



Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2020-009185

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Borosevich v. Binaka Auto Sales & Repairs Ltd.*, 2021 BCCRT 688

B E T W E E N :

LEANNA BOROSEVICH

APPLICANT

A N D :

BINAKA AUTO SALES & REPAIRS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a vehicle inspection. The applicant, Leanna Borosevich, says she relied on a private vehicle inspection report to decide on purchasing a car. The respondent, Binaka Auto Sales & Repairs Ltd. (Binaka), inspected the car and

prepared the report. Miss Borosevich says Binaka was negligent. She seeks \$2,389.39 as reimbursement for car repairs.

2. Binaka denies it was negligent. It says Ms. Borosevich's car broke down as a natural consequence of old age, high mileage, and hard driving on a highway.
3. Miss Borosevich represents herself. SMM represents Binaka. He is its employee or principal and conducted the inspection at issue.
4. For the reasons that follow, I find Miss Borosevich has not proven that Binaka was negligent. I dismiss her claims.

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). 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.
6. 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.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether Binaka was negligent and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Miss Borosevich as the applicant must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background facts. On May 28, 2020, Binaka inspected a car for TKJ. TKJ was the private seller of the car at issue. SMM inspected the car at Binaka's facilities. He filled out and signed a private vehicle inspection report. He wrote that the car was a 2005 Honda Accord. He indicated that he "road tested" the car and found it passed everything he checked it for. These included the transmission, exhaust system, and catalytic converter. He provided an overall passing grade.
12. TKJ sold the car to Miss Borosevich on June 20, 2020. The parties documented the sale in an ICBC transfer/tax form of the same date.
13. It is undisputed that on June 23, 2020, Miss Borosevich drove the car on the Coquihalla highway towards Kelowna. At some point, Miss Borosevich noticed that the transmission did not engage properly and felt extreme vibrations.
14. In August 2020 Miss Borosevich took the car to Dunbar Automotive. The August 29, 2020 invoice listed the issues with the car. The transmission was "coming apart" and "neutraling". Both the transaxle and power steering rack had to be replaced. Dunbar

Automotive provided a total of \$2,389.39 for the work, inclusive of parts and labour. Miss Borosevich had the work done and claims for this amount.

Was Binaka negligent?

15. Miss Borosevich says Binaka was negligent. The test for negligence is set out by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. In order to succeed in a negligence claim, Miss Borosevich must prove 1) Binaka owed Miss Borosevich a duty of care, 2) Binaka breached the standard of care, 3) Miss Borosevich sustained a loss, and 4) the loss was caused by Binaka's negligence.
16. I find that Binaka did not owe Miss Borosevich a duty of care. In *National Onsite Service Ltd v. Trans Canada Truck Repairs (2001) Ltd*, 2014 SKPC 53, the Saskatchewan Provincial Court held that a truck inspector did not owe a duty of care to the buyer of a truck. This was because the inspection was not conducted in contemplation of the truck's sale or purchase. In *Creusot v. 1082294 B.C. Ltd. dba NOX Automotive*, 2021 BCCRT 467 at paragraph 19, the CRT held that a vehicle inspector owed a duty of care to a subsequent buyer. A third-party seller hired the inspector. However, unlike the situation in *National Onsite Service Ltd*, the seller hired the inspector expressly to prepare for a purchase. This was noted on the inspection form itself. See *Creusot* at paragraphs 10 and 11.
17. Binaka wrote in the inspection report "Notice and Order" as the reason for the inspection. It is undisputed that this means a Peace Officer ordered TKJ to repair the car and have it inspected. I find that the inspection and report were not prepared for the purpose of a sale. Although not binding, I find the reasoning in *National Onsite Service Ltd* applicable and persuasive. I find Binaka did not owe Ms. Borosevich a duty of care, so her claims cannot succeed.
18. Even if there was a duty of care, I find that expert evidence is required to prove Binaka breached the standard of care. In *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198 at paragraph 130, the court commented that perfection is not expected

when determining whether the standard of care has been met. The court wrote that evidence of what is habitually done in similar circumstances by persons carrying out commercial vehicle inspections and preparing the inspection reports is relevant to establish the standard of care. It added that in order to prove a breach of that standard of care, the burden is on the claimant or applicant to provide evidence of what the standard is and how the respondent or defendant failed to meet that standard.

19. I find the above principles apply to this dispute, as it also about a vehicle inspection. I find that for Miss Borosevich to prove her claim, she must provide expert evidence from a vehicle inspector to show Binaka breached the standard of care.
20. Miss Borosevich provided several January 2021 emails from K, a mechanic at Dunbar Automotive. K wrote that the inspector should not have passed the car, due to the presence of 1) poor front struts, 2) a missing rear oxygen sensor and catalytic converter, and 3) transmission issues that should have been apparent during a road test. However, K did not state his qualifications as required under CRT rules 8.3(3) for expert evidence. I do not find it appropriate to waive this requirement under CRT rule 1.2(2). This is because I do not find it apparent that K is qualified to comment on the standards of a vehicle inspector.
21. Miss Borosevich provided a copy of maintenance standards for commercial vehicles, including trucks, trailers and buses. I do not find these relevant. As noted above, the standards at issue are those about inspections rather than maintenance. In any event, I do not find the types of vehicles discussed to include the car at issue.
22. I also do not find it clear from the evidence that the car troubles existed during the vehicle inspection. As noted in *Wanless v. Graham*, 2009 BCSC 578, people who buy old used vehicles must expect that defects will come to light at any time. Ms. Borosevich's car was 16 years old. Its mileage was either 174,393 kilometers as noted in the inspection report or 174,000 as stated in the transfer/tax form. I do not find anything significant turns on which number is correct. Dunbar Automotive noted in the invoice that the car's milage was 178,118 kilometers. Miss Borosevich therefore drove her car 3,725 or 4,118 kilometers before taking it in for repairs. I find the mileage

figures are consistent with a finding that her car troubles developed after the purchase.

23. For these reasons, I dismiss Ms. Borosevich's claims for reimbursement of car repairs.

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. Binaka did not pay any CRT or claim any dispute-related expenses. I therefore do not order any reimbursement for the parties.

ORDERS

25. I dismiss Ms. Borosevich's claims and this dispute.

David Jiang, Tribunal Member