



Civil Resolution Tribunal

Date Issued: July 10, 2023

File: SC-2022-006995

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Back v. Vancouver Motorrad Ltd*, 2023 BCCRT 574

BETWEEN:

JONATHAN BACK

APPLICANT

AND:

VANCOUVER MOTORRAD LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about motorcycle repairs. The applicant, Jonathan Back, says the respondent, Vancouver Motorrad Ltd (Motorrad), failed to correctly diagnose a problem with his motorcycle's clutch and charged him for unnecessary parts and repairs. He claims a total of \$750 in this dispute, \$366.47 of which is for a full refund

of his payment to Motorrad. The balance of the \$750 is for travel expenses he says he incurred to have his motorcycle's clutch replaced at a different dealership.

2. Motorrad says it followed the manufacturer's warranty procedure and correctly diagnosed and repaired the problem with Mr. Back's clutch, which was not covered under warranty. It says it does not owe Mr. Back anything.
3. Mr. Back is self-represented and Motorrad is represented by an employee.

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. In his reply submissions, Mr. Back asks the CRT to consider his future motorcycle repair costs, because he says Motorrad has told him it will not honour his warranty in the future. However, this claim is not included in the Dispute Notice, so I find it is not properly before me, and I decline to address it in this decision. Nothing turns on this in any event, given my conclusion below dismissing Mr. Back's claim.

ISSUE

9. The issue in this dispute is whether Motorrad failed to correctly diagnose and repair the motorcycle's clutch issue, and if so, whether Mr. Back is entitled to damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Back must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Back's claims.
11. At some point in the spring of 2020, Mr. Back purchased a BMW motorcycle from Motorrad, which undisputedly does business as High Road Motorsports. In September 2022, he brought it in to Motorrad complaining that the quick shifter and clutch were causing the motorcycle to violently jerk forward during gear changes. He says that through online research he had discovered there was a known problem with the clutch for his motorcycle's model and year, which he refers to as the "PUMA notice". He undisputedly told Motorrad about the PUMA notice at the time, but he did not submit it as evidence. Motorrad undisputedly replaced a non-BMW aftermarket clutch lever on the motorcycle with a BMW-made lever and Mr. Back paid Motorrad \$366.47 for the new part and repair work.
12. Mr. Back says the new clutch lever failed to resolve his complaint about jerky gear changes, and Motorrad failed to follow the PUMA notice in diagnosing the problem, which should have been covered under warranty. Motorrad disputes this. In late

November 2022, Mr. Back undisputedly had his motorcycle's clutch replaced under warranty at a BMW dealership in Victoria.

13. I find Mr. Back's claim against Motorrad is in negligence. In order to prove Motorrad was negligent, Mr. Back must establish that Motorrad owed him a duty of care, breached the required standard of care, and the breach caused him to incur damages. Generally, in claims of professional negligence, expert evidence is required to prove a breach of the standard of care unless the breach is obvious or non-technical (see *Bergen v. Gulliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside an ordinary person's knowledge.
14. Motorrad undisputedly owed its customer Mr. Back a duty of care. However, since Mr. Back did not submit any expert evidence, I find he must establish that Motorrad obviously breached its required standard of care or breached it in a non-technical way. For the following reasons, I find it did not.
15. Motorrad says its customers often research their motorcycle's problems online and believe they have discovered the solution. It says sometimes they are correct, but often they are not. Motorrad says it uses a systemic "three C's" approach to diagnosing problems with motorcycles. First, it takes note of the customer's complaint with as much detail as possible. Second, it attempts to replicate the complaint to search for the cause. Third, it finds the appropriate correction by reviewing the online dealer portal for manufacturer issues, which includes both the warranty system and technical bulletins.
16. Motorrad's repair order in evidence shows that it was able to replicate Mr. Back's complaint when starting the motorcycle cold. Motorrad says it then reviewed BMW's online dealer portal and found the "AIR Measure", which was the closest match to Mr. Back's complaint. The AIR Measure is in evidence and under "Complaint" it states, "Replacement of clutch components. Clutch sticking/closing jerkily". Motorrad undisputedly relied on the AIR Measure to diagnose the clutch issue. On the evidence before me I find Mr. Back has not established that Motorrad obviously breached its

required standard of care by following the AIR Measure as opposed to the PUMA notice, which is not in evidence.

17. Mr. Back refers to the AIR Measure which states, “In the event of a complaint that involves replacing parts of the clutch, ALWAYS check first which clutch is currently installed...The entire clutch must be replaced once only if the “old build level” is installed”. He says the AIR Measure is clear that the first thing Motorrad should have done is determine the build level of his motorcycle, and if the old build level was fitted, then the entire clutch should have been replaced under warranty. This is undisputedly what the Victoria dealership did. I infer Mr. Back says his motorcycle was fitted with the old build level at the time he brought it to Motorrad, though he does not explicitly say so.
18. Motorrad does not specifically dispute that Mr. Back’s motorcycle was fitted with the old build level, so I find it was. However, his motorcycle undisputedly had a non-BMW brand aftermarket clutch lever installed when he brought it into Motorrad. Motorrad says that in its experience, replacing non-BMW aftermarket parts with BMW-made parts is the first step in BMW’s warranty process. Based on this evidence, I find it is not obvious that Motorrad breached its required standard of care by failing to replace Mr. Back’s clutch based on it being fitted with the old build level.
19. Motorrad says that while following the AIR Measure, it determined the motorcycle’s aftermarket clutch lever was loose and may have been causing the problem. It also says that to proceed with any further investigations it needed to replace the clutch lever with the original BMW lever. The evidence shows that Mr. Back reluctantly agreed to the lever replacement. It is undisputed that while replacing the lever Motorrad discovered that the aftermarket lever was damaged. Motorrad says that once the new BMW-brand lever was in place, the motorcycle operated “within factory specifications” so BMW would not authorize a full clutch replacement.
20. After Motorrad completed the lever replacement, Mr. Back picked up the motorcycle and says he immediately experienced the same clutch issue. He says this proves that replacing the clutch lever did not resolve the issue, but for the following reasons I

