



# Civil Resolution Tribunal

Date Issued: June 24, 2024

File: SC-2023-001067

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robosa v. Megmar Maintenance Ltd.*, 2024 BCCRT 591

B E T W E E N :

BRENDA AXALAN ROBOSA

**APPLICANT**

A N D :

MEGMAR MAINTENANCE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. This is a dispute about vehicle repairs. The applicant, Brenda Axalan Robosa, hired the respondent, Megmar Maintenance Ltd. (Megmar), to fix her vehicle's power steering pump and hose, and serpentine belt. Ms. Robosa says Megmar was negligent when it installed the serpentine belt. Ms. Robosa seeks compensation of

\$2,578.41 for expenses she incurred when her vehicle broke down shortly after the repair.

2. Megmar says it was not negligent. Instead, Megmar says the vehicle's new power steering pump was faulty, which caused the serpentine belt to fail. Megmar says it replaced the power steering pump at no charge to Ms. Robosa and her claim should be against the parts supplier.
3. Megmar is represented by its owner. Ms. Robosa represents herself.

## **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.
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.

## **ISSUES**

8. The issues in the dispute are:
  - a. Is Megmar responsible for the failed serpentine belt?
  - b. If Megmar is responsible, what expenses can Ms. Robosa recover?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Ms. Robosa, as the applicant, must prove her claims on a balance of probabilities (meaning “more likely than not”). 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. The following facts are undisputed:
  - a. On November 3, 2022, Ms. Robosa brought her vehicle to Megmar to fix the power steering pump, a high-pressure hose, and the serpentine belt.
  - b. Megmar removed and replaced the power steering pump, high-pressure hose, and serpentine belt.
  - c. On November 4, 2022, Ms. Robosa picked up her vehicle and paid Megmar’s invoice totaling \$1,202.55.
  - d. On November 15, 2022, Ms. Robosa was driving her vehicle out of town for a vacation. Ms. Robosa’s vehicle broke down on the highway.
  - e. Ms. Robosa had her vehicle towed to Kamloops where a local auto repair shop, Hanson’s Auto Repair (Hanson), replaced the vehicle’s serpentine belt for \$257.63.
  - f. On April 3, 2023, Ms. Robosa emailed Megmar about an ongoing noise issue with her vehicle.

- g. On April 4, 2023, Megmar removed and replaced the power steering pump at no charge to Ms. Robosa.
- h. On April 5, 2023, Ms. Robosa emailed Megmar confirming Megmar had fixed the ongoing noise issue with her vehicle.

***Is Megmar Responsible for the Failed Serpentine Belt?***

- 11. Ms. Robosa says Megmar was negligent when it installed a new serpentine belt on November 3, 2022. In support, she says someone at Hanson told her the serpentine belt was not installed properly. She says the staff member explained to her that the serpentine belt should have been placed inside a little metal lip to prevent it from slipping.
- 12. Megmar denies it was negligent when installing the serpentine belt. Instead, Megmar says the power steering pump was faulty, which caused the serpentine belt to fail.
- 13. To prove Megmar was negligent, Ms. Robosa must show Megmar owed her a duty of care, Megmar breached the standard of care in replacing the serpentine belt, Ms. Robosa sustained a loss (damages), and Megmar's breach caused the loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
- 14. As an auto mechanic, I find Megmar owed a duty of care to its customers, including Ms. Robosa. However, I find Ms. Robosa has not provided sufficient evidence to prove Megmar breached the standard of care. Normally in a claim of professional negligence like this one, expert opinion evidence is needed to prove a professional breached the standard of care. This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience.
- 15. I find Ms. Robosa did not provide opinion evidence from an expert. Instead, Ms. Robosa provided evidence about what someone at Hanson told her. This is hearsay evidence, meaning a statement made outside the CRT proceeding that a party asks to use to prove the statement's truth. Hearsay evidence is generally inadmissible.

