The issue in this dispute is whether the applicant's vehicle is under warranty and if so, must the respondents pay \$4,263.11.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, the applicant must prove her claim, on a balance of probabilities. While I have read and considered all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. As noted above, the applicant says that she bought a used 2013 Nissan Sentra from Applewood on May 7, 2013. The applicant did not provide any receipts or documentary evidence relating to the purchase of her vehicle. The applicant also did not explain why she was not able to provide these documents.
13. In response, Applewood says that it did not sell the 2013 Nissan Sentra to the applicant. It says that the applicant bought her car from PPN, which is a separate and different dealership. So, Applewood says it cannot comment on the purchase and sale transaction. Applewood says based on the year of the applicant's vehicle,

the applicant's warranty would have been in effect only until April 1, 2018, which Nissan later confirmed in evidence.

14. Applewood also says that it only diagnosed the problem when the applicant's vehicle was towed to its shop. Applewood says it did not repair the transmission and it did not sell or provide the applicant with a manufacturer's warranty when she bought her car because she bought it elsewhere.
15. In effect, the applicant says she bought her car from Applewood and Applewood says she bought it from another dealer called PPN. I find this situation creates an evidentiary tie. The applicant bears the burden of proof in this dispute, and I find that the applicant has not met that burden. Thus, I dismiss the applicant's claim against Applewood.
16. Nissan says that it is an independent entity from Applewood. Nissan also says that the applicant's implied warranty claim is without merit and should be dismissed. It says that the manufacturer's warranty of the applicant's vehicle was valid for 5 years or 100,000 kilometers, whichever comes first. The applicant's transmission problem occurred in August 2019. Since the applicant's vehicle was no longer under warranty, Nissan says that it has no liability under its warranty.
17. Nissan provided a copy of the manufacturer's warranty. Upon review of the evidence, I find that the duration of the applicant's warranty that covers her transmission is "60 months or 100,000 kilometers (whichever comes first)." So, I find that the applicant's warranty expired in April 2018, more than a year before her transmission problem in August 2019.
18. The applicant says that her odometer was only 86,522, so she asked the respondents to cover her transmission repair under her vehicle's warranty. The applicant says her warranty is up to 100,000 kilometers, and given the reported transmission problems of similar vehicles, the respondents should extend her warranty to up to 200,000 kilometers or 10 years. The applicant submitted printouts from online news clippings about transmission problems. The clippings included a

reported settlement of a California case. It also included an article where an extension of the warranty period was considered a solution.

19. I find the news clippings are not relevant because they do not prove that the applicant obtained or is entitled to a further extended warranty coverage.
20. I have also considered the application of the *Sales of Goods Act (SGA)* but given my findings that Applewood did not sell the vehicle, I find the SGA is not applicable. Nissan's involvement is limited to the express warranty which above I have found expired before the transmission problem arose in 2019.
21. As mentioned earlier, the duration of the applicant's warranty that covers her transmission was for 5 years or 100,000 kilometers, whichever comes first. Even though the applicant's car had less than 100,000 kilometers, the warranty terms were "whichever comes first", and 5 years had occurred. Therefore, I find that the applicant has no right of claim under her vehicle's warranty against the respondents, and each of them.
22. Given my conclusions above, I find that the applicant's warranty does not cover the applicant's transmission repairs in 2019 because her warranty period expired in April 2018. Given this, I do not need to address whether the applicant's car was properly and adequately kept.
23. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful, I find she is not entitled to be reimbursed for tribunal fees or dispute-related expenses. The successful respondents did not pay any fees or claim expenses.

ORDER

24. I order the applicant's claims, and this dispute, dismissed.

Butch Bagabuyo, Tribunal Member