



# Civil Resolution Tribunal

Date Issued: December 2, 2020

File: SC-2020-001180

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ho v. Tesla Motors Canada ULC*, 2020 BCCRT 1363

B E T W E E N :

JASON TSZ-TSUN HO

**APPLICANT**

A N D :

TESLA MOTORS CANADA ULC

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about vehicle damage. The applicant, Jason Tsz-Tsun Ho, purchased a vehicle from the respondent, Tesla Motors Canada ULC (Tesla). According to Mr. Ho, within about six months, there was damage to his vehicle that was the result of a design flaw or manufacturing defect. Mr. Ho says that Tesla refused to repair this damage under the vehicle's warranty, and asks for an order that Tesla pay him

\$263.20 in repair costs. Tesla denies that there is a design flaw or manufacturing defect, or that it is responsible for Mr. Ho's claimed damages.

2. Mr. Ho is self-represented. Tesla is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issue in this dispute are:
  - a. Whether the damage to Mr. Ho's vehicle is the result of a design flaw or manufacturing defect, and
  - b. Whether Tesla should be responsible for the claimed damages of \$263.20.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their respective positions. The submissions appear to contain information about the parties' settlement discussions during the CRT process. I will not consider this information in my analysis due to the CRTA's provisions about keeping settlement discussions confidential. While I will consider the remainder of the information before me, I will refer to only what is necessary to provide context to my decision.
9. As noted, it is undisputed that Mr. Ho purchased a vehicle from Tesla in July of 2019. The warranty documentation provided by Tesla confirms that Mr. Ho's vehicle had a warranty that "covers the repair or replacement necessary to correct defects in the materials or workmanship of any parts manufactured or supplied by Tesla that occurs under normal use" for 4 years or 80,000 kilometres.
10. When the vehicle was about six months old and had mileage of around 8,300 kilometres, Mr. Ho says that he noticed that the vehicle's underbody cover was damaged and detached from the vehicle. He says that he had been driving his vehicle under "regular urban driving conditions" and there had been no incidents to account for the damage.
11. Mr. Ho says that Tesla refused to repair the damage under the vehicle's warranty. According to a January 22, 2020 invoice, Tesla personnel removed and replaced the "rear aero shield" on Mr. Ho's vehicle for \$263.20, the amount claimed in this dispute.

12. Mr. Ho says that his vehicle's damage is due to a design flaw or manufacturing defect as this kind of damage is not the result of normal wear and tear and does not meet the "baseline" performance and quality expectations for a vehicle. Mr. Ho says that he has learned that other Tesla owners have reported this same issue, which he says is common. He provided copies of internet postings from other Tesla owners who describe similar damage to their underside of their vehicles.
13. Mr. Ho states that the underbody cover (or aero shield) on his vehicle is prone to collecting water or debris and the extra weight causes the cover to fail. He describes the part as being ripped and frayed, rather than a clean cut that he says would result from an impact. Mr. Ho says that he is an engineer and, in his professional opinion, the damage was not caused by "physical impact force" but rather "weight caused by an accumulation of water and materials, which would imply a design flaw" that should be covered by the warranty. I address Mr. Ho's opinion further below.
14. Tesla does not dispute that there was damage to Mr. Ho's vehicle, but denies that the issue with the vehicle's underbody was the result of a design issue or manufacturing defect, and says that it is not common amongst other owners. Tesla submits that the underbody cover is damaged or detaches due to driver actions or road and driving conditions, which are not within its control or covered by its warranty. Tesla's position is that the underbody is similar to a windshield, and that it would be responsible for a defective product or installation, but not if a rock hit it and caused a crack.
15. There is no dispute that other owners have reported similar issues with their Tesla vehicles. However, I find this does not, by itself, prove the source of the damage to Mr. Ho's vehicle.
16. A January 19, 2019 Tesla service bulletin stated that the aero shield panels "might be susceptible to damage when driving through standing water", and described the procedure for replacing damaged panels. The bulletin did not discuss the availability of warranty coverage for this repair, but it did state that it applied to vehicles "built before approximately November 29, 2018". The evidence before me does not

comment on whether or not Mr. Ho's vehicle was manufactured during this time frame, and Mr. Ho did not state that he drove through standing water. Although the service bulletin shows that there were some problems with some vehicles manufactured by Tesla in particular circumstances, I find that it is of no assistance in assessing the problems with Mr. Ho's vehicle.

17. I find the question of whether a design flaw or manufacturing defect was responsible for the damage to Mr. Ho's vehicle is beyond the knowledge or expertise of an ordinary person and requires expert evidence to answer (see *Bergen v. Guliker*, 2015 BCCA 283).
18. As noted above, Mr. Ho provided an opinion based on his professional status as an engineer. CRT rule 8.3(7) says that an expert giving evidence to the CRT must not advocate for any party in a dispute. While Mr. Ho may be an engineer, he is a party and is advocating for his own position. Therefore, I do not accept Mr. Ho's statement about the cause of the vehicle damage or the possible presence of a design flaw or manufacturing defect as expert opinion evidence.
19. Mr. Ho provided a link to a video uploaded to the internet by a detailing business in which an unidentified person talked about how water and debris can build up in the underbody cover of a Tesla vehicle. The person discussed the need to clean out the area (which was a service that business provided) or drill holes to allow for drainage. The person did not state their qualifications, and I am unable to determine that they are qualified to give expert evidence under CRT rule 8.3(3). Further, the individual did not comment on whether the issue with the underbody was a design flaw or manufacturing defect. I do not accept this video as expert evidence.
20. As discussed above, the warranty covers defects in the materials or workmanship. I find that the evidence before me does not support Mr. Ho's claim that the damage to his vehicle was caused by a design flaw or manufacturing defect. Accordingly, I find that he is not entitled to coverage under the warranty for the associated repair costs.

21. Although Tesla appears to have sold the vehicle and is identified as the warrantor in the vehicle's warranty documentation, it is not clear whether it also manufactured the vehicle. In any event, I find that the evidence does not show that the problem with the underbody impacted the quality or durability of the vehicle such that the implied warranty of quality and durability in section 18 of the *Sale of Goods Act* would be breached.
22. I find that Tesla is not responsible for the repair costs for Mr. Ho's vehicle. I dismiss his claim for reimbursement of the \$263.20.
23. 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. As Mr. Ho was not successful, I dismiss his claim for reimbursement of tribunal fees and expenses.

## **ORDER**

24. I dismiss Mr. Ho's claims and this dispute.

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Lynn Scrivener, Tribunal Member