



Civil Resolution Tribunal

Date Issued: December 14, 2022

File: SC-2022-003129

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Somerville v. J. F. Vision Autoglass Ltd.*, 2022 BCCRT 1343

BETWEEN:

STEVEN SOMERVILLE

APPLICANT

AND:

J. F. VISION AUTOGLASS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about vehicle repairs. The applicant, Steven Somerville, says that while replacing his truck's windshield, the respondent, J. F. Vision Autoglass (JFV), cross-connected the windshield washer fluid hose and a vacuum hose. Mr. Somerville says this caused the truck to run roughly, and to be mistakenly diagnosed with a head gasket problem. Mr. Somerville claims a total of \$2,991.64 for vehicle repairs

including the head gasket, transportation costs, fuel and washer fluid costs, lost wages, and damage to door paint from an allegedly poorly installed windshield. I note the itemized claim calculations in his submissions only total \$2,986.64.

2. JFV says it is possible that it swapped the windshield washer fluid line as alleged, although it does not know if that was the case. JFV says in any event, Mr. Somerville's mechanic misdiagnosed the problem as a head gasket issue, so JFV owes no more than the cost of fixing the line-swap issue, which JFV says was \$290.64.
3. Mr. Somerville is self-represented in this dispute. JFV is represented by its owner, Jeffery Freeman.

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.

ISSUES

8. The issues in this dispute are:
 - a. Whether JFV cross-connected the windshield washer fluid and vacuum lines, and whether that resulted in the claimed vehicle damage and expenses. If so, how much must JFV reimburse Mr. Somerville, if anything?
 - b. Whether any substandard JFV windshield repairs damaged the truck's door paint, and if so, does JFV owe Mr. Somerville \$400 for repainting costs?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Somerville 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.

Did JFV misconnect the truck's hoses, resulting in the claimed expenses?

10. The undisputed evidence is that Mr. Somerville's truck began to run roughly and create excessive exhaust smoke after JFV replaced the windshield sometime in or around March 2022. Mr. Somerville says that the truck also started to quickly consume windshield washer fluid.
11. Mr. Somerville took the truck to his mechanic, Vancouver Auto Centre (VAC). I find an April 18, 2022 invoice confirms that VAC diagnosed the truck's running problems as a head gasket issue, which VAC replaced along with other parts. It is undisputed that VAC incorrectly diagnosed the engine problems as a head gasket issue, and that replacing the head gasket did not solve the rough running problem. Mr. Somerville

also says that he saw the head gaskets and they were 100% intact. On the evidence before me, I am satisfied that the head gasket replacement was based on VAC's incorrect diagnosis, and that it was unnecessary. I note that Mr. Somerville did not name VAC as a respondent to this dispute.

12. Mr. Somerville took the truck back to VAC because it was still running roughly. An April 23, 2022 invoice in evidence shows VAC discovered the truck's windshield washer fluid line and a vacuum line had been cross-connected. It is undisputed that the truck's problems cleared up after April 22, 2022 when VAC properly re-connected those lines, flushed the engine, and changed the oil. I find the cross-connection caused the excessive exhaust smoke and rough running issues.
13. JFV does not say whether its windshield replacement work involved disconnecting and reconnecting the washer fluid line. JFV says it does not know whether it accidentally cross-connected the washer fluid and vacuum lines while replacing the windshield, but says it is possible. JFV also says that, absent a well-fabricated story, the logical conclusion is that the lines had somehow been crossed. I agree. I find there is no evidence of fabrication. On the submitted evidence, including the uncontroverted evidence that Mr. Somerville's truck only started running poorly after the windshield replacement, and due to a cross-connected washer fluid line, I find that JFV cross-connected the lines.
14. For the above reasons, I find JFV is liable for any expenses that resulted from the windshield washer fluid line cross-connection.
15. JFV admits that it originally gave Mr. Somerville a cheque for \$2,500 to cover repair costs allegedly caused by the cross-connection. JFV says it later stopped payment on the cheque because it over-compensated Mr. Somerville, by paying him for both unnecessary repairs resulting from VAC's initial misdiagnosis and additional unrelated maintenance work. Mr. Somerville says JFV broke an alleged "settlement agreement" by stopping the \$2,500 payment.

16. In order for people to have a binding contract, like a settlement agreement, there must be an offer, acceptance, and consideration. "Consideration" is the exchange of something of value, which can be money or other things. There is no written settlement agreement in evidence. I find an audio recording of a conversation between the parties confirms that JFV issued the cheque as an estimate of damages related to the cross-connection. However, I find the evidence does not show that Mr. Somerville provided, or promised to give, specific consideration to JFV in return for the cheque. For example, I find the evidence does not show Mr. Somerville agreed not to sue JFV, or to accept less compensation than he was entitled to, or to provide anything else of value to JFV.
17. Given this lack of consideration, I find there was no binding settlement agreement. I find it likely the \$2,500 cheque simply represented an estimate of damages resulting from the cross-connection, which JFV later reconsidered. So, in the circumstances, I find it was reasonable to stop payment on the apparently overcompensating cheque. I find the evidence does not show JFV breached a settlement agreement.
18. I find the April 23, 2022 invoice shows that VAC charged \$290.64 to diagnose and repair the cross-connection issue. I find this included an engine flush and oil change that were needed because washer fluid had entered the engine as a result of the cross-connection. I find JFV must reimburse Mr. Somerville \$290.64 for that work.
19. Mr. Somerville also claims a total of \$1,422 as reimbursement for VAC's earlier truck repairs shown on the April 18, 2022 invoice, including the unnecessary head gasket replacement. Mr. Somerville says VAC would not have done that unnecessary work if JFV had not originally cross-connected the washer fluid line, so he says JFV is responsible for the cost of the work.
20. JFV submitted a document from Pacific Coast Motors Inc. about diagnosing head gasket issues. However, I find there is no evidence showing the author's qualifications, which is required for expert opinion evidence under CRT rule 8.3. So, I find that document is not expert evidence, and I do not rely on it. I find there is no expert evidence before me.

