



Civil Resolution Tribunal

Date Issued: October 19, 2021

File: SC-2021-002958

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pillay v. 1554566 Alberta Ltd.*, 2021 BCCRT 1107

B E T W E E N :

VINCENT PILLAY

APPLICANT

A N D :

1554566 ALBERTA LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about vehicle damage. The applicant is Vincent Pillay. The respondent is 1554566 Alberta Ltd., which operates as Defcon Transport (Defcon). Mr. Pillay says he hired Defcon to transport his convertible 1989 Mustang GT car from Calgary to Vancouver on March 19, 2021, and that when he received his car it

had significant damage. Mr. Pillay says Defcon's manager JN told him that Defcon's driver had reported that the car's hood had opened during transport. Mr. Pillay claims \$5,000 for the car's repairs.

2. Defcon denies the car was in excellent condition as Mr. Pillay alleges. It also says the car's hood latch then popped open and caused the damage, despite having been secured before transport. Defcon denies responsibility for mechanical defects.
3. Mr. Pillay is self-represented. Defcon is represented by JN, who is its manager as noted.

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). 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Defcon is responsible for the vehicle's damage during transport, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Pillay has the burden of proving his claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
10. Mr. Pillay was referred to Defcon by another transport company. Mr. Pillay called Defcon on around March 10, 2021 and says JN quoted him \$400 to transport his car from Calgary to Vancouver. I accept this evidence, which is ultimately not disputed by Defcon and is supported by a \$400 e-transfer receipt.
11. It is undisputed Defcon picked up Mr. Pillay's car on March 19, 2021 at an Alberta storage facility. At that point, the car had around 78,000 km and was in the process of being restored.
12. Mr. Pillay received his car around March 27, 2021. The undisputed evidence is that during Defcon's transport from Calgary the car's hood flew open. Based on the photos in evidence, I accept that the car's hood and convertible frame were damaged as a result.
13. Mr. Pillay says that on April 3, 2021, Defcon's driver called him and advised that police had pulled him over to tell him that the hood had become unsecured and had smashed onto the convertible top. This is consistent with Defcon's evidence about what its driver told him. I note there is no statement from Defcon's driver in evidence. I considered whether to draw an adverse inference against Defcon but

decided that the parties' consistency about the driver's evidence means a statement would likely add nothing. There is no suggestion Defcon's driver intentionally released the hood latch. If the driver had accidentally released the hood latch, I find it unlikely he would have noticed and recall he had done so. So, I do not draw an adverse inference.

14. Ultimately, I find this dispute turns on whether Defcon's driver inadvertently released the hood latch or otherwise failed to secure the car's hood properly for transport. As noted, Defcon argues the car likely had a mechanical defect. As noted, Mr. Pillay has the burden of proving his claim.
15. Mr. Pillay speculates that Defcon's driver was rushed to get back and was running late, given the driver made the trip in under 12 hours. Mr. Pillay says an average sized car would take 10 hours and 43 minutes, according to Google Maps, and that a transport truck with 3 cars in its load must have been driving at an excessive speed. As noted, Mr. Pillay argues that the driver must have pulled the hood release handle located under the steering wheel rather than releasing the emergency brake, when loading the car for transport. Mr. Pillay submitted no evidence from a transport company about the time a trip like this one ought to have taken and whether Defcon's driver was likely rushing. Based on these timelines, I do not accept that the driver was rushing or that even if he was that this likely meant he accidentally released the car's hood latch or improperly loaded the trailer.
16. Mr. Pillay submitted in evidence a brief excerpt from a "car forum discussion" about similar incidents, suggesting that the hood latch could have been released. I do not find the forum discussion relevant, as it is speculative and does not address Mr. Pillay's car specifically or its condition.
17. Mr. Pillay says he has consulted "a few mechanics" about the possibility of a car's hood opening during transport. However, he submitted no evidence from mechanics with an opinion about why the car hood likely opened during transport.

18. Most significantly, despite arguing that his car was “hastily loaded” based on how it was placed on the trailer, Mr. Pillay submitted no evidence from anyone qualified to address whether Defcon’s method of securing the car, as shown in pre-transport pictures in evidence, was adequate or not. Those photos show the car loaded on an open trailer along with 2 other cars. There are several photos taken from different angles, and some close-up. The car’s hood appears to be completely closed in all of them. There are braces around the wheels to stop the car from rolling forward or backward, but there is no strap or other mechanism across the hood’s top.
19. I find it is not within ordinary knowledge for me to determine whether hood-strapping is required or whether the car’s hood likely released due to the hood latch being released. I say the same about Defcon’s method of loading the car on the trailer. I find expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283). Yet, here there is none. Again, Mr. Pillay has the burden of proof.
20. Mr. Pillay submitted a statement from the Alberta storage facility’s attendant, who charged his car’s battery before transport. That attendant says that there was no issue with the hood’s latch that he “could see” and that it was in “perfect working order” when he opened and closed the hood. The attendant did not say he observed Defcon’s driver opening the car’s hood. There is no evidence the storage attendant has mechanical expertise, and so I place no weight on his observations about the car hood’s seemingly normal operation. I also find the attendant’s observation that the driver “appeared” to be in a rush insufficient to conclude he did something to cause the hood to fly open during transport.
21. Ultimately, I am left only with Mr. Pillay’s speculation that Defcon’s driver must have accidentally released the car’s hood because he was allegedly in a rush to return to Vancouver. I find this insufficient to prove Defcon was negligent or in breach of its contract with Mr. Pillay. So, I find Mr. Pillay’s claim must be dismissed. Therefore, I do not need to address his claimed damages in any detail.
22. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related

expenses. Mr. Pillay was unsuccessful so I find he is not entitled to reimbursement of CRT fees or dispute-related expenses. Defcon did not pay fees or claim expenses.

ORDER

23. I dismiss Mr. Pillay's claims and this dispute.

Shelley Lopez, Vice Chair