



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crabtree v. 1839928 Ontario Limited dba Audi Of Victoria*,
2021 BCCRT 822

B E T W E E N :

SEAN CRABTREE

APPLICANT

A N D :

1839928 ONTARIO LIMITED dba AUDI OF VICTORIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute about a motor vehicle inspection. The applicant, Sean Crabtree, purchased a used car and asked the respondent, 1839928 Ontario Limited dba Audi Of Victoria (Audi Victoria), to inspect it on November 23, 2019. Mr. Crabtree says that

the car's timing belt failed and ruined the engine on April 25, 2020. Mr. Crabtree says that Audi Victoria's inspection should have included a timing belt inspection, which would have revealed problems with the timing belt and allowed him to replace it before it failed. Mr. Crabtree claims \$3,873.48 for a used engine replacement, \$110 in towing fees, \$167.64 in legal fees, and a refund of the \$143 inspection fee.

2. Audi Victoria says that the inspection ordered by Mr. Crabtree did not include a timing belt inspection, which is a long and complicated procedure. Audi Victoria says there was no significant reason to inspect the timing belt or to suspect that it was faulty or likely to fail. Audi Victoria says it properly performed the requested vehicle inspection, and that it owes Mr. Crabtree nothing.
3. Mr. Crabtree is self-represented in this dispute. Audi Victoria is represented by an authorized 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 Audi Victoria failed to adequately inspect Mr. Crabtree's car as agreed, and if so, must Audi Victoria pay Mr. Crabtree for an engine replacement, towing fee, and legal fees, caused by its failure?
 - b. Is Mr. Crabtree entitled to a refund of the \$143 inspection fee?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Crabtree must prove his claims on a balance of probabilities. I have read all the parties' submitted material but refer only to the relevant evidence and arguments needed to explain my decision.
10. The undisputed evidence is that Mr. Crabtree requested a vehicle inspection from Audi Victoria. Mr. Crabtree signed a November 23, 2019 work order for a "post purchase inspection" for his 2008 Audi A4 car, which cost \$143 plus taxes. The work order did not describe which items would be inspected. According to the work order and the November 23, 2019 inspection invoice, the car's odometer reading was 137,938 at the start of the inspection, and 137,940 at the end.
11. Although some of the Audi Victoria inspection documents refer to the odometer reading as "mileage," nothing before me indicates that the odometer reading was

measured in miles. Mr. Crabtree's email correspondence with Audi Victoria indicates that he purchased the used vehicle in Canada, and the evidence does not suggest that the vehicle's odometer used a unit other than kilometres. Both Audi Victoria and Mr. Crabtree use kilometer units when referring to the odometer reading. So, I find that the car's odometer measured kilometres, and that the car had been driven 137,938 kilometres when Audi Victoria inspected it. More on that below.

12. The November 23, 2019 invoice noted that the \$143 post purchase inspection was performed. Neither the work order nor invoice mentioned a timing belt inspection, or any belt inspections.
13. An Automobile Status Report (report) in evidence showed the inspection's outcome. Although it was labelled with the date April 29, 2020, I find that the report was for the inspection on November 23, 2019, which the parties agree was the last time Mr. Crabtree brought his car to Audi Victoria. Nothing in the report mentioned a timing belt inspection, or any kind of belt inspection or recommended belt maintenance. However, the inspection form indicated that the car's factory maintenance schedule had been checked, and no factory-scheduled maintenance was outstanding.
14. Mr. Crabtree says that on April 25, 2020, 5 months after the inspection, his car's timing belt failed, which ruined the engine. In May 5, 2020 email correspondence with Audi Victoria, Mr. Crabtree indicated that the car experienced unspecified issues while Mr. Crabtree was on a road trip to the southern United States, for which he says he sought assistance at a car dealership. However, there is no evidence before me describing these issues or diagnosing their cause. I find the evidence fails to show that there were any indications of timing belt problems before the car allegedly became inoperable on April 25, 2020 due to an alleged timing belt failure.
15. Audi Victoria emailed Mr. Crabtree back that a timing belt inspection was not performed because it was not part of the post purchase inspection. Audi Victoria says that the timing belt is not normally inspected because it requires a lot of disassembly, so it is generally just replaced after the car travels a certain number of kilometres. Mr. Crabtree replied on May 5, 2020 that he had wanted a "total inspection," that Audi

Victoria's inspection was a "sub-standard evaluation," and that he could not imagine what was or was not inspected in the post purchase inspection.

16. Mr. Crabtree says he expected a "total inspection," but also admits he did not know what was included in Audi Victoria's inspection, despite the inspection report setting out a list of inspection activities that did not include any belts or any partial engine disassembly. I find the evidence fails to show that, at the time of the inspection, Mr. Crabtree ordered, requested, or expected anything other than the post purchase inspection described in the inspection report, which I find did not include a timing belt inspection.
17. Mr. Crabtree says that the post purchase inspection should have included a timing belt inspection in any event. He says he relied on Audi Victoria as car repair experts to determine what should be inspected, and that its decision not to inspect the timing belt was negligent and led to the alleged engine failure.
18. To prove that Audi Victoria was negligent, Mr. Crabtree must show that Audi Victoria owed him a duty of care, that Audi Victoria did not meet a reasonable standard of care in inspecting the car, that it was reasonably foreseeable that failing to meet the standard of care would result in damages, and that the failure actually caused the claimed damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
19. First, as for the alleged car damage, Mr. Crabtree says that a third-party car repair company, Pretzel Motors, assessed a timing belt issue as the cause of his car's alleged engine failure. Although there is a Pretzel Motors engine replacement repair order in evidence, I find none of the documents before me show that the car's timing belt failed or that such a failure ruined the car's engine. I find the only thing suggesting that the timing belt failed and caused a catastrophic engine failure is Mr. Crabtree's own unsupported statements. On that basis alone, I would dismiss as unproven Mr. Crabtree's claims for the cost of replacing the engine and for related towing fees.
20. Second, even if Mr. Crabtree had proven a timing belt failure ruined his car's engine, I find other elements of negligence are also unproven here. I accept that Audi Victoria

