



Civil Resolution Tribunal

Date Issued: January 4, 2022

File: SC-2021-004126

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Handel v. Shell Canada Limited Shell Canada Limitee*, 2022 BCCRT 4

B E T W E E N :

ROBERT HANDEL

APPLICANT

A N D :

SHELL CANADA LIMITED SHELL CANADA LIMITEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about allegedly contaminated fuel. The applicant, Robert Handel, says he purchased gas from the respondent, Shell Canada Limited Shell Canada Limitee (Shell), on April 12, 2021. Mr. Handel says the gas was contaminated with fine particulate matter and his car needed repairs as a result. Mr. Handel claims \$587.46 in damages.

2. Shell denies liability. It says all its fuel pumps have filters that prevent customers from receiving fuel contaminated with particulate. Shell also says no other customers complained about contaminated fuel, noting its station sells an average of 17,000 litres of fuel per day.
3. Mr. Handel is self-represented. Shell is represented by an insurance adjusting agent.

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.

8. Mr. Handel provided 2 pieces of late evidence. They are both copies of an Air Miles transaction history statement for April 2021. I find the statement is relevant to this dispute, and Shell was provided with an opportunity to review the late evidence and provide its submissions on it. Considering the CRT's mandate for a flexible process, and finding there is no prejudice to Shell, I admit Mr. Handel's late evidence.

ISSUES

9. The issues in this dispute are:
 - a. Did Shell sell Mr. Handel contaminated fuel?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Handel 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 I find is necessary to explain my decision.
11. Mr. Handel says his 2008 Mercedes Benz vehicle was running perfectly before he bought fuel from a Shell gas station on April 12, 2021. He says on April 13, he noticed his car's engine started running roughly when accelerating rapidly or going up hills. He says he noticed the same issue when he drove his car next on April 15. Mr. Handel says on April 18, his car's "engine malfunction" light came on while driving, so he drove home slowly. The following day, he says the engine malfunction light was still on, so he called his local Mercedes Benz dealership to book an appointment, which was scheduled for April 21.
12. The dealership invoice in evidence contains the following information:
 - a. Line A: The client reported the CEL on intermittently, had recently filled up and has been running poorly since. I infer the CEL is the "check engine light". The mechanic performed a "quick test" to find codes associated with the engine

- light. The mechanic then took a fuel sample and found “small particles” in the fuel. The invoice says the mechanic recommended removing the fuel tank, cleaning it, adding fresh fuel and injector cleaner, and that possible further diagnosis may be required.
- b. Line B: The mechanic drained the fuel tank, added fuel injector cleaner and fresh fuel, cleared codes and road tested. The invoice notes the car “running good and no check engine lights on at this time”. The invoice also notes “keep sample for customer”, which Mr. Handel says refers to the fuel from his vehicle.
13. The total bill for this work was the claimed \$587.46, including taxes.
14. Mr. Handel says he did not keep the receipt for his gas purchase made on April 12, 2021. Instead, Mr. Handel provided his Air Miles transaction statement, which shows he received one Air Mile from Shell for a purchase of V-Power fuel at a Shell gas station on April 12. Based on this statement, I am satisfied that Mr. Handel bought gas from Shell on April 12, which Shell does not particularly dispute.
15. Based on the dealership invoice, I also accept that it found small particles in the fuel from Mr. Handel’s tank, and that the particles were the cause of Mr. Handel’s vehicle problems. Shell does not particularly dispute this, but it argues that any particulate found in Mr. Handel’s fuel tank could not have come from its fuel pumps.
16. Shell says it has a monitoring system on its tanks to detect water contamination, and that each pump is equipped with a “Petroclear 10 micron filter”, which Shell says is designed to prevent customers from receiving any particulate-contaminated fuel. Shell provided photographs of the pumps in question, showing the filters attached. It also provided an information sheet with the filter specifications showing they are designed to remove particulates such as dirt, dust, and rust.
17. Mr. Handel says he believes Shell’s filters would allow the “very fine” particulates in his fuel sample to pass through. I find that whether the particulates found in Mr. Handel’s fuel tank would pass through Shell’s filters is a technical matter that requires expert evidence to prove. Yet, Mr. Handel did not provide any evidence in support of

this assertion. I also note that Mr. Handel says he kept the fuel sample the dealership gave him. However, he did not provide photographs or any other evidence about the size of the particles, or what they were made up of. I find Mr. Handel has failed to prove that Shell's filters allowed the particulates into his fuel tank.

18. Shell also says its station conducts manual weekly dips to ensure there is no water or other contaminants in the fuel storage tanks. Shell provided its April 14, 2021 manual dips results, which I find show no obvious abnormalities. Mr. Handel submits the contaminants would settle to the bottom of the tank, so Shell's manual dips would not likely capture the particulates found in his fuel sample. However, he provided no evidence to support his assertion.
19. As noted, Shell says its gas station sells an average of 17,000 litres of fuel per day, and there were no other customer complaints about contaminated fuel before or after the alleged incident. Shell provided evidence showing it sold approximately 19,690 litres of fuel on April 13, 2021, though I note that V-Power fuel accounted for only about 1,400 litres of the total fuel sold. Nevertheless, I accept Shell's evidence that there were no other complaints, which I find supports Shell's position that its fuel was not likely contaminated.
20. Mr. Handel bears the burden of proving Shell sold him contaminated fuel. While I appreciate the timing of his fuel purchase and when he started noticing issues with his vehicle may suggest they were related, I find that the timing alone is insufficient.
21. Mr. Handel provided no expert evidence about the makeup or source of the particles the dealership identified, which I find is necessary because this subject matter is technical and outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 238). The dealership invoice did not specifically say what the particles' likely source was, or that the particles could not have already been present in Mr. Handel's fuel tank when he purchased the gas on April 12. I also place significant weight on Shell's evidence about its filters and the lack of any evidence confirming fuel contamination in its tanks.

22. On balance, I find I have insufficient evidence to conclude that Shell sold Mr. Handel contaminated fuel. I find I must dismiss Mr. Handel's claims.
23. 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. Handel was unsuccessful and so I dismiss his claim for CRT fees. As the successful party, Shell did not pay any CRT fees, and neither party claimed any dispute-related expenses, so I make no order.

ORDER

24. I dismiss Mr. Handel's claims, and this dispute.

Kristin Gardner, Tribunal Member