



# Civil Resolution Tribunal

Date Issued: February 11, 2021

File: SC-2020-005360

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Life Long Management Consultancy Ltd. v. Go Auto Surrey Chrysler Dodge Jeep Ram Ltd.*, 2021 BCCRT 165

B E T W E E N :

LIFE LONG MANAGEMENT CONSULTANCY LTD.

**APPLICANT**

A N D :

GO AUTO SURREY CHRYSLER DODGE JEEP RAM LTD. and FCA  
CANADA INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about an allegedly defective tonneau cover (a cover for a pickup truck bed).

2. The applicant, Life Long Management Consultancy Ltd. (Life Long), bought a Dodge Ram 1500 pick-up from the respondent, Go Auto Surrey Chrysler Dodge Jeep Ram Ltd. (Go Auto).
3. Life Long says that the tonneau cover is defective. It seeks replacement of the tonneau cover or \$2,000, plus a refund of the \$64.96 it paid Go Auto to examine and repair the tonneau cover.
4. Go Auto denies that the tonneau cover is defective and says Life Long tampered with it and damaged it by incorrect folding.
5. The other respondent, FCA Canada Inc., provides warranty coverage for the vehicle. It says the tonneau cover was not covered by the 3-year warranty on the vehicle. Instead, FCA says the tonneau cover came with a 2-year limited warranty (Mopar warranty) that expired before Life Long brought the tonneau cover in for repairs.
6. Life Long is represented by a principal. Go Auto is represented by an employee or principal. FCA is represented by a lawyer, Grace McDonell, as discussed further below.

## **JURISDICTION AND PROCEDURE**

7. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
8. Section 39 of the CRTA says 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 in the interests of justice.

9. Section 42 of the CRTA says 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.
10. 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.
11. Section 20 of the CRTA says parties are to represent themselves in a CRT proceeding. FCA's request for legal representation was denied by CRT staff, but due to a CRT staff error, Ms. McDonell was nonetheless permitted to make submissions on FCA's behalf. The issues in this dispute are straightforward, so I find that not having representation likely did not put Life Long at a disadvantage. As well, Life Long does not object to the representation. Accordingly, I have proceeded to hear this dispute. FCA does not claim legal fees, which I would not award in any event given the CRT's rule against reimbursement of legal fees except in extraordinary cases.

## **ISSUES**

12. The issues in this dispute are:
  - a. Was the tonneau cover defective?
  - b. If so, is either respondent required to reimburse Life Long or replace the tonneau cover under warranty or otherwise?
  - c. Is Life Long entitled to a refund for the \$64.96 service charge?

## **EVIDENCE AND ANALYSIS**

13. As the applicant in this civil dispute, Life Long must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. On August 28, 2017, Life Long and another person who is not a party to this dispute purchased the vehicle, new, from Go Auto. The next day, Go Auto completed \$3,813.02 worth of upgrades to the vehicle, including the tonneau cover, which was invoiced at \$856 plus \$278 labour.
15. On May 4, 2020, Life Long brought the vehicle to Go Auto. According to the service records, Life Long reported that the tonneau cover was sticking up in the middle rather than sitting flush. The technician's notes say that they found the hold down hardware for the rails was different from the original hardware and the hold down brackets were missing pieces. The technician also found that the tri-fold cover had damage to the hinges and noted that this can happen when the cover is folded incorrectly. The technician adjusted the cover "as best as possible." Go Auto charged \$64.96, which corresponds to Life Long's refund claim.
16. Life Long says the tonneau cover repair was not done properly and the "problem" recurred. In July 2020, Life Long returned to Go Auto to request that the tonneau cover be replaced under warranty. Go Auto refused. Life Long says the technician reiterated that the evidence of outside work or tampering meant the repairs were not covered under warranty. The respondents say Go Auto also declined the work because the 2-year warranty applicable to the tonneau cover had expired.

### ***Was the tonneau cover defective?***

17. Life Long says the tonneau cover is defective. It says it has owned the vehicle since the August 28, 2017 purchase, and it never repaired the tonneau cover. Life Long says the vehicle was involved in an accident that required repairs but says the tonneau cover was not touched. There are no records of accident repairs with Go Auto, so I infer that Life Long had the repair work done elsewhere.

18. Go Auto did not provide the qualifications of the technician who performed the diagnostic work on the tonneau cover, so I do not accept the evidence as expert evidence that the tonneau was not defective. That said, I place significant weight on the technician's detailed notes as observational evidence of the tonneau cover's condition on May 3, 2020. I accept that the notes were made around the time the work was performed, and as such they are the best available evidence about the tonneau cover's condition.
19. I accept the technician's observations that some hardware was missing, some hardware was not original, and the tri-fold cover hinges were damaged. I also find the damage was likely from improper folding, given Life Long also does not deny that someone improperly folded the cover. Based on the technician's notes, and the 2.5 years that passed between the sale and repair, I find it likely that someone modified or tampered with the tonneau cover.
20. As the applicant, Life Long bears the burden of proving that the tonneau cover was defective: *Lund v. Appleford Building*, 2017 BCPC 91. Life Long provided only a blanket denial that it repaired the tonneau cover. It did not provide any evidence to support its assertion that the tonneau cover was defective, such as a report from mechanic providing an opinion that there was a defect. Life Long also did not provide photos of the tonneau cover to explain the defect or to counter Go Auto's evidence that the tonneau cover was tampered with.
21. I find Life Long has not met its burden of proving the tonneau cover was defective. Accordingly, it is not necessary to answer the question of whether the tonneau cover was still under warranty, including any implied warranty under section 18(c) of the *Sale of Goods Act*.

### ***Service charge***

22. Life Long says that if, on April 30, 2020, the technician had advised that the warranty had already expired, it would not have "taken the chance to repair" with Go Auto. Go Auto denies that its technician advised that the tonneau cover was still under

warranty. In any event, Life Long concedes the technician said Go Auto would refund the \$64.96 service charge only if the warranty provider approved of the charge. I find Life Long has not proved that the technician represented that a warranty was in effect. Either way, there was no guarantee the service charge would be covered.

23. Based on Life Long's submissions and the technician's notes, I find Life Long authorized the technician to repair the tonneau cover to the extent possible given the bent hinges and missing parts. I find Life Long authorized the \$64.96 charge. I also find no evidence Go Auto's repair work was deficient. I find Go Auto is not required to refund the \$64.96 service charge. Although in submissions Go Auto says it is willing to refund the \$64.96, I make no order because I find that offer is not binding.

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. Life Long was unsuccessful, so I dismiss its claim for CRT fees. Neither respondent claimed dispute-related expenses or paid CRT fees.

## **ORDER**

25. I dismiss Life Long's claims and this dispute.

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Micah Carmody, Tribunal Member