



Civil Resolution Tribunal

Date Issued: June 21, 2024

File: SC-2023-007768

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gaber v. Kot Automotive Group Ltd.*, 2024 BCCRT 587

B E T W E E N :

MICHAEL GABER

APPLICANT

A N D :

KOT AUTOMOTIVE GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about the cost for parts, labour and towing to replace the applicant, Michael Gaber's vehicle starter. On June 22, 2023, Mr. Gaber took his vehicle to Kelowna Kia operated by the respondent, Kot Automotive Group Ltd. (Kot). Mr. Gaber claims \$604.33 for the cost of parts, labour and towing to replace the faulty starter that Kot had installed. Mr. Gaber is self-represented.

2. Kot says that Mr. Gaber refused to send the faulty starter to Kelowna Kia so that they could process the warranty. Kot is represented by an employee.
3. For the reasons below, I dismiss Mr. Gaber's claim and this dispute.

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.
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 court.
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.

ISSUE

8. The issue in this dispute is whether Kot owes Mr. Gaber for the cost of parts, labour and towing to replace the starter in his vehicle.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Gaber must prove his 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.
10. Mr. Gaber lives in Quesnel but had his vehicle serviced at Kelowna Kia on June 23, 2023. Kelowna Kia replaced the starter at Mr. Gaber's request and conducted some other repair work including replacing brake pads and other wiring.
11. Mr. Gaber said that Kelowna Kia mentioned the ignition switch should also be replaced. Mr. Gaber did not understand if this repair was required immediately. Kot says that the technician at Kelowna Kia recommended replacing the ignition switch. Both parties provided a copy of the Service Order for the repair work. I find that the Service Order says the technician noted an issue with the ignition switch, that it needed replacement and quoted the cost for the replacement.
12. Mr. Gaber drove his vehicle back to Quesnel on June 25, 2023. During the drive, he noticed the same grinding sound that caused him to replace the starter.
13. On July 9, 2023, Mr. Gaber's starter failed, and the vehicle would not start. Mr. Gaber called Kelowna Kia to explain what had happened. Kelowna Kia offered to fix the starter but required that Mr. Gaber pay to tow the vehicle back to Kelowna. Mr. Gaber did not do so. Instead, Mr. Gaber had his vehicle towed to the local NAPA repair shop in Quesnel. NAPA told Mr. Gaber that he needed to replace the starter and the ignition switch, which had probably caused the starter to fail.
14. Mr. Gaber asked Kelowna Kia if they would process the warranty on the starter that they had replaced. Kelowna Kia said they would warranty the starter but required Mr. Gaber to send the part to Kelowna Kia at Mr. Gaber's expense. Mr. Gaber declined to send the starter to Kelowna Kia.

15. Mr. Gaber also asked Kelowna Kia if they would pay for the parts and labour to replace the starter at the NAPA location in Quesnel. Mr. Gaber did not receive an immediate response from Kelowna Kia and instructed the NAPA shop to complete the repairs. Mr. Gaber provided a copy of the NAPA invoice showing the repair work. I note that the repair work that NAPA completed included the starter and the ignition switch. Mr. Gaber had not paid Kelowna Kia to replace the ignition switch and so I find that the cost of replacing the ignition switch would not have been part of Kelowna Kia's warranty replacement in any event.
16. Mr. Gaber said he assumed that Kelowna Kia would cover the parts and labour for the starter's replacement. He made this assumption because he says the NAPA shop told him that if NAPA had done the original work they would pay for everything if the situation were reversed. Mr. Gaber provided a copy of the NAPA warranty policy. I find that the NAPA warranty policy is not relevant to the interpretation of Kelowna Kia's warranty. I also find that Mr. Gaber cannot rely on NAPA's representation to prove that Kot should pay for the repair work.
17. The Service Manager at Kelowna Kia told Mr. Gaber that Kelowna Kia would not pay for the work that NAPA completed and that it was Mr. Gaber's choice to get the problem fixed that day instead of sending the starter to Kelowna Kia for warranty replacement.
18. Kot says the warranty required Mr. Gaber to send the faulty starter back to Kelowna Kia to get it covered under the warranty and provide a replacement starter. Kot provided a copy of the Kia Canada Warranty Policy. The Warranty Policy does not say anything about sending parts back to the dealer who installed the part. However, the Service Order contains a clause directly above the customer signature line that says all warranties are subject to factory acceptance.
19. Kot does not say whether Kelowna Kia informed Mr. Gaber of the warranty requirements when he contracted for the repair services on June 23, 2023. To be enforceable, terms and conditions must be brought to the contracting parties' attention before the parties enter the contract. Kot does not say how Kelowna Kia

brought the warranty's terms and conditions to Mr. Gaber's attention. Further, neither party has provided a signed copy of the Service Order indicating that Mr. Gaber was made aware of the warranty requirements at the time of contracting for the repair services. So, I find that Kot has not proved that Mr. Gaber agreed to the warranty requirements and Kot cannot rely on them here.

20. That said, I find it was an implied term of the warranty that Mr. Gaber was required to bring the starter back to Kelowna Kia for warranty service. Contractual terms may be implied 1) based on custom or usage, 2) based on a particular class or kind of contract, or 3) or as necessary for business efficacy or those terms that the parties would have considered obvious (see *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, 1999 CanLII 677 (SCC) at paragraph 27). Here, I find the return-to-Kelowna Kia term necessary for business efficacy.
21. Another way of determining business efficacy is the "officious bystander" analysis (see *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216). The officious bystander analysis asks if, while the parties were making their bargain, an officious bystander were to suggest an express term, the parties would have said, "Oh, of course!". I find that both parties would have said so for the following reasons. A warranty is defined in the Oxford Languages online dictionary as "a written guarantee, issued to the purchaser by the manufacturer, promising to repair or replace the item if necessary." I find that a warranty for an automotive part fits this description. A repair shop cannot replace an automotive part if the customer takes the vehicle elsewhere. If the customer takes the vehicle to a third-party repair shop and seeks reimbursement from the original repair shop, then the original repair shop misses the opportunity to find the source of the problem or seek compensation from the manufacturer. For these reasons, I find that the parties would have considered it obvious that Mr. Gaber had to return the starter to Kelowna Kia for warranty replacement. I make this finding despite Mr. Gaber's residence in Quesnel.
22. Mr. Gaber chose to have his vehicle repaired in Kelowna because it was the earliest available appointment he could find. When Mr. Gaber booked his repair appointment,

the distance between Quesnel and Kelowna was not sufficiently inconvenient to wait for a local Quesnel appointment. Therefore, I find Mr. Gaber cannot rely on the inconvenience of sending the starter back to Kelowna as a reason to reject the implied term of the warranty requirement.

23. Mr. Gaber also claimed for the cost to tow his vehicle to the NAPA repair shop in Quesnel. Mr. Gaber's vehicle was working when he left Kelowna on June 25, 2023. His vehicle did not stop working until July 9, 2023. Also, NAPA told Mr. Gaber that the ignition switch likely caused the starter to fail. Kelowna Kia did not work on the ignition switch. For these reasons, I find there is no basis for Kot to pay this amount.
24. For the reasons stated above, I dismiss Mr. Gaber's claim.
25. 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 dismiss Mr. Gaber's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

26. I dismiss Mr. Gaber's claim and this dispute.

Mark Henderson, Tribunal Member