



Civil Resolution Tribunal

Date Issued: October 21, 2021

File: SC-2021-001403

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milicia v. Double S Garage*, 2021 BCCRT 1115

BETWEEN:

MASSIMO MILICIA

APPLICANT

AND:

DOUBLE S GARAGE and ALESSIA LAUDAZI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about car repairs. The applicant, Massimo Milicia, hired the partnership respondent, Double S Garage (Double S), to repair his car's starting failure in December 2019 and January 2020. The respondent, Alessia Laudazi, is a partner of Double S. Mr. Milicia claims that the respondents performed unnecessary

work, failed to repair his car and damaged his car. Mr. Milicia claims a \$4,932.42 refund.

2. The respondents deny Mr. Milicia's claim. They say that they provided appropriate repairs and parts.
3. Mr. Milicia is self-represented. Double S and Ms. Laudazi are represented by Elia Farina, a Double S partner.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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. Did Double S and Ms. Laudazi negligently repair Mr. Milicia's car's starting problem? If so, what is the remedy?
 - b. Did Double S and Ms. Laudazi negligently damage Mr. Milicia's car causing engine smoke? If so, what is the remedy?
 - c. Did Double S and Ms. Laudazi negligently provide unnecessary repair services to Mr. Milicia's car that were covered by the manufacturer's warranty?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Mr. Milicia must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Mr. Milicia brought his 2010 BMW X5 car to the respondents' car repair business in December 2019 because it was not starting correctly. The respondents say Double S checked the car and its OBD scanner, a vehicle diagnostic device, detected that the battery and fuel pump were faulty. Double S replaced these parts. Double S issued Mr. Milicia a December 5, 2019 invoice for \$1,984.94, which he paid.
11. Mr. Milicia brought the car back to the respondents' business in January 2020 complaining that the car was again not starting properly. Mr. Milicia says that he brought the car back on January 7, 2020, but the respondents say that the car was dropped off late January 2020. However, it is undisputed that Double S repaired Mr. Milicia's car a second time in January 2020 and I find that nothing in my decision

turns on the specific date of these repairs. Double S's invoices show that Mr. Milicia's car travelled 2,738 kilometers between the December 2019 and January 2020 repairs.

12. When Double S checked the car in January 2020, it noted that it was again not starting correctly. The respondents say the OBD scanner detected problems with the ignition computer sensor, which the respondents say was a different problem than the last time Double S repaired the car. The respondents say Double S replaced the electric parts indicated by the OBD scanner and it performed a tune up at Mr. Milicia's request.
13. Double S finished the repairs on January 29, 2020 and it is undisputed that Mr. Milicia paid Double S's January 29, 2020 invoice for \$2,947.48.
14. When leaving, Mr. Milicia says that Mr. Farina, a partner of Double S, told him not to worry about the smoke entering the car. Mr. Milicia says that Mr. Farina told him that the smoke would disappear when the parts settled after about 1,000 kilometers of driving. In contrast, Mr. Farina denies saying this and says that he would not have released the car in that condition. I find that the respondents' submission is more likely to be accurate than Mr. Milicia's because I find it unlikely, without further explanation, that Mr. Milicia would pick up his car and pay for the repairs with smoke entering his car.
15. Mr. Milicia says his car had an oil leak the next day, smoke was entering the car and his car was still not starting properly. Double S offered to look at the leak, but Mr. Milicia took the car to a BMW dealership, Park Shore Motors Ltd. (Park Shore), to check it. Park Shore issued a February 6, 2020 invoice showing that it repaired the car as a warranty service without charging any fees.
16. Mr. Milicia claims that Double S failed to properly repair his car, performed unnecessary work and damaged his car. These claims are discussed further below. Although Mr. Milicia did not say this, I find that he is essentially claiming that Double S was negligent. If Double S was negligent, then Ms. Laudazi would be responsible

for the resulting damages as partner of Double S under section 11 of *the Partnership Act*.

17. To prove negligence, Mr. Milicia must show that Double S owed him a duty of care, Double S breached the standard of care, Mr. Milicia sustained damage, and the damage was caused by Double S's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
18. As a car repair business, I find that Double S owed Mr. Milicia a duty to take reasonable care to repair his car.
19. Mr. Milicia must also prove that Double S breached the standard of care by failing to perform the repairs in a reasonably prudent manner. When the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of care (see, *Bergen v. Guliker*, 2015 BCCA 283). I find that the determination of a reasonable standard for Mr. Milicia's repairs, and whether the respondents met that standard, requires expert evidence.
20. Mr. Milicia provided a May 14, 2021 email statement from Adamo Artuso, a Park Shore shop foreman. As car dealership shop foreman, I am satisfied that Mr. Artuso has sufficient experience under CRT rule 8.3 to provide expert mechanical opinions about Mr. Milicia's car. Mr. Artuso's statement discussed both the starting problems and the engine smoke issues.

