Civil Resolution Tribunal

Date Issued: June 29, 2022

File: SC-2021-009447

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ye v. Volkswagen Group Canada Inc.,* 2022 BCCRT 754

B E T W E E N :

YUN PING YE

APPLICANT

A N D :

VOLKSWAGEN GROUP CANADA INC. and 1297689 B.C. LTD. doing business as VOLKSWAGEN OF RICHMOND

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about coverage under a settlement agreement for car repairs. In 2011, the applicant, Yun Ping Ye, bought a new 2011 Volkswagen Tiguan (car) from the respondent dealership, 1297689 B.C. Ltd. doing business as Volkswagen of Richmond (VR). The respondent Volkswagen Group Canada Inc. (VGCI), the car's manufacturer or distributor, was allegedly responsible under a November 2019 "Settlement Agreement" (SA) related to a class action about Volkswagen timing chain issues.

2. The applicant says they later discovered the existence of the SA, after it was too late to make a claim under it. The applicant alleges the respondents failed to notify them as required about their car's eligibility for coverage under the SA. In this dispute, the applicant claims a refund of the $2,798.59 they paid to VR for October or November 2019 repairs to the car.

3. As discussed below, VGCI did not file a Dispute Response as required, and so is technically in default. VR says the applicant received around a 65% discount and so they did essentially benefit from the SA coverage to the extent the applicant's car was eligible. So, VR says nothing is owing. In a later submitted Statement of Facts, the applicant and VR agree no orders should be made in this dispute against VR.

4. The applicant is represented by their spouse, JZ. VR is represented by its owner, Steve Jarrold. As noted, VGCI is not participating in this dispute.

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). CRTA section 2 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. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

7. 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.

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.

ISSUE

9. The issue in this dispute is whether either respondent is responsible for the applicant's claimed $2,798.59 on the basis they failed to notify the applicant of eligibility under the SA or failed to provide coverage available under the SA.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove their claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. Apart from its Dispute Response filed at the outset of this proceeding, I

note VR chose not to provide written submissions (apart from the joint Statement of Facts), despite having the opportunity to do so.

11. In support of their position, the applicant says they are an eligible class member and says the SA provided 100% reimbursement of past repair expenses.

12. First, as noted above, in a jointly submitted statement of facts, the applicant and VR agree that no orders should be made against VR in this dispute. Given this, and because there is no evidence before me that VR had any responsibility under the SA, I dismiss the applicant's claim against VR. This leaves the applicant's claim against VGCI.

13. Second, as also noted above, VGCI is in default because it did not file a Dispute Response as required after being served with the Dispute Notice. Generally, liability is assumed against a party in default. However, in the circumstances here I decline to assume liability against VGCI, given the evidence before me as discussed further below.

14. I turn to the relevant chronology. The background facts are undisputed.

15. The applicant leased the new car in January 2011, from VR. In January 2015, the applicant bought out the lease. I accept the applicant's undisputed evidence that they have been the car's sole owner since 2011, which is supported by owner's certificates in evidence.

16. On October 10, 2019, after the car would not start, the applicant sought a diagnosis and paid $151.20 to Cowell Motors Ltd. (Cowell). I infer Cowell is VR's former name as it is not disputed. On November 12, 2019, the applicant paid Cowell a further $2,647.39, and the related invoice set out a "50/50 customer and VW goodwill split for cylinder head replacement". The invoice described how the chain tensioner was "out very far" and that the technician completed a "re and re upper timing cover". The invoice also set out how the car's intake valves were all damaged and that "a cylinder head replacement with all timing chains" was recommended. The $151.20 and $2,647.39 together total the claimed $2,798.59. I accept the applicant's

undisputed evidence that Cowell's invoices show the applicant's correct mailing address and email address. This matters because the applicant argues the respondents knew their address and yet failed to give them notice of the SA.

17. In February 2020, the applicant or JZ wrote to VGCI seeking a refund of the car's repair costs but received no response. I note that the applicant says they only became aware of the SA's existence in October 2021.

