



Civil Resolution Tribunal

Date Issued: December 17, 2021

File: SC-2021-004218

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wali v. The Dick Irwin Group Ltd.*, 2021 BCCRT 1321

B E T W E E N :

HASSAN WALI

APPLICANT

A N D :

THE DICK IRWIN GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about alleged deficiencies with a new vehicle.
2. The applicant, Hassan Wali, purchased a new 2020 Honda Accord Hybrid vehicle from the respondent car dealership, The Dick Irwin Group Ltd., which does business as Pacific Honda (Pacific Honda). Mr. Wali says when he got the vehicle home, he

discovered it was “full of scratches”. Mr. Wali says the entire car needs repainting. He claims \$4,256 for the estimated cost to repaint his vehicle.

3. Pacific Honda acknowledges that there was a blemish on the hood and scratches on the trunk and door moulding of Mr. Wali’s car. Pacific Honda says these cosmetic imperfections were covered by the vehicle’s warranty, and so it offered to repaint the vehicle’s hood and truck and to replace the damaged door moulding, but Mr. Wali refused. Pacific Honda says repainting the entire vehicle is unnecessary and not covered by Mr. Wali’s warranty.
4. Mr. Wali is self-represented. Pacific Honda is represented by an employee.

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.
9. In the initial Dispute Notice, in addition to Pacific Honda Mr. Wali named Honda Canada Inc. and Babak Mousavi, a Pacific Honda sales manager, as respondents. Mr. Wali later amended the Dispute Notice to remove Honda Canada Inc. as a party. I was advised by CRT staff that after issuing the amended Dispute Notice, Mr. Wali also removed Babak Mousavi as a respondent. However, a further amended Dispute Notice was not issued to reflect that change. Babak Mousavi did not participate in the tribunal decision process and the CRT did not request any submissions from them.
10. I am satisfied that Mr. Wali chose not to pursue his claims against Babak Mousavi and removed them as a respondent. Therefore, under the CRT's authority in section 61(1) of the CRTA, I have amended the style of cause to remove Babak Mousavi as a respondent, leaving only The Dick Irwin Group Ltd. as a respondent.

ISSUE

11. The issue in this dispute is whether Pacific Honda must pay \$4,256, on the basis that Mr. Wali's entire vehicle allegedly requires repainting.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Wali must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.
13. It is undisputed that Mr. Wali initially purchased a Honda Insight Hybrid vehicle at Pacific Honda, but then decided he wanted to "upgrade" it to a new Honda Accord Hybrid. Mr. Wali discussed the upgrade with Pacific Honda over the phone and attended the dealership on July 15 and 16, 2020 to discuss the transaction and

arrange financing. Mr. Wali undisputedly selected some accessories that had to be acquired and installed. So, delivery of his new vehicle was set for July 23, 2020.

14. Mr. Wali acknowledges that when he picked the car up from Pacific Honda on July 23, 2020, he did not inspect it before leaving the dealership. Mr. Wali says upon arriving home, he noticed the vehicle was “full of scratches everywhere”.
15. It is undisputed that Mr. Wali took the vehicle back to Pacific Honda the following day. Pacific Honda acknowledged there was a blemish or paint defect on the vehicle’s hood. It also noted a scratch on the trunk, which it says may have occurred while installing a “trunk lip accessory”, and other scratches on the door moulding. It is undisputed that Pacific Honda re-detailed the vehicle on July 24, though neither party provided a description of what that entailed.
16. Mr. Wali reported to Pacific Honda later that day that he was still not happy with the defects, scratches, and paint finish. Pacific Honda says it agreed to repaint the vehicle’s hood and trunk and to replace the door moulding under warranty. However, it is undisputed that Mr. Wali declined the warranty repair and wanted Pacific Honda to replace the entire vehicle because he was unhappy with the paint generally due to other alleged scratches. In this dispute, Mr. Wali claims only that his entire vehicle should be repainted, and he seeks \$4,256 in damages.
17. Pacific Honda says that despite Mr. Wali’s allegations, other than the noted hood blemish and scratches on the trunk and door moulding, there were no other scratches on the vehicle. It says Mr. Wali’s complaints about the paint are “swirls”, or microscopic marring in the clear coat, which is applied at the time of manufacture. Pacific Honda argues that the swirls are not a material defect, but a normal characteristic of clear coats and simply more noticeable on black vehicles, such as Mr. Wali’s, particularly when it is sunny. Pacific Honda also says the visibility of swirls can be reduced through surface polishing.
18. Mr. Wali provided several photographs of the vehicle that he says show numerous scratches throughout the paint. Pacific Honda argues that Mr. Wali’s photographs