Starting problems

21. Mr. Artuso says that Mr. Milicia called him on February 1, 2020 saying that his car would not start and engine smoke was entering through the vents. Mr. Artuso says that he needed to try multiple times to start the car when he drove it on February 4, 2020. Mr. Artuso says Park Shore tested the car and found no fuel pressure and no electric power to the fuel pump. Mr. Artuso says the fuel pump relay's contacts were burnt which interfered with the fuel pump's voltage supply. Mr. Artuso says this was repaired by replacing the fuel pump relay. Mr. Artuso says that the fuel pump replaced by Double S was covered under the car's warranty.

22. The respondents argue that Double S appropriately repaired the car by replacing defective parts identified by the OBD scanner results. Mr. Milicia says that he discussed the OBD scanner results with Double S but it is undisputed that Double S did not give him a copy of the scanner results. Further, the respondents did not provide a copy of the scanner results as evidence in this dispute.
23. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them. An adverse inference is when a decision maker, like the CRT, assumes that a party failed to provide evidence because the missing evidence would not have supported their case. The respondents say that Mr. Milicia did not request a copy of the results when Double S performed the repairs. Since Mr. Milicia does not dispute this submission, I accept it as accurate. The respondents say that Double S only provides the scanner results if requested. Further, the respondents say that Double S no longer has the scanner results because the device has a limited memory and the business does not store printed copies. Based on the respondents' undisputed submissions, I am satisfied that the respondents have provided a reasonable explanation for not providing the OBD scanner results. So, I find that an adverse inference is not appropriate and I accept the respondents' undisputed submission that Double S performed its repairs in reliance on its OBD scanner results.
24. Based on Mr. Artuso's undisputed statement, I find that, more likely than not, that the car's engine starting issues were caused by a faulty fuel pump relay. Further, it is undisputed that the respondents did not diagnose or repair this issue. However, Mr. Milicia has not provided any expert evidence saying that Double S acted improperly by relying on its OBD scanner results. Even though the OBD scanner results ultimately failed to diagnose the problem's source, Mr. Milicia has not proved that Double S's reliance on this device was below the standard of care. So, I find that Mr. Milicia has failed to prove that Double S's repairs relating to the starting problems were negligent.

Engine smoke

25. Mr. Artuso says that the main source of the smoke was oil dripping from the valve cover gasket onto the hot exhaust. Mr. Artuso says the valve cover gasket's bolts were not torqued and the rubber gasket was folded under the plastic cover. Mr. Artuso also says that oil also leaked from the oil filter cap. Mr. Artuso says that the oil filter cap did not fit properly. Mr. Artuso says that Park Shore fixed the leak by replacing the gaskets and torquing the bolts.
26. Based on Mr. Artuso's undisputed statement, I find that Double S breached the standard of care by failing to torque the valve cover gaskets and by improperly replacing the oil filter cap. However, I find that Mr. Milicia has not proved that he has suffered any losses because it is undisputed that Park Shore repaired the oil leaks at no charge. Without providing evidence of any loss caused by Double S's oil change service, I dismiss this claim.

Warranty coverage

27. Mr. Milicia also argues that Double S's work was unnecessary because his car was covered by the manufacturer's warranty. Based on Mr. Artuso's statement and Park Shore's February 6, 2020 invoice, I find that Double S's repairs relating to the car's starting problems were covered by the car's warranty. However, there is no evidence showing that Mr. Milicia told Double S that the car had warranty coverage or that he asked it to check the warranty status. Further, I find that Mr. Milicia has not established that the standard of care required Double S to confirm the warranty status of an approximately 9-year old car before performing repairs. So, I dismiss Mr. Milicia's claim relating to the warranty status.
28. For the above reasons, I dismiss Mr. Milicia's claims.

CRT fees and dispute-related expenses

29. 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. Milicia was not successful, I find that he is not entitled to reimbursement of his CRT fees. The respondents did not request reimbursement of dispute-related expenses.

ORDER

30. I dismiss Mr. Milicia's claims and this dispute.

Richard McAndrew, Tribunal Member