



Civil Resolution Tribunal

Date Issued: September 11, 2020

File: SC-2020-000419

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keung v. Powerteq LLC*, 2020 BCCRT 1020

BETWEEN:

TIM KEUNG

APPLICANT

AND:

POWERTEQ LLC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about an allegedly defective exhaust system.
2. The applicant, Tim Keung, says he bought the vehicle exhaust system from the respondent, Powerteq LLC (Powerteq), and that, once installed, it caused a

squeaking noise he spent money to diagnose. Mr. Keung seeks \$1,200, which he says is reimbursement for having the issue diagnosed, as well as his time spent dealing with the squeak. Powerteq says when the issue was diagnosed, the issue was fixed at no cost to Mr. Keung. Powerteq says it asked Mr. Keung for a copy of any invoices for payments he made to diagnose the issue, but that Mr. Keung refused to provide any, so it did not reimburse the unsupported amounts.

3. Mr. Keung is self-represented. Powerteq is represented by David J. Clement, legal counsel.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is to what extent, if any, is Mr. Keung entitled to reimbursement of \$1,200 for diagnostic fees and time spent investigating an alleged defect in Powerteq's exhaust system?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Keung bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that in June 2018, Mr. Keung purchased an exhaust system through a local shop, PGP, who also installed the system. I infer Powerteq manufactures the exhaust system. Mr. Keung elected not to name PGP as a party to this dispute.
11. Mr. Keung says after PGP installed the exhaust system in his vehicle, he noticed a squeaking noise, which he says he spent six months trying to diagnose. It is undisputed that by at least November 2019, the noise was determined to be a defective weld on a bracket, and was repaired by PGP at no cost to Mr. Keung. The evidence before me is unclear about whether the defective weld was a manufacturing defect, or a defect during installation. In any event, Powerteq says it offered to provide Mr. Keung with a brand new exhaust system, shipped to the shop of his choice, and that it would pay for its installation. However, Powerteq says Mr.

Keung declined this option, and instead decided to investigate the issue himself and have it repaired instead of replaced. None of this is disputed.

12. Mr. Keung now seeks payment of \$1,200, which he says is for the money he paid various mechanics to diagnose the issue, as well as his own time trying to diagnose the problem. In support, Mr. Keung submitted two invoices. The first, from HOC dated September 7, 2019, states HOC did not find any noise, but that the sway bar was loose and therefore tightened, and that an electric control stabilizer was broken. HOC charged Mr. Keung \$272.16.
13. The second invoice, from RPIE and dated October 29, 2019, is apparently when the noise was finally diagnosed. RPIE's invoice states it found the passenger side exhaust hanger was broken. The exhaust was temporarily secured and Mr. Keung was informed to return to PGP for a repair under warranty. RPIE charged Mr. Keung \$73.56 for this work, which included a new keyfob battery.
14. Because Mr. Keung claims a total of \$1,200, I infer the remaining \$854.28 claimed is for Mr. Keung's "time spent" investigating the noise issue. I note that Mr. Keung did not provide any evidence of how much time he allegedly spent attempting to diagnose the issue himself or what steps he took to do so, including any time sheets, an explanation of his diagnostic work, or his rate of pay for the hours he allegedly missed from work. I find Mr. Keung has not proven he is entitled to be reimbursed for his time spent, and I dismiss this aspect of his claim. I also note I would have declined to award this amount in any event, as under the CRT's rules, compensation for "time spent" is generally not awarded.
15. I turn then to the paid invoices. For the HOC invoice, I am not satisfied it is sufficiently connected to the exhaust system diagnosis. Although the initial complaint appears to have been in relation to the squeaking noise, the invoice indicates most of the work done was unrelated to the exhaust system. Therefore, I find Mr. Keung is not entitled to reimbursement of the \$272.16.

16. As for RPIE's invoice, although it is undisputed this is the diagnostic testing that confirmed the defect, it is also undisputed that Mr. Keung refused to provide the invoice to Powerteq to be considered for payment before this CRT proceeding began. Powerteq says that when Mr. Keung was asked to provide the invoice, he began demanding additional money for his time, as well as a full refund for the exhaust system while he kept the repaired system. In the circumstances, I find Mr. Keung unreasonably refused to provide any evidence of the amount paid for the October 29, 2019 diagnostic testing, despite being asked for it, and instead decided to start this dispute. Given Mr. Keung's refusal, I find Powerteq did not act unreasonably in denying Mr. Keung's claim for payment. Based on Mr. Keung's refusal to provide evidence to Powerteq of related expenses, I find he is not entitled to reimbursement. I dismiss Mr. Keung's claims in their entirety.
17. Additionally, I find Mr. Keung has not proven the squeaking noise was a result of a manufacturing defect, rather than an installation error. Although Powerteq may have gratuitously offered to cover the repair work or a replacement system, that does not prove the cause of the defect. Therefore, I would not have ordered Powerteq to reimburse RPIE's invoice in any event, as Mr. Keung has not proven Powerteq was responsible for the defect.
18. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Keung was not successful, I find he is not entitled to reimbursement of his paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

19. I order Mr. Keung's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair