



Civil Resolution Tribunal

Date Issued: September 8, 2020

File: SC-2020-003418

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dead Level Construction Group Ltd. v. Southern Glass Ltd.*, 2020 BCCRT
1003

B E T W E E N :

DEAD LEVEL CONSTRUCTION GROUP LTD.

APPLICANT

A N D :

SOUTHERN GLASS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a windshield. The applicant, Dead Level Construction Group Ltd. (Dead Level), claims that the respondent, Southern Glass Ltd. (Southern), did not properly install a windshield on Dead Level's vehicle. Dead Level says the alleged poor installation caused a water leak. Dead Level says Southern refused to

fix the windshield and claims \$5,000 for the cost of resealing the windshield, lease and insurance costs, and car rental expenses.

2. Southern denies it is responsible for any costs Dead Level incurred. It says that it did not know about the leak until after a third party had resealed the windshield. Southern says this voided its warranty.
3. The parties are each represented by their employees.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
6. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether a water leak in Dead Level's vehicle was caused by an improperly installed windshield and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

9. In this civil claim, as the applicant, Dead Level bears the burden of proof on a balance of probabilities. I only refer to the evidence and submissions below as I find necessary to provide context for my decision.
10. The parties agree Southern replaced the windshield on Dead Level's 2018 GMC Yukon (vehicle) on July 29, 2019 and Southern provided a warranty for its work. According to Southern's warranty:
 - a. The replacement glass was warranted against defects in "material and workmanship" as long as the original customer owned the vehicle,
 - b. Breakage or damage from vandalism, theft, acts of God, or if "self-inflicted" voided the warranty,
 - c. If there was any defect other than due to the owner's negligence, Southern would supply and install all necessary parts free of charge, and
 - d. The sealing of any "unit" was guaranteed except if leaking is due to body deterioration. I infer "unit" meant windshield. Southern did not explain the meaning of "body deterioration".
11. Southern's warranty did not state whether work done by another technician or mechanic voided it.
12. Dead Level says once the rainy weather started in October 2019, water leaked into the vehicle and onto the driver's legs and feet. It says it did not initially associate the leak with the windshield. Dead Level says it took the vehicle to a third party service centre, BW, to determine the cause of the leak. Dead Level says initially BW's

technician thought the water was coming from the sunroof or the antenna and performed some repairs but the leak continued. Dead Level says once the technician discovered the windshield had been replaced, they tested the windshield and found that was the source of the leak. Dead Level also says BW's technician advised it to return to Southern to have the leak fixed.

13. Dead Level says it tried to contact Southern on February 10, 12, and 18, 2020, but Southern first denied there was a leak, and then stated the warranty on the windshield was void because BW had inspected it. Dead Level says BW removed the windshield and found a 6 inch gap that was not sealed. Dead Level says BW resealed the windshield on March 2, 2020, which stopped the leak.
14. Southern says Dead Level did not inform it about the leak until after BW resealed the windshield and so Southern was unable to determine whether there was a leak. Southern says it tested the windshield after BW resealed it and did not find any leaks. Southern says although its work was under warranty, the warranty was void since BW removed the windshield to inspect it.
15. Based on BW's January 29, 2020 invoice and work orders I find BW tested and resealed the windshield on January 29, 2020, not March 2, 2020. I also find on March 2, 2020 BW replaced the windshield for an unrelated rock chip. This means Dead Level did not contact Southern until after the windshield had been resealed.

Was the leak caused by the windshield?

16. The burden is on Dead Level to prove the alleged defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 24). Where the subject matter is technical, or beyond common understanding, it often necessary to produce expert evidence to determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283). I find whether the windshield was the source of water leaking directly onto a driver's legs and feet, is technical and beyond common understanding. So, I find expert evidence is necessary in this dispute.

17. Dead Level submitted 8 black and white photographs that showed close ups of the vehicle's windshield frame, the windshield, and of the vehicle's footwell. Based on these photographs alone, without expert evidence to interpret them, I am unable to reach any conclusions about Southern's work.
18. Dead Level also provided a copy of BW's January 29, 2020 invoice and a 5 page "work order" document which I infer was also from BW. The work order stated that on January 29, 2020 BW conducted a bubble test where it applied soapy water on the left edge of the windshield and using an air gun, found bubbles were forming, which indicated a leak. The work order also stated that upon removing the windshield, BW discovered a 6 inch area that was not sealed. I find the work order does not meet the requirements of expert evidence under the CRT rules. Even if it did, I find the work order does not state that the windshield was improperly installed or not properly sealed.

Sale of Goods Act

19. Dead Level also alleges that Southern breached section 18 of the *Sale of Goods Act*. Section 18 states that goods supplied under a contract of sale carry an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and all of the surrounding circumstances of the sale. Again, I find expert evidence is required to determine the durability of a windshield and whether the water leak was caused by the windshield.
20. I dismiss Dead Level's claims. Since the claims are dismissed, I do not need to address whether the warranty was voided nor do I need to address Dead Level's claimed damages.

ORDER

21. I dismiss Dead Level's claims and this dispute.

Rama Sood, Tribunal Member