



Civil Resolution Tribunal

Date Issued: March 16, 2022

File: SC-2021-006835

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henderson v. Gerlak Holdings Ltd. dba Bert's Automotive*,
2022 BCCRT 289

B E T W E E N :

MIKE HENDERSON

APPLICANT

A N D :

GERLAK HOLDINGS LTD. dba BERT'S AUTOMOTIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about vehicle repairs and reimbursement of car rental expenses. The applicant, Mike Henderson, says the respondent, Gerlak Holdings Ltd. dba Bert's

Automotive (Gerlak), installed a faulty transmission in his truck. Mr. Henderson claims \$1,200 for his car rental cost while Gerlak fixed the problem.

2. Gerlak admits that at Mr. Henderson's request it installed a rebuilt transmission in Mr. Henderson's truck. Gerlak also admits that the later transmission repair at issue was covered under the manufacturer Chrysler Canada's (Chrysler) warranty. However, Gerlak says it is not responsible for car rental charges, given the limited coverage in its warranty policy and in Chrysler's warranty policy. Chrysler is not a party to this dispute.
3. Mr. Henderson is self-represented. Gerlak is represented by its owner, Gerry Kreuzkamp.

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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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. Henderson submitted evidence past the CRT's deadline. Bearing in mind the CRT's mandate and because Gerlak had an opportunity to comment on it, I allow the late evidence and have considered it in coming to my decision.

ISSUE

9. The issue in this dispute is whether Gerlak is responsible for Mr. Henderson's claimed \$1,200 car rental expense while the transmission Gerlak installed was repaired under warranty.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Henderson must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Henderson did not provide any final reply submission, despite having the opportunity to do so.
11. In a submitted Statement of Facts, the parties agree:
 - a. Mr. Henderson's 2014 Ram 3500 pick-up truck suffered a transmission failure and he brought it to Gerlak for repairs.
 - b. Mr. Henderson decided to have Gerlak install a rebuilt transmission which was purchased from Chrysler.

- c. The rebuilt transmission carried a 3-year and 160,000 km warranty from Chrysler.
 - d. Within a few days of Gerlak completing the transmission repair, the truck suffered another transmission failure.
 - e. At Chrysler's request, the truck was set to a Richmond, BC dealership for warranty repair work on the transmission.
 - f. While Chrysler's repair work was underway, Mr. Henderson rented a vehicle between June 22 and July 7, 2021, for \$1,191.25. As noted above, Mr. Henderson claims \$1,200 in this dispute. I infer he simply rounded up from the \$1,191.25 car rental bill.
12. It is undisputed that the rebuilt transmission at issue was repaired by Chrysler under warranty. The issue is whether Gerlak must reimburse Mr. Henderson for his car rental expense while that repair was being done.
13. There is no evidence or argument that Gerlak's installation work was defective. On balance, I find it likely the rebuilt transmission's problem was a defect in the transmission itself, which is consistent with Chrysler's agreement to cover its repair under Chrysler's warranty. That said, I find Gerlak breached its contract with Mr. Henderson by selling him a defective rebuilt transmission, even if Chrysler was the one who sold that rebuilt transmission to Gerlak. However, that conclusion does not necessarily mean Mr. Henderson is entitled to the claimed remedy.
14. There is no formal written contract in evidence between Gerlak and Mr. Henderson. What I have is Gerlak's invoice for the rebuilt transmission's supply and install, at the bottom of which Gerlak excludes coverage for things like car rental expenses. Ordinarily, I might say Mr. Henderson did not agree to such a term if it was unilaterally imposed in an invoice after the work was done. However, Mr. Henderson did not dispute his agreement with Gerlak excluded coverage for car rental expenses. Mr. Henderson essentially argues that he expected Gerlak to do a good job and that it should want to satisfy its customer.

15. On balance, because Mr. Henderson's agreement with Gerlak undisputedly excluded from warranty coverage the cost of a rental car, I find damages for Gerlak's breach of contract necessarily excludes rental car expenses. It follows that I dismiss Mr. Henderson's \$1,200 claim for reimbursement of car rental charges.
16. 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. As Mr. Henderson was unsuccessful, I find he is not entitled to reimbursement of CRT fees. Gerlak did not pay fees or claim dispute-related expenses.

ORDER

17. I dismiss Mr. Henderson's claim and this dispute.

Shelley Lopez, Vice Chair