16. Under CRTA section 42, I may accept hearsay evidence where relevant, but I must weigh the evidence based on its reliability and other factors. I place no weight on Ms. Robosa's hearsay evidence, and I find it unreliable. There is no evidence before me about who this person is, their qualifications, or a detailed description of their opinion. So, I reject this hearsay evidence, and I find Ms. Robosa has not proven that Megmar negligently installed the serpentine belt.
17. Even though Ms. Robosa did not prove Megmar was negligent, I find Megmar is still responsible for the failed serpentine belt. This is because I find the implied conditions in section 18 of the *Sale of Goods Act (SGA)* apply to Megmar's vehicle repairs.
18. SGA section 18 requires that when selling goods, such as the power steering pump, the goods will be of saleable quality and fit for their intended purpose. SGA section 18(c) says the goods will also be durable for a "reasonable period of time".
19. Megmar admits the power steering pump was faulty and this caused the serpentine belt to fail. Megmar provided an April 10, 2023 email from its parts supplier about the faulty power steering pump. In the email, the parts supplier offered to pay part of Ms. Robosa's towing and repair costs, totaling \$513.67, plus taxes. There is no evidence before me that Megmar acted on this offer. So, I find Megmar breached the implied conditions in SGA section 18 when it sold Ms. Robosa a faulty power steering pump. Based on Megmar's admission, I also find the faulty power steering pump caused the serpentine belt to fail.
20. Megmar says Ms. Robosa should be going after the parts supplier for her losses. Ms. Robosa says she brought her vehicle to Megmar, who supplied the parts for her vehicle, and she should not be responsible for going after the parts supplier. I agree with Ms. Robosa. Megmar sold the power steering pump to Ms. Robosa. SGA section 18 applies to goods supplied under a sales contract. I find the power steering pump is a good supplied under a sales contract between Megmar and Ms. Robosa. So, I find Ms. Robosa has correctly brought her claim against Megmar.

21. SGA section 18 may apply to Megmar and its parts supplier. However, I make no findings about whether such claims would be successful.

***What Expenses Can Ms. Robosa Recover?***

22. SGA section 15(4) says once a buyer accepts the goods, the implied conditions under the SGA become implied warranties. This distinction matters because SGA section 56 sets out remedies for a breach of warranty. SGA section 56(2) says the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. Naturally resulting means, based on the information available to the parties when the contract is formed, a reasonable person would realize such a loss is likely to occur (see *Purolator Courier Ltd. v. Nav Air Charter Inc.*, 2002 BCSC 965 at para 29).

23. Ms. Robosa says she incurred the following expenses when her vehicle's serpentine belt failed, which total \$2,578.41:

- a. \$492.03 for Roadhouse Towing Ltd. to tow her vehicle from the highway to the Coast Kamloops Hotel in Kamloops on November 15, 2022.
- b. \$50 for dinner in Kamloops.
- c. \$164.72 for 1 night's accommodation at Coast Kamloops Hotel on November 15, 2022.
- d. \$345.20 for missing her first night of vacation accommodation.
- e. \$112.61 for Don's Auto Towing Ltd. to tow her vehicle from Coast Kamloops Hotel to Hanson on November 16, 2022.
- f. \$50 for a taxi from Hanson to Enterprise Rent-a-Car.
- g. \$725.80 for a rental car from Enterprise Rent-a-Car between November 16 – 21, 2022.
- h. \$50 for dinner in Kamloops.

