



Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-002954

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Benoit v. Ocean Surf Motors Ltd. dba Ensign Pacific Chrysler Dodge Jeep Ram*, 2020 BCCRT 1051

B E T W E E N :

GENE BENOIT

APPLICANT

A N D :

OCEAN SURF MOTORS LTD. doing business as ENSIGN PACIFIC
CHRYSLER DODGE JEEP RAM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about car repairs.
2. The applicant Gene Benoit says the respondent Ocean Surf Motors Ltd. doing business as Ensign Pacific Chrysler Dodge Jeep Ram (Ensign) performed

substandard auto repairs on his 2002 Jeep Liberty (car). Mr. Benoit claims \$5,000 total given the CRT's monetary jurisdiction limit, made up of a \$3,075.07 refund for Ensign's repairs, the cost of towing and a replacement car he says he purchased for \$3,206.00.

3. Ensign says the car had about 324,500 kilometers on it when it was towed in for service. Ensign says that it repaired the car appropriately and warned Mr. Benoit that the work would not guarantee against future engine failure. Ensign asks me to dismiss the dispute.
4. Mr. Benoit is self-represented. Ensign is represented by business contact WR.

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. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. To the extent that Mr. Benoit disputes that Ensign warned him about unseen engine damage and says Ensign instead told him the car would be "good as new", I find there is sufficient evidence before me to resolve that conflict without in-person evidence.

7. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Was Ensign negligent in the repairs it performed on Mr. Benoit's car?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. In this civil claim, as the applicant Mr. Benoit bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

Facts

12. Based on Ensign's invoice print outs and the statement from its service advisor MB, I find the following facts:

- a. On the evening of January 29, 2020, Mr. Benoit had the car towed to Ensign because it was not starting.
- b. The following day, Ensign's technicians diagnosed a problem with the car's starter and provided Mr. Benoit an estimate to repair it. Mr. Benoit agreed and Ensign repaired the starter wiring. The invoice for the starter repair records that the car's oil pressure lamp was on "due to unrelated issue."
- c. After the wiring repair, Ensign road tested the car and observed a rattling noise in the engine. The technician then checked the oil and found no oil registering on the dip stick. Ensign's service advisor MB called Mr. Benoit and explained that there was no oil registering on the dip stick, and that the car needed an oil change. Mr. Benoit authorized the oil change.
- d. During the oil change, Ensign noted that the car's oil pan was leaking and the pan itself was rusty.
- e. MB gave Mr. Benoit an estimate to reseal the leaking oil pan. Mr. Benoit agreed to proceed with the resealing work.
- f. Ensign then discovered metal debris in the car's oil pan. Ensign assessed that the metal debris likely came from rod bearings, indicating severe engine wear. The crankshaft journals, being the part of the shaft that rotates inside a bearing, had only minor wear, and so Ensign determined that replacing the rod bearings could prolong the engine's life.
- g. I find that MB then explained to Mr. Benoit that replacing the rod bearings "could" prolong the engine's life. Mr. Benoit agreed to have the rod bearings replaced.
- h. Mr. Benoit submits that MB told him the repairs would make the car "good as new". I do not accept this evidence, because it is inconsistent with the invoice document and MB's evidence discussed below.

- i. Ensign's invoice document provided to Mr. Benoit contains a typewritten note that there is no guarantee of rod bearing life due to possible unseen damage throughout the engine. The invoice also contains a typewritten note that there is "no guarantee of engine failure", which I take to mean that the repairs would not guarantee against engine failure.
- j. I find that MB explained that Ensign could not know the full extent of engine damage without disassembling it. I also find that Mr. Benoit, knowing that the engine damage could not be fully visualized, agreed to have Ensign complete the rod bearing replacement without fully disassembling the engine, without an assurance that it would make the car "good as new".
- k. After Ensign replaced the rod bearings, the car road tested successfully. When Mr. Benoit picked up the car, MB told him that the hope was that the repair would extend the engine's life, but that Mr. Benoit should consider getting a new engine.
- l. On February 22, 2020, Mr. Benoit picked up the car and paid Ensign \$3,075.07 for the car repairs completed during this service visit.
- m. On February 23, 2020, Mr. Benoit was driving the car when the oil light came back on, he heard a bang and the engine turned off completely. Mr. Benoit had the car towed back to Ensign.