21. I find none of the evidence proves that a professional mechanic could reasonably misdiagnose a head gasket issue based on the truck's symptoms. Further, if VAC had reasonably diagnosed the actual problem, it would not have done the unnecessary work. So, on the submitted evidence, I find it unproven that VAC's unnecessary head gasket work resulted from JFV's washer fluid cross-connection. So, I find JFV is not responsible for any of the charges shown on the April 18, 2022 VAC invoice that totals \$2,863.84, including those related to the head gasket diagnosis and repair. This also includes the April 18, 2022 oil change that had to be repeated on April 22, 2022 because VAC failed to correctly diagnose and repair the ongoing washer fluid line connection issue by April 18, 2022.
22. Next, Mr. Somerville claims \$250 for the cost of replacing the truck's brake booster, because he says the washer fluid line cross-connection will eventually lead to brake system failure. VAC's April 23, 2022 invoice noted that brake booster damage may occur due to water contamination in vacuum lines, but it did not say whether that damage had occurred, or would likely occur, in Mr. Somerville's truck. As noted, there is no expert evidence before me, and no evidence showing that Mr. Somerville's brake booster failed or was likely to fail because of JFV's washer fluid cross-connection. There is also no documentary evidence showing the actual or likely cost of replacing the truck's brake booster. For the above reasons, I decline to order the reimbursement of brake booster replacement expenses.
23. Mr. Somerville also claims \$10 for 8 litres of washer fluid and \$50 for "fuel losses/cost." I find there is no evidence, or adequate explanation, of additional fuel costs that resulted from the washer fluid cross-connection. Although I acknowledge that Mr. Somerville might have lost some washer fluid from the cross-connection, he provided no documentary evidence proving that he purchased any replacement washer fluid, or its price. I decline to order any reimbursement for those unproven fuel and washer fluid costs.
24. Next, Mr. Somerville claims \$25 for the cost of Uber transportation. However, I find he does not explain why or when he needed that transportation. He submitted no

receipts or other documents showing that he hired or paid for an Uber ride. So, I decline to order the requested Uber reimbursement because that expense is unproven.

25. Mr. Somerville also claims \$539 for 2 days of lost wages, which he says is “70% of gross.” I find he does not adequately describe why the truck’s problems caused him to miss work. Mr. Somerville also provided no documentation confirming his rate of pay or that he missed any work. So, I decline to order any reimbursement for lost wages, which I find are unproven.

Did any poor JFV windshield repairs damage the truck’s door paint?

26. JFV first replaced the truck’s windshield in 2016. After that, JFV undisputedly performed more than one further windshield replacement under warranty, including in March 2022 when it cross-connected the washer fluid line. Mr. Somerville says that JFV improperly replaced the windshield, which caused one of the truck’s doors to rub against its frame and wear off some of the door’s paint. He claims \$400 for the cost of repairing the alleged paint damage.
27. Mr. Somerville submitted a close-up photo showing what appears to be the edge of a vehicle door. I find it is not clear from the photo whether the shiny door edge is from worn paint, photo lighting, or something else. There are no photos showing where the door allegedly rubbed against the frame. Further, Mr. Somerville does not adequately explain, or identify evidence explaining, how the allegedly incorrect window installation could have made the door fit poorly. I find none of the evidence before me proves that JFV incorrectly installed the windshield in any event.
28. For the above reasons, I find Mr. Somerville has not proven the cause of the allegedly damaged paint. Mr. Somerville also provided no documentary evidence showing what it cost, or would have cost, to repair the alleged paint damage, such as receipts or estimates from a painting company. So, I decline to order any reimbursements for paint damage, because the evidence does not show that any paint damage resulted from JFV’s windshield work.

29. In summary, for all of the above reasons, I allow \$290.64 for Mr. Somerville's claim for windshield washer fluid line cross-connection repairs. I dismiss his other requested remedies.

CRT Fees, Expenses, and Interest

30. The *Court Order Interest Act* (COIA) applies to the CRT. COIA sections 1(2) and 1(3) describe how to calculate pre-judgment interest on special damages. Special damages are specific, measurable past losses that arise from the circumstances of a dispute. I find that the \$290.64 truck repair bill is special damages.

31. Under COIA section 1(2), interest on special damages is calculated from the end of each 6-month period after the cause of action arose. Here, none of the evidence shows exactly when JFV cross-connected the washer fluid line. Mr. Somerville says he became aware of the truck's issues on April 7, 2022, so I find that is likely the date the cause of action arose. Therefore, I find Mr. Somerville is entitled to pre-judgment interest on the \$290.64 owing for the April 23, 2022 repair bill, calculated from October 7, 2022 until the date of this decision. This equals \$0.93.

32. 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. Mr. Somerville was partly successful in this dispute, so I find he is entitled to reimbursement of half his paid CRT fees, which equals \$62.50. JFV paid no CRT fees, and neither party claimed CRT dispute-related expenses.

ORDERS

33. I order that, within 30 days of the date of this order, JFV pay Mr. Somerville a total of \$354.07, broken down as follows:

- a. \$290.64 in damages,
- b. \$0.93 in pre-judgment interest under the COIA, and

c. \$62.50 in CRT fees.

34. Mr. Somerville is also entitled to post-judgment interest under the COIA, as applicable.

35. I dismiss the remaining aspects of Mr. Somerville's claim.

36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member