



# Civil Resolution Tribunal

Date Issued: March 26, 2024

File: SC-2023-003125

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stein v. P.S. Motors Ltd.*, 2024 BCCRT 315

BETWEEN:

CHERYL STEIN

**APPLICANT**

AND:

P.S. MOTORS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about vehicle repairs. Cheryl Stein says that P.S. Motors Ltd. (PSM) failed to adequately repair her vehicle's window, and damaged her vehicle's convertible top. She claims \$2,999 in damages for repair costs and mental distress. Ms. Stein is self-represented.

2. PSM says that Ms. Stein caused the damage by operating the convertible top when it instructed her not to. It denies responsibility for Ms. Stein's claimed damages. PSM is represented by an employee or principal.
3. For the following reasons, I dismiss Ms. Stein's claims.

## **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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. However, 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. 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.

### ***Additional Claim***

7. In her final reply submissions, Ms. Stein says that PSM also did not repair a coolant leak in her vehicle, which caused her motor to burn out. She claims an additional \$6,000 for this repair. This claim was not part of Ms. Stein's Dispute Notice. I find it would be procedurally unfair to consider this claim at this late stage, because PSM had no notice of it. So, I will not address this claim further in this decision, other than to note it exceeds the CRT's small claims monetary limit in any event.

## ***Delay***

8. Ms. Stein also argues that she was prejudiced by PSM's multiple delays during the CRT process. PSM undisputedly requested an 18-day extension to file its Dispute Response, and a 4-week extension to provide its evidence and submissions. These requests were approved under the CRT Rules. While PSM submitted its Dispute Response before the extended deadline, Ms. Stein did not receive a copy of it until approximately 3 weeks later.
9. Ms. Stein says that these delays have caused her grief and distress, because she is disabled and relies on her vehicle for transportation, but the top is still not functioning. She also says that her car now has mold buildup because of moisture coming in through the window, which she says PSM did not properly fix. I infer she argues that she has had to wait to repair these issues until this dispute is resolved.
10. As noted, the CRT's mandate includes informality and flexibility. While I acknowledge Ms. Stein's frustration about PSM's extensions, I find they were relatively short and were reasonable in the circumstances. Ms. Stein has not provided any evidence that her vehicle cannot be driven in the meantime. So, I find she has not been prejudiced by PSM's brief delays.

## **ISSUE**

11. The issue in this dispute is whether PSM acted negligently in repairing Ms. Stein's vehicle, and if so, whether it must pay her the claimed damages.

## **EVIDENCE AND ANALYSIS**

12. As the applicant in this civil proceeding, Ms. Stein must prove her 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.
13. On April 13, 2021, Ms. Stein brought her vehicle to PSM to have the left rear window regulator replaced. One of the convertible top's lift rods broke while PSM was

replacing the sensor. The parties agreed that Ms. Stein would pay for a new lift rod, but PSM would not charge for its labour to install it.

14. The following day, Ms. Stein returned to PSM to have the lift rod replaced. She undisputedly requested that PSM's employees not enter her vehicle, due to concerns about COVID-19. The parties agree that Ms. Stein entered her vehicle and lowered the top, which caused damage to other components. Ms. Stein says that PSM's employee, J, instructed her to lower the top, while PSM says that J instructed her not to lower it.
15. Ms. Stein says PSM acted negligently by not sufficiently repairing the window, breaking the lift rod, and instructing her to lower the convertible top. She also makes general arguments that PSM overcharged her for an oil change, but claims no remedy for this, so I have not addressed it further.
16. In order to prove negligence, Ms. Stein must prove that:
  - a. PSM owed her a duty of care,
  - b. PSM breached the applicable standard of care,
  - c. Ms. Stein suffered damage, and
  - d. PSM's breach caused the damage.
17. I accept that PSM owed Ms. Stein a duty of care to repair her vehicle to a reasonably competent standard. I consider whether Ms. Stein has proven the remaining elements for each of her claims below.

### ***Window Repairs***

18. Ms. Stein claims \$862 as a refund for the initial window repairs, which she says were not completed correctly.

19. Generally, an allegation that a professional's work was negligent must be proven with expert evidence. There are exceptions where the work is obviously substandard, or the deficiency relates to something non-technical.<sup>1</sup>
20. Ms. Stein provided photographs showing the rear driver's side window on her vehicle partially open. I find these photographs are insufficient to determine whether PSM's original window repairs were obviously deficient, so expert evidence is required.
21. Ms. Stein says that she tried to obtain an expert report from two different repair shops, but that both declined to provide one. In the absence of expert evidence about PSM's window repairs, I find Ms. Stein has not proven that PSM's repairs were deficient. I dismiss this part of her claim.

### ***Broken Lift Rod***

22. Ms. Stein says that PSM's employee negligently broke the lift rod, while PSM says that the lift rod "disintegrated" upon reinstallation because it was old and its plastic was brittle.
23. In reply submissions, Ms. Stein says that the vehicle's entire top had been replaced by the previous owner, so the parts were newer. She also argues that the lift rod on the vehicle's other side is working perfectly. I infer she argues it is obvious that PSM negligently broke the lift rod, because if it failed due to brittle plastic then the other side would have failed as well. I find this speculative, as there is no evidence before me that it is common or expected for lift rods on either side of a vehicle to fail at the same time. Ms. Stein did not provide any evidence of the vehicle's top having been recently replaced, and in any event, there is no evidence before me about the average lifespan for the lift rods. I find the fact that one lift rod is still working does not, in itself, mean that PSM negligently damaged the other one.
24. Ms. Stein also argues that PSM offered to install the new lift rod without charging for its labour because it knew that its employee had negligently damaged the lift rod.

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<sup>1</sup> *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.

PSM agrees that it told Ms. Stein that it would not charge for its labour to install the new lift rod, but says that it did so as an act of goodwill because the installation required minimal labour. I find that PSM's offer does not establish that PSM was negligent.

25. As there is no evidence that PSM obviously breached a reasonable standard of care, I find expert evidence is required to prove that PSM's work was substandard. As noted above, Ms. Stein did not provide expert evidence about PSM's work. Ms. Stein did provide an estimate from a different shop for the cost to repair the convertible top parts, but this estimate does not say anything about PSM's work and whether it was substandard. In the absence of expert evidence, I find Ms. Stein has not proven that PSM negligently broke the lift rod. I dismiss this part of her claim.

### ***Additional Convertible Top Damages***

26. As noted, Ms. Stein also argues that PSM acted negligently by instructing her to lower the vehicle's convertible top, which undisputedly damaged the top's components. She claims \$1,500 to repair this damage.
27. The parties give conflicting descriptions about this incident. Ms. Stein says that J instructed her to put the top down. She says she lowered the top and heard a crunching sound when it was about halfway down. In contrast, PSM says that J instructed Ms. Stein *not* to lower the top, because lowering it when the lift rod was not installed would damage the top's components.
28. Given these conflicting stories, I must decide whose evidence is more credible. This includes a consideration of whether the parties' respective versions of the events are consistent with available evidence, such as documents, photographs, and witness statements.
29. Here, there is little documentary evidence supporting either party's description of the events. Ms. Stein mostly relies on notes that she says she took in April 2021. These notes say that J told her to put the top down.

30. PSM relies on an email its manager sent to Ms. Stein on May 6, 2021. In it, PSM's manager says that Ms. Stein was instructed not to lower the convertible top, but she did so anyway. PSM also relies on a December 20, 2023 statement from its manager, which reiterates that Ms. Stein lowered the top against its instructions. However, PSM did not provide a direct statement from J.
31. While each party's evidence is generally consistent with their respective arguments in this dispute, I give the notes, email, and statement little weight, because they are the parties' own descriptions. Neither party's description of what happened is supported by independent evidence such as photographs, recordings, or witness statements.
32. In her notes and in an email to PSM, Ms. Stein says she has a recording of a phone call from PSM's manager, but she did not provide this recording in evidence. Neither party provided any other documentary evidence in support of their description of the events. While Ms. Stein says that PSM's statement is "invalid" because it is not notarized, her notes also are not notarized. In any event, the CRT does not require evidence to be notarized to be admissible.
33. PSM also relies on positive online reviews from previous customers. Ms. Stein says that these reviews are irrelevant because they do not have anything to do with the repairs on her vehicle. I agree. The fact that some of PSM's other customers have been satisfied with their experience with PSM does not assist in determining whether PSM acted negligently in this specific instance.
34. In the absence of independent documentary evidence, I must consider which version of the events is more consistent with common human experience. In this regard, Ms. Stein says that PSM told her to put the top down because it could not do the repair with the top up. PSM acknowledges that it needed to put the top down to complete the repair, but says that it was possible to retract the top manually, which would require two people.

35. I find it unlikely that J would instruct Ms. Stein to lower the convertible top when it was undisputedly missing the lift rod. PSM says that it told Ms. Stein not to operate the convertible top when she took the vehicle home on April 13, 2021. While Ms. Stein's notes say that PSM had put the top up for her with "seemingly no problem" before she went home, she does not dispute that PSM told her at this time not to move the top until the lift rod was repaired. Overall, I find it unproven that J instructed Ms. Stein to lower the top. I dismiss this part of Ms. Stein's claim.

### ***Mental Distress***

36. Ms. Stein also claims \$600 for "lost time and emotional distress". Under CRT Rule 9.5, the CRT will not order one party to pay another party compensation for time spent dealing with the CRT proceeding except in extraordinary circumstances, which I find are not present here. Ms. Stein provided no evidence or further explanation in support of her claim for emotional distress, so I find it is unproven. I dismiss this part of Ms. Stein's claim.

### **CRT FEES AND EXPENSES**

37. 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. Neither party paid CRT fees. As Ms. Stein was unsuccessful, I dismiss her claim for registered mail expenses. PSM was the successful party, but did not claim expenses.

### **ORDER**

38. I dismiss Ms. Stein's claims and this dispute.

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Alison Wake, Tribunal Member