disagree. Mr. Back undisputedly took the motorcycle back to Motorrad who could not replicate the clutch issue. Motorrad says it determined the problem was caused by operator error, and that Mr. Back was releasing the clutch lever too abruptly. It says it explained to him the importance of releasing the clutch more smoothly, and he was able to do so while its technician observed. Mr. Back denies this. However, without expert evidence, I find Mr. Back has failed to establish that the motorcycle obviously had a mechanical issue immediately after Motorrad replaced the clutch lever.

21. At this point the parties disagreed about next steps, and Motorrad undisputedly refused to provide Mr. Back any further services based on what it says was his “demeaning” behaviour. Mr. Back subsequently contacted BMW who instructed him to take his motorcycle to a different dealership. Mr. Back took his motorcycle to the Victoria dealership, which he says was the next closest dealership to his home. That dealership undisputedly carried out the “Puma measure” under warranty. Mr. Back says the Victoria dealership told him his clutch issue was one of the worst they had seen and should have been immediately obvious to Motorrad’s technician. However, he did not submit a statement from anyone at the Victoria dealership, so I find this statement is hearsay. While the CRT is permitted to accept hearsay evidence in certain circumstances, I decline to do so in this case. I find there is no way to verify the veracity of the alleged statement, and Mr. Back did not say why he did not obtain a written statement.
22. Motorrad says that based on the repair order in evidence, the Victoria dealership confirmed the clutch issue was warrantable without inspecting the motorcycle. It says this is an exception to usual practice because of Mr. Back’s complaint to BMW. For the following reasons, I find that the steps the Victoria dealership took to repair Mr. Back’s motorcycle are unhelpful in determining whether Motorrad was negligent.
23. Mr. Back says the “original” clutch lever and the parts Motorrad claimed were faulty were “restored in their entirety” on the motorcycle before he took it to the Victoria dealership. He says the “original” lever “passed inspection” at the Victoria dealership and the warranty claim was processed with the “original” lever in place. He says this

shows the lever was not the problem with the clutch and did not need to be replaced. However, Mr. Back did not say whether the “original” lever was the aftermarket non-BMW lever that was on his motorcycle when he brought it to Motorrad, or the original BMW-brand lever that came with the motorcycle. He also did not say who “restored” this lever and other parts on the motorcycle, or when this was done. The evidence shows the Victoria dealership did not replace the clutch until November 26, 2022, which is more than 2 months after he brought the motorcycle to Motorrad.

24. On the evidence before me, I find the motorcycle was undisputedly not in the same condition when he brought it to the Victoria dealership as when he brought it to Motorrad. It is also possible that other issues arose with the motorcycle through regular use during the 2-month interim period. So, I find the evidence of any repairs the Victoria dealership completed on Mr. Back’s motorcycle is unhelpful in determining the issues with the motorcycle when he brought it to Motorrad in September 2022.
25. Mr. Back also says the replacement BMW-brand clutch lever Motorrad installed was of poor quality and broke. He submitted a photo of the broken lever, but I find I cannot determine from the photo how or when the lever broke, and whether it broke because of the quality of the lever. Motorrad says the lever is designed to break at the spot it broke when the motorcycle is dropped or takes impact at that spot. It says this allows a rider to continue riding rather than losing the entire clutch lever. I find there is insufficient evidence to establish that Motorrad obviously breached its required standard of care by installing a poor-quality lever or by improperly installing it.
26. In summary, I find Mr. Back has failed to establish that Motorrad breached the required standard of care, and so he has not proven that Motorrad was negligent.
27. Mr. Back also says Motorrad breached its contract by failing to perform a warranty investigation and repair on the motorcycle. He says Motorrad is contractually obligated to do this as the delivering retailer of the motorcycle and that the warranty follows the vehicle, not the person. However, Mr. Back did not submit the warranty

as evidence, and given my conclusions above I find he has not established Motorrad failed to follow BMW's warranty procedure.

28. Mr. Back also mentions the *Sale of Goods Act* in his submissions but does not refer to a specific section. For the same reasons I find negligence unproven, I find there is insufficient evidence before me to establish that Motorrad breached any of its obligations under the *Sale of Goods Act*.
29. I note that even if I had found Motorrad was negligent or in breach of any of its contractual or legislative obligations to Mr. Back, which I have not, I would not have awarded Mr. Back the full amount of his claim. He provided no evidence of any travel expenses he incurred to bring his motorcycle to the Victoria BMW dealership, despite those expenses constituting more than half the amount of his claim.
30. 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. Since Mr. Back was unsuccessful, I find he is not entitled to reimbursement of his CRT fees. Motorrad did not pay any CRT fees. Neither party claimed any dispute-related expenses.

ORDER

31. I dismiss Mr. Back's claims and this dispute.

Sarah Orr, Tribunal Member