18. VR says the Volkswagen "VWAG" portal contained owners' addresses and notice for the class action was based on that portal information. The applicant submitted a VWAG portal screenshot that listed a person with initials JZ as the car's owner during the relevant notice period, but with no address listed. I infer the applicant's spouse and CRT representative JZ gave their name at one point and someone affiliated with Volkswagen recorded them in error as the car's registered owner. Nothing turns on this, for the reasons set out below.

19. On March 23, 2020, the Ontario Superior Court of Justice issued an Order declaring the SA was approved and would be implemented. The Order also said that the claims of the class members were dismissed and released against the defendants (including VGCI), in accordance with the SA. The Order also specified how notice of the SA's terms and the claims process was to be given to class members, namely by "Class Counsel" (specific lawyers representing the class) providing addresses and the "Claims Administrator" mailing the notice to anyone who had been sent a notice under an earlier Pre-Approval Order. The Order specified that a third party, Epiq Class Action Services, was the Claims Administrator. The Order did not say that VR or VGCI had any specific role in providing addresses or giving notice of the SA to class members.

20. It is undisputed the applicant's car was an "eligible vehicle" under the SA because its 2011 model year fell within the allowed range of 2009 to 2012. Under the SA, the applicant was a settlement class member because they were the car's registered owner.

21. There are a number of terms in the SA that are relevant to this dispute. Section 8.2 of the SA says summary notices will be mailed to all potential settlement class members for whom Volkswagen has a valid mailing address **and** who have contacted class counsel and provided only a mailing address as their contact info. The SA also specifies publication to a settlement website, which was undisputedly done. Here, there is no evidence before me that the applicant ever contacted class counsel. Contrary to the applicant's assertion, there is nothing in the SA that required VR or VGCI to go through their records and ensure class counsel or the class administrator had the applicant's correct address for the purpose of giving notice under the SA. Similarly, there is nothing in the SA that directly required VGCI or VR to give notice to the applicant as a class member.

22. Further, sections 5.3 and 5.4 of the SA provide that class members fully release all timing chain related claims, whether known or unknown, and that released parties (including VGCI) have no obligation to make payments to non-parties for liability arising out of released claims by operation of the SA. I find insufficient evidence that either VGCI or VR breached any notice provisions. In the circumstances I find the Ontario court's Order that certified the SA left the applicant with no ability to claim against VGCI.

23. In any event, even if VGCI or VR had been required to give the applicant notice of the SA directly, I find the applicant would not have received any compensation had they made a claim within the SA's May 25, 2020 to January 25, 2021 claim period. My reasons follow.

24. First, any available reimbursement must be reduced by goodwill or other concession (SA section 4.3). In other words, the applicant cannot claim from VGCI under the SA for discounted or "goodwill" credits in VR's invoice.

25. Second, while the SA provides 100% repair coverage for the applicant's car's timing chain replacement or repair, it limits the amount of coverage for repair or replacement to engine damage. The SA's reimbursement limit for a damaged or failed engine due to a timing chain tensioner failure is 60% for a car with less than

95,000 km and is 7 to 10 years from “in-service date”. The applicant’s car had about 60,000 km on it when repaired in October 2019 and was then 8 years old.

26. The applicant argues VR repaired only their timing chain system. I do not agree. VR’s invoice says it recommended a “cylinder head replacement with all timing chains” and then with the applicant’s approval later cleaned the engine block and installed a new cylinder head, along with replacement of timing chain system components. It is undisputed a cylinder head is part of the car’s engine.

27. So, under the SA the applicant would have been entitled to only 60% coverage for their engine repair. VR’s $2,647.39 invoice said, “VW pays 50% of repair”. However, the undisputed evidence is that without discounts, the car’s repair cost was $6,767.44. In its Dispute Response, VR said VGCI covered $3,130.25 and VR covered $1,271.45. The applicant did not dispute this and submitted no evidence to the contrary, so I accept it. I accept the applicant received discounts of around 65%. In other words, even if the applicant had made a claim under the SA, they would not have received any compensation because they already received the maximum discount. I dismiss the applicant’s claims.

28. 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 the applicant was unsuccessful, I find they are not entitled to reimbursement of paid CRT fees or dispute-related expenses. The respondents did not pay fees or claim expenses.

ORDER

29. I dismiss the applicant’s claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair