



Civil Resolution Tribunal

Date Issued: November 20, 2023

File: SC-2022-003539

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Embury v. Resilient Management (West) Corp*, 2023 BCCRT 990

B E T W E E N :

FREDRICK JOHN EMBURY

APPLICANT

A N D :

RESILIENT MANAGEMENT (WEST) CORP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, Mr. Embury, took his 2000 Volkswagen Beetle TDI to the respondent, Resilient Management (West) Corp (Resilient), for an oil change on May 16, 2022. Resilient does business as Mr. Lube.

2. Mr. Embury says that during the oil change, Resilient's technician removed the oil cooler from the bottom of the oil filter and damaged the seal and O-ring when putting it back on. Mr. Embury says his car ran out of oil after 10 minutes. He collectively claims \$587.72 for repairs and the cost of the oil change itself, plus replacement oil and oil additives.
3. Resilient denies Mr. Embury's claims. Resilient says its technician did not remove the oil cooler during the oil change, and says the oil leak was due to wear and tear.
4. Mr. Embury is self-represented. Resilient is represented by a person I infer is an authorized employee.

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.
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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Was Resilient negligent in providing oil change services to Mr. Embury?
 - b. If yes, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Mr. Embury, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision. Mr. Embury did not provide final reply submissions despite being provided the opportunity to do so.
11. As noted, Mr. Embury alleges that Resilient's technician unnecessarily removed the oil cooler, and says they failed to re-insert the associated O-ring when reinstalling the oil cooler. Mr. Embury says this caused a significant oil leak, and says all the car's engine oil was lost in a few minutes of driving.
12. For its part, Resilient does not dispute there was an oil leak. However, Resilient says its technician never removed the oil cooler, and did not cause the oil leak. Resilient provided a May 16 ,2022 customer incident report from one of its technicians, N. In their statement, N said they checked the car over after it was towed back to Resilient's store after it apparently leaked on the road. N said there were no leaks at the oil filter housing, and no leaks at the oil pan drain. N said there was oil all over the fan and oil appeared to have been leaking from the bottom of the oil filter housing cooler. N said they explained to Mr. Embury that the oil was not leaking from anything that was touched during the oil change, and told Mr. Embury that it was leaking at the oil housing cooler and that it was obvious there were heavy leaks prior.

13. Resilient says the car had over 400,000 kilometres on the odometer. It says based on the high mileage and how many oil changes have been completed, the leak was due to wear and tear.

Was Resilient negligent in providing oil change services to Mr. Embury?

14. To succeed in a claim for negligence, Mr. Embury must prove Resilient owed him a duty of care, Resilient failed to meet that duty, and the failure resulted in the claimed damages. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

15. Resilient undisputedly owed its customer Mr. Embury a duty of care. I find the applicable standard of care is that of a reasonably competent oil change technician.

16. In claims of professional negligence, it is generally necessary for the party alleging negligence to prove a breach of the applicable standard of care with expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283. This is because the standards of a particular industry are often outside of an ordinary person's knowledge and experience. There are 2 exceptions to this general rule that I find do not apply here.

17. Here, I find expert evidence is necessary to prove whether Resilient negligently provided any of the oil change services because I find it is a technical matter that is not obvious. As noted, the parties dispute whether Resilient's technician removed the oil cooler and failed to re-install the associated O-ring during the oil change. However, I find it unnecessary to make a finding on this issue. I say this because for the following reasons, I find Mr. Embury has not proved that a missing oil cooler O-ring caused the oil leak in any event.

18. Mr. Embury provided a Sirianni Motors invoice that I find was likely misdated May 18, 2021. I say this because the invoice listed the odometer at 426219, which is only 5 kilometres more than the 426214 odometer listing shown on Resilient's May 16, 2022 invoice for the oil change. So, I find the Sirianni Motors invoice was likely issued May 18, 2022.

19. The Sirianni Motors invoice noted “checked for oil leakage”, “washed the bottom of engine”, and “re & re oil cooler & resealed”. I find this shows that some oil cooler repairs occurred. However, the statement does not say that the oil cooler’s O-ring was missing or damaged, or that it caused the oil leak. Further, the invoice is not expert evidence, and there is no statement or expert evidence from a Sirianni Motors technician or any other technician to support a finding that the oil leak was caused by a missing oil cooler O-ring.
20. Mr. Embury also provided what I infer is a Volkswagen diagram of some components located near the car’s oil filter, including the oil cooler. The diagram included handwritten notes that said the oil cooler does not have to come off during an oil change. There is no indication of who wrote the notes, and I find this diagram does not prove that Resilient removed the oil cooler or caused the oil leak.
21. As noted, Mr. Embury bears the burden of proving his claims. Here, I find he has not provided expert evidence to prove the oil leak was caused by a missing oil cooler O-ring, or that Resilient’s oil change services were otherwise negligent. Therefore, I find it unnecessary to address Mr. Embury’s claimed damages. I dismiss Mr. Embury’s claims.

CRT fees and expenses

22. 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. As Mr. Embury was unsuccessful, I dismiss his fee claim. Resilient did not pay any CRT fees and neither party claimed any dispute related expenses.

ORDER

23. I dismiss Mr. Embury's claims and this dispute.

Leah Volkers, Tribunal Member