



Civil Resolution Tribunal

Date Issued: December 27, 2024

File: SC-2023-009772

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morrison v. D'Souza dba Broco Auto Glass*, 2024 BCCRT 1306

B E T W E E N :

STACEY ANN MORRISON

APPLICANT

A N D :

NIGEL D'SOUZA (Doing Business As BROCO AUTO GLASS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about a car windshield repair.
2. The applicant, Stacey Ann Morrison, hired the respondent, Nigel D'Souza (Doing Business As Broco Auto Glass) (Broco), to replace her car's windshield. Ms.

Morrison says Broco installed the windshield improperly and damaged the car. She requests \$3,000 in damages for a diagnostic inspection and car repairs.

3. Broco says it was not negligent, and is not liable for the claimed damages.
4. Both parties are self-represented in this dispute.
5. For the reasons set out below, I allow Ms. Morrison's claim.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
7. 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. 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.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

9. Is Ms. Morrison entitled to compensation for car repairs and if so, how much?

EVIDENCE AND ANALYSIS

10. As applicant in this civil dispute, Ms. Morrison must prove her claim on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
11. Ms. Morrison says Broco did not properly seal the windshield when it replaced it in January 2023. She says this caused water to leak into the car, which damaged a sensor. Ms. Morrison says she is entitled to her claimed damages because Broco was negligent.
12. To prove negligence, Ms. Morrison must show that Broco owed her a duty of care, Broco failed to meet the applicable standard of care, and that failure caused Ms. Morrison's damages: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
13. I find that as a commercial auto glass repairer, Broco owes its customers, including Ms. Morrison, a duty of care. I find the standard of care is that of a reasonably competent glass repair shop. I find this includes installing windshields that do not leak for a reasonable period of time after the installation.
14. Ms. Morrison the windshield Broco installed in January 2023 leaked. She provided a May 8, 2023 invoice from the dealership that states as follows:
 - The customer reported water ingress in the driver's footwell.
 - The technician performed a water leak test, and found a water leak coming from the left side of the windshield.
 - "Aftermarket windshield was not done properly – windshield too far to the right."
 - Carpet and vehicle left apart to dry for a week.

15. Broco says the windshield it installed in January 2023 did not leak. In support of its position, Broco provided an August 16, 2024 statement from employee TJ, stating as follows:

- TJ has been a certified glass technician for 22 years, and has been a manager at Broco for 9 years.
- Ms. Morrison was concerned that windshield was improperly installed and leaking water. TJ did a pressure test and found no leaks.
- TJ made a video of the test, which is deleted and not available.
- Ms. Morrison came in a second time, so Broco installed a second new windshield for Ms. Morrison's "peace of mind."
- At that time, TJ tested the sunroof drains, which were plugged, so TJ cleaned them.
- Sunroof drains often get plugged, leading to water leaks, and clients think it is the windshield. TJ has seen this misdiagnosis many times in his years as a glass installer, especially by dealerships, as they are not knowledgeable about windshield installation.

16. In weighing the dealership's May 8, 2023 invoice against TJ's statement, I am more persuaded by the dealership invoice, and put more weight on it. My reasons follow.

17. Based on his statement, I accept that TJ has expertise in glass installation. However, I find that as a Broco manager, TJ is not neutral. Also, there is no written record, notes, invoice, or any other evidence about the pressure test TJ allegedly did. There is no clear evidence about how the test was conducted, and no evidence about the test's findings, other than the summary TJ wrote over a year later.

18. In addition, I find that TJ's assertion about sunroof drain clogs causing misdiagnosed water leaks is speculative. TJ provided no evidence to support this assertion, such as documents showing similar problems with other cars. I find that if

sunroof clogs were as frequent a source of water leaks as TJ says, Broco would have inspected and unclogged the sunroof drains on Ms. Morrison's first visit, when TJ tested the windshield for leaks. And, if sunroof drain clogs were that common and the most likely source of the leak, Broco would have checked and cleaned the drains to see if that fixed the problem before expending labour and materials to install another windshield.

