



Civil Resolution Tribunal

Date Issued: November 24, 2022

File: SC-2022-002803

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fang v. MTTM Auto Group Ltd.*, 2022 BCCRT 1267

B E T W E E N :

GANG FANG

APPLICANT

A N D :

MTTM AUTO GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about allegedly deficient car repairs. The applicant, Gang Fang, took his car to the respondent, MTTM Auto Group Ltd. (MTTM), on 2 occasions to fix gear shifting issues. Dr. Fang says MTTM's repairs did not fix those issues, and says they recurred shortly after each visit. Dr. Fang's car became a total loss after the second

alleged recurrence when it was in an accident while being towed. Dr. Fang claims \$5,000 in damages.

2. MTTM says it repaired the gear shifting issues both times that Dr. Fang brought his car in. MTTM says it told Dr. Fang the car had ongoing water leak issues, but Dr. Fang did not request that they be repaired. MTTM says Dr. Fang's described problems after the second repair, and his accident while towing the car, are unrelated to its repairs, so MTTM owes nothing.
3. Dr. Fang is self-represented in this dispute. MTTM is represented by an employee or principal.

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. Dr. Fang claims \$5,000 in damages, which is the maximum CRT small claim amount. Although Dr. Fang says his actual losses are close to \$10,000, he abandons any claim to amounts exceeding \$5,000.

ISSUE

9. The issue in this dispute is whether MTTM's repairs were deficient, and if so, does it owe Dr. Fang \$5,000 in damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Dr. Fang must prove his claims on a balance of probabilities, meaning "more likely than not." I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. As discussed below, Dr. Fang alleges MTTM's car repairs were substandard on 2 occasions. Dr. Fang claims \$5,000 in damages for a refund of MTTM's repair fees, additional diagnostic tests, truck and trailer rental fees, towing and recovery fees, a forfeited class action settlement amount from the car's manufacturer, and food and accommodation expenses during the car repairs and after the accident.
12. Having reviewed the evidence, I find it shows that MTTM gave no express warranties about the quality of its repair work. However, I find it was an implied term of the parties' agreement that MTTM's repairs would be performed to the standard of a reasonably competent car mechanic (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). As the applicant alleging deficient work, Dr. Fang bears the burden of proving that MTTM failed to perform the work in a

reasonably professional manner. For the following reasons, I find Dr. Fang has not met that burden.

First Repair

13. Dr. Fang says his car stopped being able to change gears and became stuck in “park” on November 17, 2021. Dr. Fang had the car towed to MTTM. MTTM’s service records show that Dr. Fang’s car was a 2011 Mercedes-Benz with slightly more than 100,000 km on it at that time.
14. It is undisputed that MTTM diagnosed the issue as a faulty ISM module, which is an electronic part. Based on the service records, I find that on November 26, 2021, MTTM installed a replacement ISM module.
15. Dr. Fang questions whether the replacement ISM module was the correct type or functioned correctly. Dr. Fang says that MTTM’s invoice identified the part as an I-SAM and not an ISM. MTTM says that its clerk mistakenly wrote “I-SAM” when the invoice should have read “ISM,” and that it installed the correct part as shown in its other records. Further, Dr. Fang does not deny that when he drove the car away from MTTM on November 26, 2021, the car was able to shift gears correctly. So, I find MTTM likely installed a correct, functioning ISM module, and not an I-SAM.
16. Dr. Fang says MTTM failed to properly program the ISM module during installation, and that MTTM likely mis-diagnosed and improperly repaired the car’s gear shifting issues and other symptoms. I find those questions involve technical subjects outside of an ordinary person’s knowledge and experience. So, I find expert evidence is required to prove those alleged deficiencies in MTTM’s work (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
17. Dr. Fang submitted an email from a service advisor and customer experience manager at a Mercedes-Benz dealership that suggested a faulty ISM module and a non-programmed ISM module can produce the same error code. However, I find that is not expert evidence, because the author does not describe his technical

qualifications as required by CRT rule 8.3. Further, the advisor provides no opinion about whether the specific ISM module in Dr. Fang's car had been correctly programmed, or had only been reset or "flashed" to remove error codes as Dr. Fang alleges.

18. I find there is no expert evidence before me in this dispute. I find there is nothing obviously wrong with MTTM's car diagnoses, repairs, or ISM module programming, either. So, I find Dr. Fang has not proven with required expert evidence that MTTM failed to program the ISM module correctly, or mis-diagnosed or incorrectly repaired the car's gear shifting problems.

19. For the above reasons, I find it unproven that MTTM incorrectly diagnosed and repaired the gear shifting problem on Dr. Fang's first visit.

Second Repair

20. Dr. Fang says that 2 days later, on November 28, 2021, the "same issue exactly" happened again and the car could not change gears. Dr. Fang says the car was towed to MTTM again on November 29, 2021. MTTM's December 7, 2021 invoice says it diagnosed a power drain and found water damage, so it cleaned up all the water and wet areas. MTTM clarifies in its submissions that it found 2 litres of water in the battery box of the ISM module, which caused the module to fail. Submitted photos show what may be wet areas on an engine, but it is not entirely clear what the photos demonstrate. In any event, and as noted above, I find there is no required expert evidence before me to show that MTTM's water leak diagnosis was incorrect, or that the ISM module failed for a different reason than the water leak. MTTM also says, and Dr. Fang does not refute, that MTTM blew out the car's sunroof drains.

21. MTTM obtained another ISM module from the manufacturer at no charge, but its invoice shows it charged Dr. Fang to program the device again. Dr. Fang says MTTM failed to return the removed ISM module to him on either repair visit. I find MTTM's service records and submitted correspondence show that MTTM ordered replacement ISM modules from the manufacturer and returned the old, broken

modules to the manufacturer at its request. I find the evidence does not show that Dr. Fang requested the old ISM modules' return before MTTM returned them to the manufacturer.

22. MTTM says it told Dr. Fang that the water leak could cause issues for the car, and especially electronic modules, but Dr. Fang did not instruct MTTM to fix the leak. Dr. Fang does not dispute that MTTM told him about the water leak and that it caused the gear shifting problem, although he denies being informed about the potential consequences of further water leakage. In the circumstances, given that MTTM told Dr. Fang a water leak caused the shifting issues, I find the potential for further water leak damage should have been obvious to Dr. Fang. Dr. Fang does not deny that he did not instruct MTTM to investigate or fix the water leak, and did not seek further guidance from MTTM. He says that MTTM did not independently propose a strategy or provide a quotation for addressing the leak, but I find MTTM was under no obligation to provide those things absent a request from Dr. Fang.
23. Dr. Fang says that the water leak might have been caused by MTTM not attaching unspecified parts correctly during the first repair, but I find there is no evidence of that. Dr. Fang also says MTTM might have fabricated the water leak to cover up ISM module programming issues and justify more programming charges, but I find the evidence does not show that either. Dr. Fang does not deny that the car shifted correctly when he left MTTM for the second time on December 7, 2021, and for several hundred kilometres of driving after that. This correct gear shifting supports a finding that MTTM's second round of repairs fixed the second shifting problem.
24. Dr. Fang says that the car began having trouble again 2 days later when he was 600 kilometres away from Vancouver. The car limited its speed to 30 kilometres per hour. The parties agree that this was a "limp mode" that protects the car when it detects a problem. MTTM says this limp mode was not the same issue as the car's earlier inability to shift gears out of park. Dr. Fang says it was the same issue and was caused by MTTM's faulty repairs. Dr. Fang does not explain how MTTM's allegedly

faulty repairs caused the limp mode, or how not being able to shift out of park is the same issue as being limited to a low speed of travel.

25. A submitted invoice shows that Dr. Fang took the car to In-Gear Mechanical Services Ltd., who diagnosed the limp mode's cause as a faulty temperature sensor upstream from the turbo charger, which required further testing and possible replacement. I find none the evidence shows that this problem was related to the ISM module, the transmission, MTTM's repairs, or water leakage. On the evidence before me, I find the car's limp mode was likely caused by a faulty temperature sensor that was unrelated to any of the earlier issues addressed by MTTM.
26. For the above reasons, I find it unproven that MTTM incorrectly diagnosed and repaired the gear shifting issues with Dr. Fang's car. Further, I find nothing before me shows that MTTM caused or unnecessarily delayed any of the repairs, resulting in Dr. Fang extending his trip and incurring more accommodation and food expenses.
27. So, I dismiss Dr. Fang's claim for a refund of MTTM's repair charges (noting that those included a \$97.78 oil change and fluid fill that is unrelated to this dispute). I also find that Dr. Fang's claimed \$1,683.72 for truck and trailer rental expenses, \$145.59 for further car diagnoses, \$1,709.97 for accommodation and food expenses, and \$807.16 for towing and recovery expenses (which includes the first tow to MTTM before any repairs were made), did not result from substandard MTTM diagnoses or repairs. Further, I find that the accident that allegedly resulted in the loss of the towed car, which in turn allegedly caused Dr. Fang to forfeit a \$2,632 class action settlement from the car's manufacturer, did not result from deficient MTTM diagnoses or repairs. I dismiss Dr. Fang's claim entirely.

CRT Fees and Expenses

28. Under section 49 of the CRTA, and the 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.

Dr. Fang was unsuccessful in his claim, but MTTM paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

29. I dismiss Dr. Fang's claim, and this dispute.

Chad McCarthy, Tribunal Member