



Civil Resolution Tribunal

Date Issued: June 3, 2022

File: SC-2021-007349

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *D'Aigle v. Smithers Road Automotive Ltd.*, 2022 BCCRT 651

BETWEEN:

JOHN D'AIGLE

APPLICANT

AND:

SMITHERS ROAD AUTOMOTIVE LTD. and RANDALL BURROWS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about vehicle repairs. The applicant, John D'Aigle says the respondents, Smithers Road Automotive Ltd. (SRA) and Randall Burrows, misdiagnosed mechanical issues with his vehicle, and performed unnecessary repairs. He also says the fuel pump installed by the respondents failed. Mr. D'Aigle

initially claimed a total of \$3,849.59 for reimbursement of the repairs completed by the respondents, repairs later completed by other mechanics, and replacement vehicle parts. In submissions, Mr. D'Aigle reduced his total claim to \$3,638.34, which also includes his Civil Resolution Tribunal (CRT) fee claim.

2. The respondents dispute Mr. D'Aigle's claims and say he is not entitled to any reimbursement.
3. Mr. D'Aigle is self-represented. Mr. Burrows is an SRA director, and represents both himself and SRA.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.

ISSUE

8. The issue in this dispute is whether the respondents were negligent in diagnosing and repairing Mr. D'Aigle's vehicle, and if yes, what remedy is appropriate.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. D'Aigle must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. Mr. D'Aigle named both SRA and Mr. Burrows as respondents in this dispute. As noted, Mr. Burrows is one of SRA's directors. At law, directors, officers and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. Mr. D'Aigle did not allege that Mr. Burrows committed a wrongful act independent of SRA. So, I dismiss Mr. D'Aigle's claims against Mr. Burrows personally.
11. SRA and Mr. D'Aigle agree to the following facts:
 - a. Mr. D'Aigle brought his 2014 Ford F-150 truck to SRA to investigate the cause of engine warning lights and erratic engine performance.
 - b. A mass air flow (MAF) sensor was recommended for the truck, and SRA installed the part on October 2, 2020.

- c. Mr. D'Aigle brought the truck back to SRA on October 15, 2020, and it was decided that the fuel pump would be changed. SRA and Mr. D'Aigle agreed that Mr. D'Aigle would supply the fuel pump and SRA would install it.
- d. Mr. D'Aigle purchased new CO2 sensors and installed them himself.
- e. In September 2021, the fuel pump provided by Mr. D'Aigle and installed by SRA failed and needed replacement.

Was SRA negligent in diagnosing and repairing Mr. D'Aigle's truck?

- 12. Mr. D'Aigle says SRA's diagnosis and repair of his truck was negligent. Mr. D'Aigle says he told SRA that he suspected the air filter was an issue when he first brought the truck to SRA to be checked. Mr. D'Aigle says after the MAF sensor and fuel pump were installed by SRA, the problems with his truck persisted. He says he then took the truck to a Ford dealership, where the air filter was replaced. He says this solved the problem with his truck. Mr. D'Aigle says this problem should have been identified by SRA, but SRA failed to check the air filter.
- 13. SRA says one procedure in testing for Mr. D'Aigle's concern was to test the fuel pump pressure. SRA says it tested Mr. D'Aigle's fuel pump pressure and it dropped below the specifications. SRA said that it would not have recommended replacing the fuel pump if it did not see the "drop out on the pressure readings". SRA says Mr. D'Aigle agreed to replace the fuel pump.
- 14. SRA also says Mr. D'Aigle did not mention any concerns with his aftermarket air filter when he brought his truck in. SRA does not dispute that the air filter assembly in Mr. D'Aigle's truck also failed. However, SRA says there are "no diagnostics" when a performance part like an air filter fails, and the only thing to do is to try a different filter to see if it resolves the issue. SRA says Ford tried a good air filter from another vehicle, and this is how it later diagnosed the air filter assembly failure. SRA also says that on a high mileage vehicle such as Mr. D'Aigle's, many parts can be failing. SRA says Mr. D'Aigle still benefited by replacing his truck's failing fuel pump.

