



Civil Resolution Tribunal

Date Issued: May 4, 2021

File: SC-2020-009276

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Creusot v. 1082294 B.C. Ltd. dba NOX Automotive*, 2021 BCCRT 467

B E T W E E N :

NIGEL CREUSOT

APPLICANT

A N D :

1082294 B.C. LTD. doing business as NOX AUTOMOTIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a pre-purchase vehicle inspection. The applicant, Nigel Creusot, says the respondent, 1082294 B.C. Ltd. dba NOX Automotive (Nox), failed to identify worn brake rotors when it inspected a vehicle before he purchased it from a third

party. Mr. Creusot says this caused his vehicle to fail inspection in Saskatchewan. He seeks \$818.59 for the cost of replacing the parts and \$650 for shipping fees.

2. Nox denies Mr. Creusot's claim and says the services were provided to the third party, not Mr. Creusot, and any warranty is non-transferable. It also denies Mr. Creusot incurred any costs related to its inspection.
3. Mr. Creusot is self-represented. Nox is represented by an employee.

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). 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Whether there was privity of contract between the parties, and
 - b. Whether Nox was negligent and, if so, whether Nox must pay for replacing the brakes and for shipping fees.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Creusot bears the burden of proving his claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Creusot purchased a 2010 BMW (vehicle) from JS, who is not a party to these proceedings. Mr. Creusot says he wanted to make sure the vehicle would pass the out of province vehicle inspection in Saskatchewan where he lives. So, before purchasing the vehicle, JS hired and paid Nox to perform an "out of province purchase inspection".
11. The parties agree that on May 4, 2020, Nox inspected the vehicle and completed a British Columbia CVSE Private Vehicle Inspection Report (CVSE report). CVSE stands for Commercial Vehicle Safety and Enforcement. Nox wrote on the CVSE report that the vehicle was "inspected for sale". However, the vehicle failed the inspection because the windshield had chips. Mr. Creusot says he bought the vehicle despite this and factored the windshield's condition into the purchase price.
12. Nox's invoice to JS for the inspection contained warranty terms in fine print, which included:
 - a. Nox warrantied its workmanship for 12 months or 20,000 kilometers,

- b. The seller expressly disclaimed all warranties, either express or implied. I infer the seller means Nox,
 - c. All CVSE inspections were good for 1 year, and
 - d. The Nox Automotive Warranty was non-transferable.
13. Mr. Creusot says the vehicle subsequently failed the Saskatchewan SGI Provincial Inspection (SGI inspection) on June 12, 2020 because the brake parts exceeded the wear tolerance. More specifically, the front brake rotors were below the minimum thickness standards.
14. Mr. Creusot paid \$818.59 to replace the front brakes and the vehicle then passed the SGI inspection. Mr. Creusot says that Nox did not follow the BC Vehicle Inspection Manual (VIM) procedures since it did not remove the wheels and measure the brake rotors' thickness during its inspection. If it had, Mr. Creusot says Nox would have realized the front rotor needed to be replaced.

Privity of contract

15. Nox says its warranty is not transferable. Based on the fine print on the invoice, I agree.
16. Nox also says it performed the inspection for JS, not Mr. Creusot. Mr. Creusot says regardless of who Nox conducted the inspection for, it was not done in compliance with the VIM.
17. Generally speaking, a contract can only give rights to people who are parties to it. This legal concept is known as “privity of contract”. There are 3 exceptions that can allow a person who is not a party to the contract to rely on it. The first 2 exceptions, agency and trust, do not apply. The third exception applies if both Nox and JS intended to extend the contract’s benefit to Mr. Creusot, and also intended for the report to be used to determine if the vehicle would pass the SGI inspection (see *The Owners of Strata Plan KAS3204 v Navigator Development Corporation*, 2020 BCSC 1954 at paragraphs 49 -50). I find that the test for the third exception has not been

met. Even though Nox knew the inspection was being done for the vehicle's sale, I find there was no intention to extend its benefit to Mr. Creusot. since Nox stated its warranty was non-transferable.

Was Nox negligent?

18. Mr. Creusot also claims Nox was negligent. To prove his claim in negligence, Mr. Creusot must show on a balance of probabilities, (1) Nox owed Mr. Creusot a duty of care; (2) Nox breached the applicable standard of care; and (3) the breach caused Mr. Creusot's loss or damage. I find Nox was not negligent. My reasons are as follows (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33).
19. A professional can be liable in negligence to a third party even though there is no contract if there is a sufficiently close relationship to justify imposing a duty of care. A professional can owe a duty of care if it is reasonably foreseeable that a failure to take reasonable care could lead to damages. I find Nox owed a duty of care to subsequent purchasers to carry out the inspection in accordance to the CVSE standards.
20. I also find that Nox was required to perform its duties with the reasonable skill, care and diligence of an ordinary, competent and skilled vehicle inspector. Mr. Creusot says Nox did not meet this standard since it did not measure the rotor thickness.
21. In claims of professional negligence, an applicant generally must prove a breach of the standard of care through expert opinion evidence. This is because the applicable standard is generally outside the knowledge or experience of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119). I find whether rotor thickness must be measured during a CVSE inspection is outside of ordinary knowledge and requires expert evidence.
22. I find Mr. Creusot did not prove the standard of care was breached. I say this since Mr. Creusot did not provide any evidence that the CSVE inspection required the rotors' thickness to be measured. Unlike the SGI form, the CVSE report did not contain space to record the rotor thickness measurements. Also, Mr. Creusot did not

submit a copy of the VIM, which he says requires rotors to be measured for inspections.

23. Mr. Creusot submitted a document entitled “brake specification guide” which contained, amongst other details, rotor thickness for 2006 to 2013 BMWs. It appeared to be an excerpt from a manual or book. I give little weight to this document since Mr. Creusot did not provide the source or whether the guide was used for CVSE inspections.
24. Mr. Creusot says he is a professional driver for 39 years. However, I find this does not mean he had knowledge or experience about how either CVSE or SGI inspections are conducted.
25. For these reasons, I dismiss Mr. Creusot’s claims.
26. 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. Since Mr. Creusot was unsuccessful, I dismiss his claim for CRT fees. Nox did not claim any dispute-related expenses.

ORDER

27. I dismiss Mr. Creusot’s claims and this dispute.

Rama Sood, Tribunal Member