



Civil Resolution Tribunal

Date Issued: May 9, 2022

File: SC-2022-005763

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Powell v. WBC Holdings Ltd.*, 2023 BCCRT 380

BETWEEN:

ANDREW POWELL

APPLICANT

AND:

WBC HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Andrew Powell, took his 2009 BMW X5 to WBC Holdings Ltd. (WBC) for an oil change. WBC does business as Great Canadian Oil Change.

2. Mr. Powell says during the oil change WBC removed and failed to replace an oil filter cap insert that directs oil through the filter. He says this resulted in damage to various parts. Mr. Powell claims \$5,000 in damages for repairs and engine cleaning. Mr. Powell, who is a lawyer, represents himself.
3. WBC says Mr. Powell's repair costs were related to the BMW's pre-existing issues and not WBC's oil change. It denies losing any oil filter cap components. WBC says the claim should be dismissed. An employee or principal represents WBC.
4. As I explain below, I find Mr. Powell has not proven that WBC was negligent, and I dismiss his claim.

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). 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.
6. 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.
7. 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.

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.

Late evidence

9. Mr. Powell pasted the text of an emailed expert opinion statement directly into his final reply submissions. He said until seeing WBC's expert evidence, he was unaware of some aspects of WBC's position and the need to provide expert evidence in response.
10. At my direction, CRT staff invited Mr. Powell to submit the evidence in its original format. Mr. Powell provided a copy of 2 emails and 2 related documents from the expert witness. I find the emails and documents are relevant, and WBC was given an additional opportunity to comment on them. So, I admit them in evidence, bearing in mind the CRT's mandate that includes informality and flexibility.
11. When commenting on Mr. Powell's expert evidence, WBC provided additional new documentary evidence that did not respond to any new issues Mr. Powell's evidence raised. I find WBC's new evidence could have been provided with its earlier evidence. Given the CRT's mandate to provide speedy and fair dispute resolution, I decided not to admit or consider this evidence, which would have required a further round of submissions. Ultimately, given I dismiss Mr. Powell's claim, nothing turns on WBC's additional evidence.

ISSUES

12. The issues in this dispute are:
 - a. Did WBC negligently remove and fail to replace the BMW's oil filter cap insert?
 - b. If so, which of Mr. Powell's claimed repair costs are attributable to the missing oil filter cap insert?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Mr. Powell must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. On January 22, 2022, Mr. Powell brought his BMW to WBC for a routine oil change. The WBC invoice shows the BMW had 65,626 km at the time.
15. Mr. Powell says on February 8, 2022, his check engine light came on. He took the BMW to his regular mechanic, Affordable Auto Repair (AAR). Mr. Powell paid AAR's February 9, 2022 invoice for \$2,508.76. He says this full amount was attributable to WBC's oil change. The invoice includes extensive notes, which I return to below.
16. Mr. Powell says his check engine light came on again a few months later. He took the BMW to AAR again. Mr. Powell says \$2,589.06 of AAR's \$3,865.46 May 30, 2022 invoice was attributable to WBC's oil change.
17. The expenses Mr. Powell says were attributable to WBC therefore equal just over \$5,000, which is the CRT's monetary limit for small claims disputes. Mr. Powell expressly limits his claim to \$5,000.

Did WCB negligently fail to replace the BMW's oil filter cap insert?

18. To prove liability in negligence, Mr. Powell must show that WBC owed him a duty of care, that WBC breached the standard of care in performing the oil change, that he sustained a loss (damages), and that WBC's breach caused the loss.
19. It is undisputed that WBC owed its customer Mr. Powell a duty of care. It is also undisputed that the applicable standard of care is that of a reasonably competent oil change technician.
20. AAR's February 9, 2022 invoice includes detailed notes made by JP, a red seal automotive technician. JP noted that based on the engine error codes and the

information Mr. Powell provided that he recently had an oil change, JP started by checking the oil filter cap. It is undisputed that Mr. Powell's BMW model has an oil filter cap that normally has a centre cartridge or insert that directs the oil flow. Without it, the oil bypasses the filter, resulting in unfiltered engine oil being supplied to the engine.

21. JP's notes say that as JP suspected, the centre cartridge inside the oil filter cap was missing. JP noted that the cartridge can be stuck in the filter when the old filter is removed and can be inadvertently discarded along with the filter.
22. Normally in a claim of professional negligence like this one, expert evidence is required to prove a breach of the applicable standard of care. This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. The exceptions to this general rule are when the alleged breach relates to something non-technical or is so egregious that it is obviously below the standard of care. I find that failing to replace an oil filter cap insert during an oil change is a serious mistake. I also find it is obvious that all parts removed during an oil change should be replaced. WBC does not argue otherwise. So, I find that if WBC's technician failed to replace the filter cartridge, then they breached the standard of care of a reasonably competent oil change technician.
23. WBC disputes that it removed and failed to replace the insert. It says the insert must have been previously missing. It relies on the note on its January 22 oil change invoice that it observed "heavy oil leaks beneath oil filter on arrival." Mr. Powell acknowledges that he signed this invoice with the note on it, but suggests that WBC included the note to insulate itself from liability. Mr. Powell says AAR staff told him that every invoice they see from WBC says there was a pre-existing oil leak. This is hearsay evidence, meaning a statement made outside the CRT proceeding that Mr. Powell relies on to prove the truth of its content. While the CRT may accept hearsay evidence, I choose not to do so here. Mr. Powell provided a written statement from an AAR representative that addressed other issues but not WBC's invoice notes. Mr. Powell is a lawyer and was or ought to have been aware of the requirement to provide

direct evidence. He failed to obtain that evidence from AAR. So, I reject his assertion that WBC's note about heavy oil leaks was an attempt to insulate itself from liability and not a genuine observation. I find there was a pre-existing oil leak before WBC's oil change, as noted on WBC's invoice that Mr. Powell signed. I note Mr. Powell does not explicitly deny the presence of a previous oil leak.