15. In order to prove that SRA was negligent, Mr. D'Aigle must show that SRA owed him a duty of care, a reasonable standard of care was not met, it was reasonably foreseeable that failing to meet the standard of care would cause the claimed damages, and the failure caused Mr. D'Aigle's damages. It is undisputed that SRA owed a duty of care to Mr. D'Aigle as its customer.
16. Where a dispute's subject matter is technical or beyond common understanding, it is necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find that the determination of a reasonable standard for diagnosing and repairing vehicles, and whether SRA met that standard, requires expert evidence.
17. The CRT's rules explain that written expert evidence must include a statement of the expert's qualifications, which must show that the person is qualified by education, training or experience to give the opinion. Mr. D'Aigle submitted screenshots from what I infer are various websites that he says identify a mechanic's "code of ethics", and common misdiagnoses for "code faults" in a Ford F-150, among other things. The source of this information is not identified in the screen shots. Even if the source was identified, I find the internet articles do not meet the criteria for expert evidence under the CRT rules. So, I place no weight on this evidence.
18. Mr. D'Aigle also submitted repair invoices from a Ford dealership from October 2020, November 2020, and September 2021. I find the October 2020 invoice shows that Ford also checked the fuel pump pressure, could not determine any further issue with the truck, but suspected "age/contamination of parts" and recommended driving and re-evaluating. Given that Ford also checked the fuel pressure in response to Mr. D'Aigle's voiced concerns, I find it was not obviously negligent for SRA to have previously done so. I also note that the October 2020 invoice does not refer to the truck's air filter. I find that this supports SRA's submissions that Mr. D'Aigle did not identify any concerns with his air filter when he first brought the truck in to SRA to be checked. Given this, and despite Mr. D'Aigle's submissions, I find it likely that Mr.

D'Aigle did not raise any concerns with his truck's air filter when he brought the truck to SRA, or to Ford initially.

19. The other two Ford invoices show that Ford replaced the truck's air filter in November 2020, and replaced the truck's fuel pump in September 2021. While I accept that Ford identified the air filter issue and replaced the air filter in November 2020, I find the invoices do not show SRA was negligent in failing to previously identify the air filter issue or replace the air filter earlier. None of the Ford invoices provide expert evidence on the standard of care or show that SRA fell below the standard of care in its diagnosis and repair of Mr. D'Aigle's truck.
20. I find that Mr. D'Aigle has not provided any expert opinion proving the standard of care for diagnosing and repairing vehicles, or that SRA fell below the standard. As noted, Mr. D'Aigle bears the burden of proving his claims that SRA misdiagnosed his truck's mechanical issues and performed unnecessary repairs. I find the available evidence does not prove that SRA did so. So, I find that Mr. D'Aigle has not proved that SRA misdiagnosed his truck's problems or completed unnecessary repairs.
21. As noted, Mr. D'Aigle and SRA agree that the fuel pump supplied by Mr. D'Aigle and installed by SRA failed in September 2021, 11 months after SRA installed it. The evidence shows that Mr. D'Aigle bought the fuel pump at Lordco. SRA says it cannot warranty a part that it did not supply, but offered to install a new fuel pump supplied by Mr. D'Aigle at no charge, which he refused. Mr. D'Aigle does not dispute that he declined SRA's offer to install a new fuel pump at no charge. As discussed above, a September 2021 Ford invoice shows Ford installed a new fuel pump in the truck. The invoice also noted that Mr. D'Aigle instructed Ford to keep the failed fuel pump, because Lordco would refund Mr. D'Aigle for it. So, I find Mr. D'Aigle has likely been reimbursed for the failed fuel pump itself.
22. As noted above, the fuel pump failed 11 months after it was installed. Ford tested the fuel pump pressure in October 2020 after it was replaced by SRA, and did not identify any problems. I find this shows it is likely that the fuel pump was functioning properly after SRA installed it. As discussed above, there is no expert evidence about the

standard of care, or expert evidence showing that SRA fell below the standard of care when it diagnosed and repaired Mr. D'Aigle's truck. Mr. D'Aigle did not provide evidence that shows SRA's fuel pump installation caused the fuel pump to fail. Given this, I find Mr. D'Aigle has not proved that SRA's fuel pump installation was negligent, and I find SRA is not responsible for the cost of installing the new fuel pump.

23. Given all the above, I dismiss Mr. D'Aigle's claims.

24. 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. Mr. D'Aigle was unsuccessful in this dispute so I find he is not entitled to reimbursement of CRT fees or dispute-related expenses. SRA did not pay any CRT fees or claim any dispute-related expenses, so I award none.

ORDER

25. I dismiss Mr. D'Aigle's claims and this dispute.

Leah Volkers, Tribunal Member