



Civil Resolution Tribunal

Date Issued: June 3, 2020

File: SC-2020-000315

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Salem v. Volkswagen Group Canada Inc.*, 2020 BCCRT 612

B E T W E E N :

AIMEN SALEM and BOSHRA ZORCANI

APPLICANTS

A N D :

VOLKSWAGEN GROUP CANADA INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about damage to a vehicle's glass sunroof. The applicants, Aimen Salem and Boshra Zorcani, own a 2016 Volkswagen vehicle. The applicants say the vehicle's sunroof "exploded" and cost them \$5,923.82 to repair. They say the respondent, Volkswagen Group Canada Inc. (VWC), owes them for the repairs, because the sunroof was defective and should have been covered under VWC's

warranties. The applicants claim \$5,000, the maximum Civil Resolution Tribunal (tribunal) small claim amount.

2. VWC says it did not design or manufacture the vehicle, that it is unaware of any defect in its sunroof, and that the sunroof damage is not covered under a warranty. So, VWC says it owes nothing.
3. Aimen Salem represents the applicants. VWC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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.
5. 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 only, as there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. 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

8. The issue in this dispute is whether VWC is responsible for the applicants' broken sunroof, and if so, how much does VWC owe?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. The applicants say they were driving in their vehicle one day in December 2019 when its glass sunroof "exploded," mostly outward, for no apparent reason. The applicants say they initially thought it might have been struck by a rock, although they say that seems unlikely. Later, after reading information on the internet, the applicants say they came to believe the sunroof broke because it was defective. A January 17, 2020 invoice showed the applicants paid \$5,923.82 to replace and repair the damaged sunroof.
11. I find none of the evidence shows why the applicants' sunroof broke. My reasons follow.
12. The repair invoices submitted by the applicants do not say why the sunroof broke. The applicants submitted a copy of an article from the internet about the cause of "exploding" sunroofs generally. Without citing any sources, the article said some types and years of vehicle had been recalled by "Volkswagen Group" for defective auto glass. However, the article did not say that the applicants' model and year of vehicle, or their specific vehicle, had defective glass. So, I place no weight on that article. The applicants also submitted a copy of a web page from a law firm in the United States, stating that a class action lawsuit had been filed against "Volkswagen," alleging that certain vehicle models had sunroofs that were prone to shattering. That web page copy cited no sources and identified no supporting

evidence. So, I place no weight on the web page copy or the unspecified allegations in the United States.

13. The applicants say they attempted to get an expert opinion about the cause of the sunroof damage. The applicants say they had already replaced the sunroof, and only had video evidence of the damage, so the experts did not feel comfortable providing an opinion that the damage was caused by a manufacturer defect. According to the applicants, these unidentified “experts” said such sunroof damage was most often caused by an “outside influence,” and can also occur when there is a scratch in the sunroof and a temperature change. I place no weight on these statements, as there is no evidence that a properly qualified expert made them. That said, I find these alleged statements would tend to disprove the applicants’ claim that the sunroof damage was caused by a manufacturer defect, as opposed to a road hazard or other physical damage.
14. VWC says, and the applicants do not deny, that VWC does not manufacture or sell vehicles to individuals, but that it imports vehicles and distributes them to Canadian dealerships. On balance, I find that VWC did not design or manufacture the applicants’ vehicle, but that it distributed the vehicle to the dealership where the applicants later purchased it. The dealership is not a party to this dispute. VWC says there is no proof that the applicants’ vehicle was defective or unfit when the dealer sold it to the applicants in 2016, and on the evidence before me, I agree. Further, the applicants have not explained why they think VWC is liable for selling an allegedly defective vehicle, rather than the dealership who sold the vehicle or the manufacturer who designed and built the vehicle.
15. The applicants admit that the vehicle was approximately 3.5 years old, and had been driven approximately 61,000 kilometres, when the sunroof damage occurred. I find the vehicle had been driven a significant distance and length of time when the sunroof broke, and that it is likely the sunroof had experienced normal wear and tear during that time.

16. Having considered the evidence, I find the applicants have not proven that their vehicle's sunroof damage was caused by defective manufacturing or design. Even if I had found the damage was caused by such a defect, I would have found the applicants failed to prove that VWC was or ought to have been aware of such a potential defect in the applicants' vehicle, so VWC is not liable for the damage.
17. The applicants also say VWC should have covered the broken sunroof under VWC's warranty. VWC provided a warranty document, which the applicants do not deny applies to their vehicle. The VWC warranty says, "this limited warranty does not cover glass breakage, unless due to a defect in manufacturers material or workmanship" (quote reproduced as written). The damage here is a broken glass sunroof, and I find the applicants have failed to prove there was any defect in the material or workmanship of the sunroof. So, I find this warranty does not cover the sunroof damage.
18. The applicants say they also purchased an "extended appearance warranty" that covers the sunroof damage. VWC says the applicants purchased an "Appearance Protection" option, but that it did not cover sunroof glass damage. There is no "appearance" warranty in evidence. So, I find the applicants have not proven the terms of an appearance warranty, or that sunroof damage was covered under it.
19. I note that implied warranties under the *Sale Of Goods Act* do not apply to VWC, because I find VWC did not sell the vehicle to the applicant. As a result, I find the evidence fails to prove that VWC is liable for the sunroof damage under any warranty.
20. Next, VWC takes issue with the applicants' submission that VWC offered them a "goodwill" settlement, which the applicants refused. VWC says settlement discussions were conducted "without prejudice," so the tribunal should not consider them. It is not clear whether the alleged settlement offer was made before or during the tribunal process. I note that Rule 1.11 prohibits parties from disclosing, during the tribunal decision process, discussions, negotiations, and other communications made attempting settle claims by agreement in the tribunal process.

21. I find there is no evidence before me supporting the applicants' submission that VWC offered an amount in settlement. Even if a settlement had been offered, the offer was withdrawn, as VWC now seeks dismissal of the applicants' claims. In any event, I do not consider such an alleged settlement offer to be an admission of liability by VWC in these circumstances. So, I find it is unnecessary to consider whether VWC made such an offer, and I place no evidentiary weight on the existence of a settlement offer.

22. Overall, I find the applicants have not met their burden of proving that VWC is responsible for the damaged sunroof because of known manufacturing and design defects or under a warranty. I dismiss the applicants' claims.

TRIBUNAL FEES AND EXPENSES

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. The applicants were unsuccessful, so they are not entitled to reimbursement of any fees. The successful respondent paid no fees. No expenses were claimed.

ORDER

24. I dismiss the applicants' claims, and this dispute.

Chad McCarthy, Tribunal Member