

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Hudston v. Volkswagen Group Canada Inc.*, 2019 NSSM 58

BETWEEN:

RANULPH MICHAEL HUDSTON
[address deleted in electronic version]

CLAIMANT·

AND

VOLKSWAGEN GROUP CANADA INC
c/o John Hunter
[address deleted in electronic version]

DEFENDANT

REASONS FOR DECISION

BEFORE:

Shelly A Martin, Adjudicator
Hearing held May 6, 2019.
Decision Rendered on November 7, 2019

APPEARANCES

For the Claimant: Self-Represented
For the Defendant(s): Sian Laing, Cox, Palmer & Associates

By the Court:

Background

[1.] The Claimant, Ranulph Hudston, sued VM Canada for \$7687.05 plus costs he incurred to fix corrosion on the left and right rear rocker panels and sills on his 2007 Volkswagen Jetta. Mr. Hudston was provided with a Corrosion Warranty when he purchased the vehicle and argues the corrosion on his vehicle should be covered pursuant to the Warranty.

[2.] Volkswagen Canada took a variety of positions in its refusal to cover Mr. Hudston's repairs. They rejected Mr. Hudston's warranty claim on the basis that the corrosion evidenced on his Jetta was not perforation corrosion, but was surface corrosion occasioned by Mr. Hudston's a failure to wash or otherwise care for the vehicle. Volkswagen also maintained that the length of time that passed between Mr. Hudston noticing the blistering paint and the work being requested was too long: Volkswagen's position was that the repairs should have been done "promptly" after Mr. Hudston discovered the problem. It is worth mentioning that this particular limitation was not included in the original warranty provided to Mr. Hudston at the time he purchased the vehicle and was only apparent to Mr. Hudston once he was directed to submit a request for the warranty work online in October 2017.

Background

[3.] In the fall of 2014, Ranulph Hudston, a now-retired educator, noticed some corrosion on his almost seven year old Jetta. At that time, corrosion was beginning to show on the left front fender. Mr. Hudston purchased the vehicle from Hillcrest Volkswagen in Halifax and was provided a 12 year corrosion warranty on the vehicle.

[4.] The original warranty document provided to Mr. Hudston was a Limited Warranty Against Corrosion Perforation. This is described in its documentation as a 12 year warranty, without distance limitations. The coverage was for "any repair or replacement of body sheet metal panels that have been perforated by rust." The exclusion section of the original document states "repairs are covered under this warranty only if there is a rust through condition in the body sheet metal." In another section meant to limit coverage appears the following:

"this warranty does not cover corrosion perforation resulting from the

failure to properly repair or paint damaged undercoating or surface corrosion. It does not cover damage due to failure to water otherwise regularly care for the vehicle as described in the Volkswagen owner's manual. The warranty does not cover corrosion perforation resulting from on repaired collision damage or improper collision repair environmental damage this warranty does not cover damage caused by airborne pollutants example (example acid rain bracket.bird droppings, stones, flood water, tree sap or other environmental concerns)

[5.] After noticing the initial corrosion in 2014, Mr. Hudston approached Hillcrest Volkswagen about the front fender and was directed by Hillcrest to Wolf Collision Ltd, a Volkswagen-authorised shop. Corrosion was becoming evident elsewhere on the front end of the vehicle. Under the warranty, Wolf Collision repaired (but did not replace) the left quarter panel and repaired the left and right front rocker panels. The right quarter panel of the Jetta was damaged enough to be replaced entirely. Mr. Hudston testified in court that he also paid from his own pocket to have some minor paint repair done on the driver side front door sill.

[6.] Three years later, in late February or early March 2017, Mr. Hudston noticed a small strip of paint peeling off of the bottom of the right-side rocker panels. Mr. Hudston testified that he also noticed at blistering of the paint on the front section of the front passenger side door sill. Owing to the persistent winter weather and scheduling issues, Mr. Hudston scheduled repairs for the work to be done through Carstar Autobody Repair in June of 2017.

[7.] However, the Carstar auto body technician, pointed out other issues with the left side of the vehicle, as the front left side door sill was also beginning to blister. Carstar informed Mr. Hudston that the body metal under the paint was corroding and advised him this was work that should be covered by and performed under Volkswagen's warranty. Mr. Hudston was told that driving the care in the interim while he sought out the warranty work was fine and continued to drive it during the intervening summer months.

[8.] After approaching Hillcrest Volkswagen, Mr. Hudston was directed to complete an inspection request, which was done online on October 19, 2019. A prerequisite of being able to file the online report was Mr. Hudston's acceptance of additional terms and conditions that he maintains were more specific and limiting than provided in the Warranty itself. The relevant sections of the terms and conditions tied to the inspection request are as follows:

The customer understands that approval or denial of body panel coverage by Volkswagen Canada is final and binding. Repairs to body panels are deemed to be outside our control. Assessments are made by professionally trained Volkswagen paint and corrosion specialist to look for the defect covered under warranty - any decisions they make are final.

