



# Civil Resolution Tribunal

Date Issued: March 26, 2024

File: SC-2023-002113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bligh v. Sunwest Auto Centre Ltd.*, 2024 BCCRT 313

BETWEEN:

ALLISON BLIGH

**APPLICANT**

AND:

SUNWEST AUTO CENTRE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about an allegedly negligent diagnosis of a car problem.
2. The applicant, Allison Bligh, took her Volkswagen Jetta to the respondent, Sunwest Auto Centre Ltd., complaining of engine trouble. The respondent diagnosed the

problem as her evaporative emission canister (charcoal canister). After 22 weeks, the respondent had not found replacement parts, so the applicant had her car towed to a 3<sup>rd</sup> party mechanic, VWA, for a 2<sup>nd</sup> opinion. VWA repaired her car in one day, replacing only a \$21.24 hose clamp.

3. The applicant claims \$2,898.92. This includes \$2,513.92 for rental vehicles while her car was with the respondent and \$385 for the time she spent working on this dispute.
4. The respondent says it follows Volkswagen's diagnostic process and that VWA did a "work around." It says it offered to sell the applicant a different car instead, but she declined. Finally, it says it voluntarily loaned her a vehicle for part of the time it had her car. It asks me to dismiss the applicant's claims.
5. The applicant is self-represented. The respondent is represented by an employee.
6. For the reasons that follow, I allow the applicant's claim.

## **JURISDICTION AND PROCEDURE**

7. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
10. Where permitted by CRTA section 118, 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**

11. The issues in this dispute are:
  - a. Did the respondent negligently diagnosis the problem with the applicant's car?
  - b. If so, what are the applicant's damages?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. On July 7, 2022, the applicant took her car to the respondent saying it was having engine trouble. The respondent investigated and determined it needed to replace the evaporative canister. A quote for parts shows it also intended to replace the leak detection pump and a valve. The respondent estimated \$1,106.30 for parts.
14. Undisputedly, one or more of the parts were unavailable. There was no estimated time when they would become available again.
15. Over the next 22 weeks, the respondent loaned the applicant a car for some, but not all, of that time. I find this shows the respondent was aware the applicant both needed and used a car while it had her Jetta. During the periods the applicant did not have a loaner car from the respondent, she rented one. These were July 7 to August 6

(\$1,355.20), August 16 to August 30 (\$570.85), and December 1 to December 15 (\$587.87).

16. On December 6, 2022, the applicant towed her car from the respondent. She took the car to a 3<sup>rd</sup> party mechanic, VWA, for a 2<sup>nd</sup> opinion.
17. The applicant says VWA was able to repair her car within 1 day. VWA's December 15, 2022 invoice includes detailed and clear technician's notes. They wrote the canister was flowing free and the leak detection pump was operating normally. They diagnosed the issue as a line problem. They repaired the line, replaced a \$21.24 clamp, and returned the car to the applicant. The applicant says the car has worked properly since.

### ***Negligence***

18. I find the applicant claims the respondent was negligent. To prove negligence, she must show that the respondent owed her a duty of care, that it breached the standard of care, that she sustained damage, and that the respondent's breach caused the damage.<sup>1</sup>
19. As a business offering car repairs, I find the respondent had a duty of care to provide reasonable care to diagnosis and repair the applicant's car.
20. To prove the respondent breached that standard of care, I find the applicant must provide expert evidence. This is generally the case when the subject matter is technical, or beyond common understanding.<sup>2</sup>
21. VWA's invoice lists the technicians who provided the work. As technicians at a car mechanic's, I find they have sufficient expertise under CRT rule 8.3 to provide expert mechanical opinions about the applicant's car.

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<sup>1</sup> See: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

<sup>2</sup> See: *Bergen v. Guliker*, 2015 BCCA 283.

22. On the basis of VWA's invoice, I find a car repair business taking reasonable care would have accurately diagnosed and repaired the applicant's car. I am persuaded by VWA's technicians' comments that they tested both the canister and the leak detection pump and found no problems.
23. The respondent did not provide any expert evidence refuting the information in VWA's invoice. While it said it follows Volkswagen's diagnostic process and that VWA performed a "work around" it does not explain how it failed to discover the line issue or why repairing the line and replacing the clamp was able to fix the problem.
24. So, I find the respondent negligently diagnosed the applicant's car problems.

### ***Damages***

25. The applicant undisputedly paid \$2,513.92 for rental vehicles while her car was with the respondent when she did not have use of a loaner car. As set out above, this covers three periods.
26. The applicant says the respondent also mentioned her ongoing vehicle rentals as a reason to purchase a new vehicle instead of waiting for repairs. The respondent does not dispute her statement. The respondent also knew they were loaning a car to the applicant. So, I find it was reasonably foreseeable that the applicant would incur rental costs.
27. The applicant dropped her car off at the respondent at 7:49am on July 7. She did not begin to rent a car until 4:30pm that same day. Since VWA was undisputedly able to diagnosis and repair the applicant's car within 1 day, I find the applicant is entitled to car rental costs for the first two periods, totaling \$1,926.05.
28. The applicant towed her car on December 6 and says it took 1 day to repair. However, she does not explain why VWA did not diagnosis or repair her car before December 15. So, I find she is entitled to car rental costs until December 7, 1 day after her car was towed. This is 7 days, half of the final rental period. So, I find the applicant is

entitled to half the cost of the final rental, which equals \$293.94. In total, I find the respondent must reimburse the applicant \$2,2199.99 for car rental fees.

29. The applicant claimed \$385 for 11 hours of time she spent working on the dispute. I find she has not proven her claim for time spent. There is no documentation or detailed list of tasks, she provided no evidence of lost wages, and she did not prove how she set her fees at \$35 per hour.

30. Further, the CRT does not generally award compensation for time spent on a dispute. This is consistent with the CRT's rules against awarding reimbursement of legal fees, except in extraordinary cases. I see no reason to deviate from that rule as I find that this is not an extraordinary case. I dismiss the applicant's claim for compensation for time spent.

### ***Interest, Fees, and Expenses***

31. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on her damages from the date she paid each invoice to the date of this decision. This equals \$146.35.

32. Under CRTA section 49 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. Since the applicant was substantially successful, I find she is entitled to reimbursement of \$125 in CRT fees and \$12.27 in dispute-related expenses.

## **ORDERS**

33. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,503.61, broken down as follows:

a. \$2,219.99 in damages,

b. \$146.35 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$137.27, for \$125 in CRT fees and \$12.27 for dispute-related expenses.

34. The applicant is entitled to post-judgment interest, as applicable.

35. This is a validated decision and order. Under CRTA section 58.1, 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.

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Christopher C. Rivers, Tribunal Member