



Civil Resolution Tribunal

Date Issued: September 10, 2020

File: SC-2020-003443

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Silva v. KD Gold Enterprises Ltd.*, 2020 BCCRT 1017

BETWEEN:

JUAN SILVA

APPLICANT

AND:

KD Gold Enterprises LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about repairs to a 2003 Audi.
2. The applicant Juan Silva says the respondent, KD Gold Enterprises Ltd. (KD), did repair work on his 2003 Audi (car), causing damage to its transmission. Mr. Silva claims \$5,000 for this damage.

3. The respondent KD denies damaging the car. KD says all auto services were completed satisfactorily. KD asks me to dismiss the dispute.
4. Mr. Silva represents himself. KD is represented by its principal Kevin Goldsbury.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

ISSUES

9. The issue in this dispute is whether KD's repair services caused the claimed \$5,000 damage to Mr. Silva's car.

EVIDENCE AND ANALYSIS

10. In this civil claim, as the applicant Mr. Silva bears the burden of proof on a balance of probabilities. This means that Mr. Silva must prove that it is more likely than not that KD provided substandard service or otherwise damaged his car, causing his claimed damages. For the reasons given below, I find that Mr. Silva has not met this burden.
11. On July 28, 2018, Mr. Silva bought the car. At that time Matrix Auto Repair inspected the car and reported that it was in “good” condition. The car’s odometer read 126,732 kilometers.
12. On August 20, 2018, Mr. Silva brought his car into Midas on Willingdon in Burnaby (Midas Willingdon) for a cooling system flush. I find that Midas Willingdon is a business name for KD.
13. Mr. Silva says that Midas Willingdon failed to refill the coolant during the service.
14. On November 14, 2018, Mr. Silva brought the car back to Midas Willingdon. Midas completed a premium oil change service for \$129.16. I find that coolant was checked and reported to be “good”. The odometer was 131,058 km. I mention the odometer readings to show 15-year-old car had significant mileage on it.
15. Mr. Silva says that after the November 2018 oil change, his car’s check engine light came on, and that he noticed the mud guards and splash guards were not attached as they had been prior to the oil change.
16. Mr. Silva says that on January 19, 2019, he went to Midas on Kingsway for a “courtesy check” during which the engine coolant was refilled.
17. Mr. Silva also says that when he took the car in on January 19, 2019, the mechanic mishandled his car by parking it on an incline without engaging the parking brake. KD does not dispute that its technician parked the car in the Midas lot, on a slight incline, without the parking brake on. KD denies that this parking caused any

problem with the car. Mr. Silva says that, after this point, the car's transmission behaved differently.

18. On September 26, 2019, Mr. Silva brought the car back to Midas Willingdon because he remained unhappy with previous service visits. On September 26, 2019, Midas Willingdon replaced the car's gas cap, one headlight bulb and provided splash shield screws, at no charge.
19. In April 2020, Mr. Silva had the car serviced at an Audi dealership, where the car's check engine light was noted to be on. Repair of a vacuum hose was among the repairs completed by Audi.
20. Mr. Silva's submission is that his car's transmission no longer shifts properly, and that the car lurches forward when at a stop. He says the physical "jerks" are due to the transmission and only started happening after the car was serviced at Midas.
21. Mr. Silva submits that the transmission problems were caused by a Midas technician parking his car on an incline without engaging the parking brake. Based on the photographs provided, I find that the Midas parking lot had only a very slight incline.
22. To establish negligence, Mr. Silva must prove the following elements on a balance of probabilities: KD owes a duty of care, KD failed to meet the applicable standard of care, it was reasonably foreseeable that the KD's failure to meet the standard could cause the claimed damages, and the failure caused the claimed damages.
23. Because KD did not dispute being responsible for the work performed by Midas on the car, I find KD owed a duty of care to Mr. Silva to perform its automobile service work to the standard of a reasonably competent car mechanic.
24. However, I find the question of whether KD competently repaired the car during the oil change is outside the knowledge and expertise of an ordinary person. This means that Mr. Silva requires expert evidence, such as an opinion from a qualified car mechanic, that KD fell below a reasonable standard either in performing the oil

change, or in parking it on the slight incline without the parking brake on: see *Bergen v. Guliker*, 2015 BCCA 283.

25. Mr. Silva did not provide expert evidence that KD's treatment of the car fell below the applicable standard. Mr. Silva also did not prove that he himself has car mechanic qualifications and expertise to provide an expert opinion about the work done on the car and the cause of its transmission issues. Therefore, I put no weight on Mr. Silva's assertion that the KD's work or handling of the car was substandard or caused the transmission changes. I find there is insufficient evidence that any of KD's work or handling of the car fell below the standard of a reasonably competent mechanic.
26. I also find that Mr. Silva has not proven that he suffered \$5,000 in damages as a result of KD's work on the car. Mr. Silva provided evidence for some subsequent work on the car to address the check engine light, but there is no proof these repairs were needed as a result of KD's conduct.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Since Mr. Silva was not successful in this dispute, I dismiss his claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDER

28. I dismiss Mr. Silva's claims and this dispute.

Julie K. Gibson, Tribunal Member