- i. \$126.90 for 1 night's accommodation at Riverland Inn & Suites in Kamloops on November 20, 2022.
  - j. \$50 for a taxi from Enterprise Rent-a-Car to Hanson.
  - k. \$257.63 for Hanson to fix the serpentine belt.
  - l. \$153.52 for Megmar's original serpentine belt repairs.
24. Megmar does not dispute the individual amounts claimed by Ms. Robosa. Instead, Megmar says Ms. Robosa is only entitled to \$1,094.83. Megmar does not break down this amount.
25. Ms. Robosa did not provide any receipts to support her claims for the 2 dinners in Kamloops, and the 2 taxi rides between Enterprise Rent-a-Car and Hanson. So, I find Ms. Robosa did not provide sufficient evidence to prove these expenses, and I decline to order these amounts.
26. Ms. Robosa provided receipts from Roadhouse Towing Ltd. for \$492.03, Don's Auto Towing Ltd. for \$112.61, Coast Kamloops Hotel for \$164.72, and Hanson for \$257.63. Ms. Robosa did not explain why she incurred two towing charges. Since Ms. Robosa had her vehicle initially towed to the Coast Kamloops Hotel, I infer she arrived in Kamloops after the auto repair shop had closed. I find all these expenses naturally resulted from the failed serpentine belt. So, I find Ms. Robosa is entitled to be reimbursed \$1,026.99.
27. Ms. Robosa also claims \$153.52 for the amount she paid Megmar to install the original serpentine belt. If I were to allow this expense, Ms. Robosa would be getting the serpentine belt for free. In a breach of contract, a party should not be in a better position than if the contract was fulfilled (see *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, 1993 CanLII 145 (SCC), [1993] 1 SCR 12). So, I decline to order \$153.52 for these vehicle repairs.
28. Ms. Robosa provided a rental agreement from Enterprise Rent-a-Car for \$725.80. The agreement was to rent a vehicle for 5 days from November 16 – 21, 2022. Ms.

Robosa also provided a receipt from Riverland Inn and Suites in Kamloops for \$126.90. The receipt was for 1 night's stay on November 20, 2022.

29. Ms. Robosa did not explain why she needed a rental vehicle for 5 days, or why she needed another 1 night's stay in Kamloops. Hanson's invoice shows the vehicle repairs required 1 hour of labour, and Hanson received the vehicle at 9:44 a.m. on November 16, 2022. Presumably, Hanson would have repaired the vehicle that day.
30. I find Ms. Robosa has not sufficiently proven that the rental car expense for 5 days and the added hotel stay naturally resulted from the failed serpentine belt. Based on the evidence before me, I find a rental car for 1 day is reasonable. So, I find Ms. Robosa is entitled to be reimbursed \$145.16 for the rental car expense. I decline to order \$126.90 for the extra hotel expense.
31. Ms. Robosa claims \$345.20 for missing her first night of vacation accommodation. In support, Ms. Robosa provided a November 15, 2022 email confirming a booking from November 15 - 18, 2022. Ms. Robosa also provided a receipt from a numbered company, which totaled \$1,036.50.
32. To be successful Ms. Robosa must prove the vacation expense naturally resulted from the failed serpentine belt. This means Ms. Robosa must prove a reasonable person would realize this loss was likely to occur when she brought her vehicle to Megmar for repairs. There is no evidence before me that Ms. Robosa told Megmar she was getting her vehicle repaired for a vacation trip. So, I find the vacation expense did not naturally result from the failed serpentine belt, and I decline to order \$345.20.

### ***Conclusion***

33. In summary, I find Megmar is responsible for the failed serpentine belt. So, Ms. Robosa is entitled to \$1,172.15 in damages.
34. The *Court Order Interest Act* applies to the CRT. Ms. Robosa is entitled to pre-judgment interest on the \$1,172.15 damages award from November 16, 2022, the



date Ms. Robosa incurred the expenses, to the date of this decision. This equals \$87.02.

35. 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 find Ms. Robosa was generally successful. So, Ms. Robosa is entitled to reimbursement of \$125 in CRT fees. Ms. Robosa did not claim dispute-related expenses, so I order none.

## **ORDERS**

36. Within 21 days of the date of this order, I order Megmar to pay Ms. Robosa a total of \$1,384.17, broken down as follows:
- a. \$1,172.15 as reimbursement for expenses,
  - b. \$87.02 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 for CRT fees.
37. Ms. Robosa is entitled to post-judgment interest, as applicable.
38. This is a validated decision and order. Under section 58.1 of the CRTA, 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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Jeffrey Drozdiak, Tribunal Member