Law re: Negligence and Expert Opinion

- 13. To prove negligence, Mr. Benoit must show that Ensign owed him a duty of care, a reasonable standard of care in performing the repairs was not met, it was reasonably foreseeable that failing to meet the standard of care would cause the claimed damages, and the failure caused Mr. Benoit's damages. It is undisputed that the Ensign owes a duty of care to Mr. Benoit as its customer.

14. Where a dispute's subject matter is technical or beyond common understanding, expert evidence is needed to help the decision-maker determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find that expert evidence is required for me to determine the reasonable standard for mechanical repairs on the car, and whether Ensign met that standard.
15. The CRT's rules explain that written expert evidence must include a statement of the expert's qualifications, which must show that the person is qualified by education, training or experience to give the opinion. I find that Mr. Benoit's evidence of a pictorial diagram of a crank shaft and a website printout about the purpose of lubrication in mechanical systems are not admissible expert evidence.
16. MB from Ensign provided his opinion that the car's engine failure was due to damage from metal debris and wear from the rod bearings, and not caused by poor workmanship. Although I accept that MB is qualified to provide this opinion as an automotive repair service manager, because he is employed by Ensign I find that he is an interested party. I therefore I assign little weight to his opinion.
17. Having said that, both parties filed copies of an identical undated letter authored by SS, a mechanic with Canada Engines Ltd. I find that SS examined the car after Ensign serviced it. I accept that SS is a mechanic qualified to comment on the standard of care in automobile repair. SS wrote that the car was towed to their shop to investigate its "no start" condition. SS wrote that the starter would not turn over the engine, and that the crankshaft would not turn in either direction. SS suspected either a failed rod or main bearing in the engine, which SS wrote is usually caused by poor lubrication.
18. Mr. Benoit insists that "poor lubrication" in SS's letter refers to Ensign failing to properly lubricate the engine after servicing. However, I find SS's opinion did not distinguish between Ensign's obligation to lubricate the engine after servicing, if

any, and damage caused by the absence of oil in the car before it was brought to Ensign.

19. Therefore, I find that SS' opinion did not establish the relevant standard of care, nor did it prove that Ensign breached a standard. In other words, SS did not say the probable cause of the car's February 23, 2020 breakdown was a deficiency in Ensign's work. Instead, as noted above SS's report suggested that the absence of oil from the car's engine when it first arrived at Ensign may be to blame.
20. The burden of proof is on Mr. Benoit. I find that Mr. Benoit has not provided any expert opinion proving the standard of care for work on the car, nor that Ensign fell below the relevant standard.

Analysis and Conclusion

21. Given the absence of expert evidence as to the standard of care or the probable cause of the car's breakdown, Mr. Benoit's remaining submission is that Ensign was negligent because the car broke down again within 24 hours of the service.
22. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court found that an 8-year-old car with over 140,000 kilometers on the odometer had been durable for a reasonable period, despite breaking down only 616 kilometres after it was purchased. By analogy, Mr. Benoit's car had over 300,000 kilometers on it when he brought it to Ensign for service. Considering the car's age, the high odometer reading, and the absence of expert evidence, I find that the fact that the car broke down soon after the repairs does not prove negligence on Ensign's part.
23. For these reasons, I dismiss Mr. Benoit's claims.
24. 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. I see no reason in this case not to follow that general rule. Ensign was successful but did not claim tribunal fees or dispute-related expenses.

ORDER

25. I dismiss Mr. Benoit's claims and his dispute.

Julie K. Gibson, Tribunal Member