24. Next, I find that whether the damage the BMW exhibited after WBC's oil change was consistent with a filter cartridge that went missing at the time of WBC's oil change, rather than some previous time, is technical and not obvious, and therefore requires expert evidence to prove.
25. Both parties submitted expert opinion evidence. I summarize Mr. Powell's first. Christopher August is a red seal journeyman automotive technician since 2002. Mr. August is an employee or principal of AAR, but I find his evidence straightforward and honest. I do not agree with WBC's suggestion that Mr. August gave false evidence to profit from AAR's services, particularly given AAR was paid for its services well before Mr. August gave his statement. I find Mr. August is qualified as an expert in automotive repair.
26. Mr. August said AAR has seen the same issue that affected the BMW in the past with other vehicles from different shops, especially those specializing in quick oil changes. He said the error codes the BMW showed typically occur when the oil filter cap insert is accidentally removed with the filter and not re-installed with the new filter. He referred to BMW's technical service bulletin in evidence. That bulletin confirms that the check engine code the BMW had can result from an oil filter cap insert being inadvertently removed during the vehicle's last oil service. I find from context that "insert" as used here and "cartridge" as used in JP's notes mean the same component within the oil filter cap.
27. Mr. August said when the oil cap filter insert is not installed, the error code will start "shortly after" because it does not take long for the camshafts to fail to meet the specified position due to lack of proper oil pressure. However, Mr. August did not say whether the 17 days between WBC's oil change and the appearance of the error code

was consistent with the error code appearing “shortly after” the filter’s disappearance. There is no odometer recorded on AAR’s first invoice.

28. Mr. Powell does not say when his previous oil change occurred. He did not provide any maintenance or service records for the BMW. He does not say how many kilometres he drove the BMW between its last service and WBC’s oil change, or the 17 days between WBC’s oil change and AAR’s first invoice. Although JP noted on AAR’s invoice that the problems did not pre-date the oil change in question, it is not apparent whether JP was basing that on AAR’s service records, which are not in evidence, or simply on what Mr. Powell told JP. In the circumstances, given there were documented heavy oil leaks beneath the filter before WBC’s oil change, I am unable to conclude on a balance of probabilities that the insert was removed during WBC’s oil change and not at some other time.
29. I turn to WBC’s expert evidence. WBC provided evidence from certified mechanics Bob Spenst and Justin Spenst of Neighbours Automotive Ltd. WBC also provided evidence from Jim Stroszyn, licensed automotive technician with 37 years’ experience servicing vehicles, including BMWs. Mr. Powell does not challenge these witnesses’ qualifications, and I accept their evidence as expert evidence. My acceptance is not without hesitation given Bob and Justin Spenst said many mechanics in town had a “problem with” AAR. This suggests their evidence may not be without bias. Similarly, Mr. Stroszyn’s evidence bordered on advocacy for WCB, including statements that WBC should not be held responsible. An expert’s role is to help the CRT understand technical matters and not to advocate for either party. That said, I find I am able to rely on the narrow, technical portions of their evidence and disregard the rest. Also, while their evidence is consistent with my conclusion above, that conclusion would not change without their evidence.
30. WBC’s expert witnesses reviewed WBC’s and AAR’s invoices. They said the damage AAR found was not consistent with a recent leak of new oil. For example, AAR said oil had attacked rubber in O-rings and hoses, which it replaced. WBC’s witnesses said that oil takes time to deteriorate rubber components and these components

would not need replacing unless they had years, not weeks, of exposure to oil. Mr. Powell disagrees, but he does not say he has expertise in this area. His expert, Mr. August, did not comment on whether the damage to O-rings and hoses could have resulted from a recently misplaced filter cap insert. On balance, I find AAR's repairs equally consistent with a previous leak as with a leak that developed after WBC's oil change.

31. Was it a breach of the standard of care for WCB's technician not to notice the previously missing insert and advise Mr. Powell? I find this requires expert evidence to prove because it is beyond an ordinary person's knowledge. Mr. Powell did not provide expert evidence that a reasonably competent mechanic would have inspected for the missing oil filter cap insert and advised the customer. Also, I find the note about the heavy oil leak served to alert Mr. Powell of a potential issue. So, I find Mr. Powell has not proven a breach of the standard of care.
32. Given my conclusion that Mr. Powell has not proven that WBC was negligent, I dismiss his claim. It is therefore not necessary to address the specific repairs on AAR's invoice.
33. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of the CRT fees and reasonable dispute-related expenses. WBC was successful but did not pay CRT fees. I dismiss Mr. Powell's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

34. I dismiss Mr. Powell's claims and this dispute.

Micah Carmody, Tribunal Member