also show dust and dirt on the vehicle, which should not be confused as defects. From my review of the photographs, I cannot determine whether the features Mr. Wali complains of are scratches and paint defects, as alleged. Most of the photographs were taken outside on a sunny day. While I acknowledge that some of the photographs appear to show what Pacific Honda described as “swirls”, there are significant reflections coming off the vehicle, so it is impossible to determine whether certain marks are scratches, surface dirt, or impermanent scuffs.

19. Given Pacific Honda’s admission about the hood blemish and scratches on the trunk and door moulding, I accept that those marks constituted defects that Pacific Honda agreed to repair under warranty.
20. I have considered whether these agreed defects represented a breach of the *Sale of Goods Act* (SGA). While the parties did not specifically refer to the SGA in their submissions, the relevant provisions are mandatory, and I decided it was not necessary to seek the parties’ further submissions on the SGA.
21. Section 18 of the SGA implies certain warranties into contracts for the sale of goods, such as the sale of Mr. Wali’s vehicle. Section 18(b) says if goods are bought by description, there is an implied condition that the goods are of merchantable quality, but if the buyer has examined the goods there is no implied condition as regards defects that the examination ought to have revealed.
22. Here, I find Mr. Wali had the opportunity to examine the vehicle before leaving Pacific Honda with it on July 23, and an examination ought to have revealed the agreed defects. While Mr. Wali says he did not inspect the vehicle on the date of delivery, the Purchase Agreement Mr. Wali signed on July 23, includes a declaration that Mr. Wali inspected the vehicle and was satisfied with its mechanical and physical condition. Based on the declaration, I find the implied condition of merchantability in section 18(b) of the SGA does not apply to the agreed defects.
23. However, even if I am wrong about the applicability of the SGA implied warranty, I find the agreed defects are relatively minor cosmetic issues and do not impact the

overall merchantable quality of the vehicle. On balance, I find the offered warranty repair is sufficient to address the agreed defects.

24. As for whether the vehicle's paint generally contains scratches throughout or is otherwise defective, I find the photographs are inconclusive.
25. Mr. Wali did not provide any other evidence to support his position that the paint is defective, that the entire car needs repainting, or that polishing would not rectify the "swirls" Pacific Honda described. In any event, I find there is insufficient evidence to conclude that the swirls constitute a paint defect. As noted, Mr. Wali bears the burden of proving any vehicle defects that Pacific Honda is liable to remedy. On balance, I find Mr. Wali has failed to meet his burden to prove the paint is generally scratched or defective.
26. Mr. Wali also says that a Pacific Honda "painter" recommended not painting only the hood and trunk because the vehicle's manufacturer uses a different technology to paint cars than the dealership uses, so the vehicle would look like it was painted 2 different colours. However, Mr. Wali provided no supporting evidence of this, and I find the alleged statement is insufficient to prove that painting the hood and trunk would result in a noticeable colour difference in those areas compared with the rest of the vehicle.
27. On the evidence before me, I find Mr. Wali has not proven his entire vehicle needs to be repainted. Therefore, I dismiss Mr. Wali's claim.
28. Given my conclusion, I find I do not have to address Mr. Wali's claimed damages in any detail. However, I note that Mr. Wali did not provide any evidence to support the cost of repainting his vehicle, such as an estimate or invoice. Therefore, I would have dismissed Mr. Wali's claim in any event, for a failure to prove his damages.
29. Nothing in this decision invalidates the manufacturer's warranty for the vehicle or prevents Mr. Wali from requesting that Pacific Honda honour the warranty to have the vehicle's hood and trunk repainted and the door moulding replaced, as previously agreed, subject to any applicable limitation periods.

30. 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. Mr. Wali was unsuccessful and so I dismiss his claim for CRT fees. As the successful party, Pacific Honda did not pay any fees or claim any dispute-related expenses.

ORDER

31. I dismiss Mr. Wali's claims, and this dispute.

Kristin Gardner, Tribunal Member