Conditions and limitations

It is the vehicle owner's responsibility to promptly repair paint damage, damaged undercoating, or surface corrosion to maintain the limited warranty against corrosion perforation for the affected area of the vehicle active. Neglecting to have the vehicle properly repaired will result in refusal of coverage of the affected area under the limited warranty against corrosion perforation. Rust through condition in the body sheet-metal originating from the inside of the affected panels and not caused by outside influences must be addressed with any authorized Volkswagen dealer at the earliest date possible. Neglecting to have a vehicle promptly repaired will result in refusal of coverage of the affected area under the limited warranty against corrosion perforation. ·

What is not covered

Surface corrosion without perforation

Repairs are covered under this limited warranty only if there is a rust through condition in the body sheet metal originating from the inside of the affected panels. Surface corrosion is not covered under the terms of this limited warranty.

Perforation of sheet metal due to accident, lack of care, or failure to repair or modifications to the paint/painted surfaces.

This limited warranty does not cover corrosion perforation resulting from the failure to properly repair damage, damage to undercoating or surface corrosion. It does not cover damage due to failure to wash or otherwise regularly care for the vehicle as described in the Volkswagen owners manual. This limited warranty does not cover corrosion perforation resulting from unrepaired collision damage or improper collision repair.

Neglecting to have the vehicle promptly repaired

Neglecting to have a vehicle properly repaired may result in refusal of coverage of the affected area under the limited warranty against corrosion perforation.

[9.] The same day he submitted his online report, Hillcrest Volkswagen advised there was no corrosion coverage on the drivers side rocker panel, but no explanation was given for why this was so. At the beginning of November, Hillcrest Volkswagen directed Mr. Hudston to Wolf Collision in Halifax for a repair estimate. In speaking with the technician there, Mr. Hudston was told that any attempt to clean away the corrosion present on the door sill would likely “blow a hole right through it.”

[10.] Unfortunately for Mr. Hudston, Hillcrest emailed more than a month later on December 18 to advise that the warranty repair was declined by Volkswagen. In an email from Jennifer Davison, Volkswagen denied the corrosion was the type covered by the warranty:

This is not corrosion perforation. We cannot cover this repaired under warranty. Prolonged use of the vehicle after discovery of a defect in material or workmanship and the extent of the corrosion is excessive along with the overall condition of the panel being requested is consistent with the general lack of care and maintenance

- *Corrosion resulting from outside influences.*

[11.] Mr. Hudston contacted Volkswagen, disputing their findings and offering to take the vehicle to a third body shop for an opinion. On 21 December, a representative from Volkswagen telephoned Mr. Hudston to advise their decision was final. Undeterred, Mr. Hudston visited a third auto body shop in Elmsdale. Their opinion was also that the corrosion evident on the door sales was coming through the body metal and was in fact corrosion perforation.

[12.] Mr. Hudston asked for a clarification of Volkswagen's decision. and provided research of his own to suggest there are numerous complaints regarding corrosion in his particular model of Jetta. Indeed, Mr. Hudston testified both he and his wife owned several Jetta's or other Volkswagen models and never experienced corrosion problems.

[13.] In an email to the company, Mr. Hudston was incredulous at their claim that

the corrosion was owing to a "general lack of care and maintenance" and provided photos of the vehicle, which show an older but well cared for Jetta, stored in an impeccably clean garage. Mr. Hudston also scoffed at the idea of "corrosion resulting from outside influences" as the blistering was happening at the very front of the sill. He noted that corrosion was beginning on the driver side door sill as well.

[14.] Mr. Hudston attached photos of Vehicle to his email and showed that both rocker panels underneath the vehicle were perforated by rust under the paint and undercoating, which still appeared to be intact.

[15.] He posed the following questions to Volkswagen in closing:

*If this is not corrosion perforation, then what is likely to have caused this corrosion (t i.e. beyond "outside influences?")
Is this type of corrosion a known defect and other cars of the same model?
What specifically could I have done in the way of care and maintenance to prevent of this corrosion?*

[16.] Volkswagen responded a month later, in March

We understand that you were in a disagreement with the decision rendered on your corrosion claim and that you have seeked (sic) the opinion of an independent body shop: however we are unable to base our decisions on information received from independent shops and our decision remains unchanged. As you have been informed the corrosion on your vehicle is not a result of a fault in the factory basecoat, but rather due to outside influence and failure to properly repair paint damage, damage undercoating or surface corrosion. As stipulated in terms of the corrosion warranty, corrosion resulting from these reasons is not cover a bowl; therefore, Volkswagen Canada will not be in a position to authorize the repair of the right side member of your vehicle.

"Corrosion can occur for a number of reasons, such as outside influence bracket road debris, rocks, tree sap, bird droppings, etc. bracket, and proper repair, use of inferior rust proofing methods or lack of rust proofing, as well as fault in the factory workmanship . Meaning the corrosion has originated from inside the panel and work it's way out forward. For these reasons we are an able to comment on any information you may have read about corrosion appearing on other vehicles that may seem similar to the grocery

and on your vehicle.” Furthermore, when you submitted your corrosion claim you indicated that you read and understood the terms and conditions. Within those terms and conditions it states that all decisions made by our corrosion specialist are final. Please find attached a copy of the terms and conditions were you may review this information under the approval/denial portion, along with all other conditions regarding a corrosion inspection request, should you wish to review it.”