owes its customers a duty of care when inspecting their vehicles. Mr. Crabtree says that automotive work is a technical matter that is beyond common understanding, as described in *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124 and *Wilkinson v. WBC Holdings Ltd.*, 2020 BCCRT 1058 at paragraph 20. I agree. I find that I require expert evidence to determine the appropriate standard of care and whether Audi Victoria met that standard. In particular, I find that expert evidence is required to determine whether Audi Victoria should have inspected the car's timing belt in the circumstances, whether the timing belt was about to fail, whether an inspection would have revealed an imminent timing belt failure, and whether the car's alleged engine failure was caused by a failed timing belt.

21. As noted, Mr. Crabtree bears the burden of proof in this dispute. I find the submitted evidence includes none of the required expert evidence about the standard of care applicable to Audi Victoria's inspection, and whether Audi Victoria met that standard.
22. Further, Mr. Crabtree relies in part on a May 1, 2020 email from an Audi Victoria service advisor that said, "due to time and kilometers" the car's timing "chain" and water pump "should have been done by now". It is undisputed that Mr. Crabtree's car had a timing belt, not a timing chain. Regardless, Mr. Crabtree says the service advisor's comments show that the car was overdue for a timing belt replacement by about 20,000 kilometres, therefore the inspection form was incorrect in stating that no factory-scheduled maintenance was outstanding. He says this shows Audi Victoria's inspection was negligent. I find Mr. Crabtree is mistaken about this, for the following reasons.
23. Audi Victoria submitted an undisputed 2008 Scheduled Maintenance Intervals document for Audi vehicles (maintenance schedule). I find the maintenance schedule says the timing belt for a 2.0L engine should be replaced at 110,000 miles or 175,000 kilometres, and the schedule makes no other timing belt replacement or inspection recommendations for any engine type. On balance, I find that the evidence shows Mr. Crabtree's car's timing belt replacement interval was 175,000 kilometres, which is roughly 110,000 miles. I find that the car's 137,938 kilometre odometer reading at

the time of the inspection was far less than 175,000 kilometres. So, I find that the Audi Victoria service advisor was incorrect in suggesting that the timing “chain” was overdue for replacement at the time of the inspection.

24. On the evidence before me, I find that Mr. Crabtree’s car had not yet approached the 175,000 kilometre timing belt replacement interval when Audi Victoria inspected it. I find the evidence does not show any recommended timing belt inspections or maintenance before that point. Overall, I find the evidence does not show that Audi Victoria’s inspection failed to identify any outstanding factory-scheduled maintenance items, or that a November 23, 2019 timing belt inspection was recommended by the car’s manufacturer.
25. Mr. Crabtree also says that Audi Victoria admitted that it failed to meet the required standard of care in a May 5, 2020 email from its service manager. The email said that not giving Mr. Crabtree information about when his timing belt “would be due” did not meet Audi Victoria’s service standard. I find this email was in response to Mr. Crabtree’s complaints about the lack of a timing belt inspection, which I find the service manager had already told Mr. Crabtree was not part of the agreed post purchase inspection. I find the May 5, 2020 email was not an admission that the inspection should have included a timing belt inspection, but only indicated that Audi Victoria should have told Mr. Crabtree about when his timing belt would be due for maintenance. As noted, the timing belt was not due for inspection or replacement for tens of thousands more kilometres. I find it unlikely that Mr. Crabtree would have requested or expected a timing belt inspection if Audi Victoria had given him that information.
26. Having weighed the evidence, I find that Mr. Crabtree has not met his burden of showing that Audi Victoria’s car inspection was negligent. I find that Mr. Crabtree has not proven that Audi Victoria’s decision not to inspect the timing belt, absent a specific request to do so, failed to meet an applicable standard of care. Further, he has not proven the alleged car damage or its alleged cause. So, I find that Audi Victoria is not responsible for the car’s alleged timing belt failure and allegedly resulting engine

failure. I dismiss Mr. Crabtree's claim for \$3,873.48 for a used engine replacement and \$110 in towing fees. I also find that Audi Victoria's inspection was as agreed and was not deficient, so I dismiss Mr. Crabtree's claim for a \$143 inspection fee refund. I address his claim for legal fees below.

CRT FEES AND EXPENSES

27. 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 not to follow that general rule. I find Mr. Crabtree was unsuccessful, and Audi Victoria paid no CRT fees and claimed no CRT dispute-related expenses. I note that even if Mr. Crabtree had been successful, under CRT rule 9.5(3) the CRT does not pay lawyer fees except in extraordinary circumstances that I find do not exist here. Further, Mr. Crabtree submitted no evidence showing that he received any legal advice about this CRT dispute or that he paid or owes anything for legal fees. I dismiss Mr. Crabtree's claim for \$167.64 in legal fees and for CRT fee reimbursement.

ORDER

28. I dismiss Mr. Crabtree's claims, and this dispute.

Chad McCarthy, Tribunal Member