19. In contrast, while there is no information before me about the qualifications of the dealership technician who documented the leak on the May 8, 2023 invoice, I find the dealership and its technician are neutral, and have no stake in this dispute. I also place significant weight on the fact that the technician's findings were documented on the written invoice and specifically stated what was wrong with the installation, and the dealership also provided Ms. Morrison with 3 photos showing the leak's location.
20. For these reasons, I accept the dealership's evidence that the windshield was incorrectly installed and leaked. So, I find Broco was negligent.
21. A June 21, 2023 invoice from the dealership shows that Ms. Morrison brought her car in due to an electronic malfunction message. The dealership inspected the car and found a problem with the soot sensor. According to the invoice, the technician removed the driver's seat and carpet and found that the carpet was soaked in water, with water running into the soot sensor connector. The wiring harnesses connected to the sensor were corroded and water was coming out as the parts were disassembled.
22. A second invoice dated June 29, 2023 says the dealership removed all the seats, replaced the soot sensor and its wiring harness, removed and dried all the carpets, cleaned water residue and dried the car's interior. After the car was reassembled, the road test was successful.
23. The dealership invoices do not specifically say that the corroded soot sensor and wiring was due to the windshield leak. However, there is no suggestion in the

dealership's detailed records of the inspections and work that there was any other possible source for the water. Also, the wet area was on the driver's side, which is the same side as the windshield leak the dealership identified on May 8, 2023.

24. Also, a July 2, 2024 text message from the dealership technician who wrote the June 2023 invoices states that water inside a vehicle is not normal.
25. Taken together, I find this evidence supports the conclusion that the windshield leak caused the mechanical damage described in the June 2023 invoices. As explained above, although TJ speculated about other potential sources of water ingress, there is no evidence before me to prove that Ms. Morrison's car had another leak, besides the leaking windshield.
26. Broco submits that the dealership reported that the car had "water pooling on the floor on the driver's side", which is consistent with a blocked sunroof drain, and not a windshield leak. I find this is speculative, and not proved by evidence.
27. Broco says that an improperly installed windshield will leak right away and not after 3 months, which proves that the disputed leak was not caused by the windshield installation. Broco says it is impossible for a windshield leak to start 3 months after installation, and Ms. Morrison would have noticed the leak earlier if it was caused by Broco's work.
28. Again, I find this is speculative. Broco did not provide an independent expert source for this assertion about the nature of windshield leaks, such as an expert report or a technical manual or training guide. Also, Ms. Morrison says she parked in an enclosed garage, and that the winter was unusually dry. I make no findings about the weather in winter 2023, as there is no evidence before me about that. But I accept that parking indoors could delay discovery of a leak.
29. Broco also says that taking the car to the dealership voided the warranty on its work, and meant Broco could not claim its cost for the repairs on its insurance. I am not persuaded by this argument. There is no contract in evidence that prohibited Ms. Morrison from taking her car to a dealership. There is also no evidence that the

dealership changed or undid any windshield work that Broco had performed. I also find that Ms. Morrison is not responsible for whether or not Broco can make an insurance claim.

30. For the reasons set out above, I find that Broco was negligent, and that its negligence damaged Ms. Morrison's car. So, Broco is liable for those damages.
31. The dealership's invoices show that Ms. Morrison paid \$392 for the June 21 inspection of the soot sensor problem, and \$2,702.64 for the June 29 repairs. This totals \$3,094.64. Ms. Morrison only claimed \$3,000 in damages in this dispute, so I order Broco to pay \$3,000.
32. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Morrison is entitled to pre-judgment interest from June 29, 2023. This equals \$224.98.
33. As Ms. Morrison was successful in this dispute, under CRTA section 49 and the CRT's rules I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

34. I order that within 30 days of this decision, Broco must pay Ms. Morrison a total of \$3,349.98, broken down as follows:
 - a. \$3,000 in damages,
 - b. \$224.98 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
35. Ms. Morrison is entitled to post-judgment interest under the COIA, as applicable.

36. 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 BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair