



Civil Resolution Tribunal

Date Issued: May 25, 2020

File: SC-2019-010875

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. Vantage Power Sport and Marine Inc.*, 2020 BCCRT 565

BETWEEN:

LORAINE PEARSON

APPLICANT

AND:

VANTAGE POWER SPORT AND MARINE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Butch Bagabuyo

INTRODUCTION

1. This is a dispute over repairs to a 1998 Yamaha Kodiak ATV (ATV).
2. The applicant, Loraine Pearson, says she paid the respondent, Vantage Power Sport and Marine Inc., to diagnose and repair her ATV's starting and backfiring

issues. The applicant says the respondent did not properly diagnose and fix her ATV issues. The applicant seeks a \$1,261.52 refund from the respondent.

3. The respondent denies the applicant's claims. The respondent says that it properly diagnosed and addressed the applicant's ATV issues. As such, it says it is not responsible for the applicant's on-going ATV maintenance issues.
4. The applicant is self-represented. The respondent is represented by its principal, DT.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, 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 decided that an oral hearing is not necessary, and I can fairly hear this dispute through written submissions.
7. 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.

8. 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

9. Did the respondent fail to diagnose and repair the applicant's ATV properly, and if so, must the respondent refund the \$1,261.52 repair cost?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove her claim, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The applicant took her ATV to the respondent for diagnosis and repair due to starting and backfiring issues. The respondent replaced the CDI unit and the stator, which are components of the ATV's ignition system. The applicant says her ATV continued to have starting and backfiring issues even after the repair. The applicant says that from November 2017 to September 2018, she brought her ATV back to the respondent for repairs on at least 4 occasions, for the same issues. The respondent disagrees, and it says that the ATV issues were due to different causes, including fuel flooding, over choking, spark plugs, stator and CDI, coil, and battery.
12. The applicant dropped off her ATV for the first time on December 5, 2017 for repair due to backfiring and starting issues, and the respondent replaced a failing fuel line and cleaned its carburetor. The respondent also changed the oil and filter. The respondent says that the applicant returned on February 1, 2018 saying that her ATV was still having backfiring and starting issues. The respondent says that it diagnosed a fuel leak, an old gasket, and a weak stator and CDI unit. The applicant

chose a cheaper aftermarket stator and CDI unit instead of the more expensive original equipment manufacturer or OEM parts that it recommended. The respondent installed the aftermarket stator and CDI unit to the applicant's ATV. After testing, the respondent returned the ATV to the applicant.

13. The applicant returned on April 3, 2018 and complained of backfiring issues again. The respondent diagnosed the issue and replaced a weak coil and battery. On October 31, 2018, the applicant brought her ATV with starting issues again. The respondent tested the ATV and found that it easily flooded when over-choked. So, the respondent simply advised the applicant not to over-choke when she starts her ATV.
14. Sometime in September 2018, the applicant says she asked the respondent to repair her ATV's starting and backfiring issues, which she claims was already paid for in the past. The applicant says the respondent did not want to work on her ATV because it did not know what to do with it anymore. The respondent disagrees and says it only told the applicant that it did not feel comfortable doing more repairs since the repair costs were going to be more than the \$1,000 value of her ATV that was over 20 years old.
15. In March 2019, the applicant took her ATV to another repair shop, Kelowna Yamaha & Marine (KYM). The applicant says KYM confirmed to her that the CDI unit and the stator were not working and needed replacement. While at KYM, the applicant phoned the respondent for one final opportunity to repair her ATV, but she says that the respondent refused and told her to have KYM fix it instead. The applicant says KYM told her the faulty CDI and the stator caused her on-going ATV issues. The applicant says her ATV now starts and runs fine since KYM repaired it.
16. The respondent says that when it learned that KYM replaced the CDI unit and the stator, it contacted its supplier to see if there was any warranty left on the parts to help the applicant out, but its supplier said no because it had been over 12 months already.

17. I turn to the applicable law. To establish negligence, the applicant must prove the following elements on a balance of probabilities: the respondent owes a duty of care, the respondent failed to meet the applicable standard of care, it was reasonably foreseeable that the respondent's failure to meet the standard could cause the claimed damages, and the failure did cause the claimed damages.
18. I find the respondent owed a duty of care to the applicant to perform its work to the standard of a reasonably competent mechanic. The law does not require perfection.
19. In claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence. (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside of the knowledge or expertise of an ordinary person. I find that in this dispute, expert evidence is necessary to prove that the respondent's work fell below the standard of a reasonably competent mechanic.
20. However, the applicant did not provide any expert evidence that the respondent's work fell below the applicable standard. The applicant says that KYM did not want to get involved, as her explanation for why she did not submit a written statement from KYM. As noted above, the burden of proof is on the applicant, and so to succeed she must prove negligence or breach of contract. The applicant provided KYM's June 28, 2019 invoice, which shows that the CDI unit and the stator were replaced because they were faulty. The respondent did not dispute that the CDI unit and the stator that it installed failed. The respondent says the parts it recommended were OEM parts, but the applicant opted for the cheaper aftermarket parts. It also says that the warranty for the parts had lapsed already because it has been more than a year. I find that KYM's invoice does not in and of itself establish that the respondent was negligent. I find that it is equally possible that these parts failed because they were aftermarket parts instead of the OEM parts that the respondent recommended.
21. I also find that when KYM replaced the CDI unit and the stator, it was already 16 months since the respondent installed them. I find that the passage of over a year

means I cannot conclude that the respondent's work was faulty in the absence of expert evidence. The applicant has not shown that she has the mechanical expertise to provide an opinion on the above items. Therefore, I put no weight on her unsupported assertion that the respondent's work was sub-standard. For these reasons, I find there is insufficient evidence that any of the respondent's work fell below the standard of a reasonably competent mechanic.

22. In summary, I find that the applicant has not proven on a balance of probabilities that the respondent's diagnosis and repair work was negligent or a breach of contract. Therefore, I dismiss the applicant's claims.
23. 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. Since the applicant was unsuccessful in this dispute, I dismiss her claim for tribunal fees. The respondent claimed no fees or dispute-related expenses.

ORDER

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

Butch Bagabuyo, Tribunal Member