[17.] Undeterred, Mr. Hudston visited a local shop near his home in Elmsdale on March 9, 2018 to have the underside of the car and the corrosion sites examined. Upon hoisting the vehicle to inspect the corrosion damage, it was clear that the body metal under the blistering paint on both sides was soft and that “if the paint wasn't holding it together there would probably be a hole” the middle of the right side rocker panel. Mr. Hudston submitted photos showing substantial amount of corrosion and added:

The body metal under the blistering paint on both sills is soft- if the paint wasn't holding together there would probably be a hole.

The middle of the right-side rocker panel is perforated by rust through the edge of the rocker underneath the car.

The middle of the left-side rocker panel is soft under the paint on the edge underneath the car. The paint and the rock-guard are intact, but the metal underneath is likely disintegrating.

[18.] Mr. Hudston added “the pictures I have submitted to make it clear that the corrosion occurring on my door sills is well forward of the door entry areas under the doors, and is so entirely protected from outside influences, paint damage or damage undercoating. Further the soft surface under the paint and rock guard on the left rocker panel is clear evidence the corrosion is taking place under the paint surface and not through it. I appreciate that you have not been able to assess my vehicle directly if you wish to reassess your decision and you require further information and/or photographs, or if you wish me to take my Vehicle into a body shop of your choice for further inspection, I will be happy to oblige.”

[19.] Again Volkswagen responded via email stating that the warranty did not cover surface corrosion and “only applies to cases where the rest is afflicted to the car from the inside and out.” It is worth mentioning that Walter Wetmore, the witness for a Volkswagen did not personally inspect Mr. Hudston's vehicle. Rather, he formed his opinion based on photos that were provided to Volkswagen Head office by Wolf Collision. Coincidentally, the technician who did inspect and

photograph the vehicle for Wolf Collision did suggest to Mr. Hudston that the corrosion was corrosion perforation. However, Mr. Wetmore based his opinions on photos provided to Volkswagen by Wolf Collision and suggested a range of possible causes of what he opined was surface corrosion, including tree sap, bird droppings, shoe buckles or an improperly stored seat belt buckle. With respect to Mr. Wetmore, the location of the corrosion is not a place one would reasonably expect a buildup of tree sap or bird droppings, let alone in an amount to be sufficient to corrode the body of a vehicle.

[20.] In order to be covered, Mr. Wetmore testified that the vehicle must have a hole through it. Mr. Hudston's vehicle clearly has a hole in it, though Mr. Wetmore ascribes the damage to the very thing excluded from coverage by the Warranty: damage to the paint layer of the vehicle.

[21.] Mr. Wetmore suggested damage to the underside of the vehicle was possible, compromising the vehicle undercoating. However, Mr. Hudston testified he had never been involved in an accident with the vehicle and did a Carfax inquiry on the vehicle, which shows no record of accident or damage. He also provided to the court an inspection report from Canavan's Central Appraisers who certified that there was no damage to the rocker panels evident to which the corrosion could have been attributed.

[22.] Mr. Wetmore cited damaged possible to paint owing to rocks and dents, adding that salt and water on Canadian roads are notoriously hard on vehicles . Again, the site of the corrosion on the inside door sills makes these causes seem unlikely.

[23.] I likewise fail to see how a seatbelt or footwear could affect the areas in questions, as the site of corrosion is not easily in contact with footwear or a seatbelt, even one that is improperly stored. On the likelihood of these scenarios, Mr. Wetmore himself admitted that he has "seen it, but it really doesn't happen all the time." While I appreciate Mr. Wetmore's evidence, I have difficulty finding that these scenarios put forward by Volkswagen reasonable, especially given the vehicle's previous history with perforation corrosion. Mr. Hudston maintained during the hearing it was unusual for the rockers to rust out in the way they did on the one occasion, let alone a second time. He admits this was something most car owners never experience during the ordinary course of car ownership and he admitted being surprised as an owner of previous Volkswagen vehicles for this to happen.

[24.] On the one hand, Volkswagen hung much of their defence on Mr. Hudston's failure to "promptly" repair the corrosion when it was discovered. However, "promptly" is not a defined term in the warranty nor did it appear until after Mr. Hudston made a second application for warranty coverage. Volkswagen did not present any evidence to me to suggest what was reasonable in these circumstances only that eight months between the initial discovery of some blistered paint in early March 2017 and the request for repairs in October 2018 was too long.

[25.] On the matter of "prompt" repair, Mr. Wetmore's evidence was somewhat contradictory. On the one hand, he suggested that in the event there is corrosion damage repair must be done immediately to prevent it from becoming worse. However, in another part of his testimony, Mr. Wetmore also stated however, that "once you see that corrosion, it's too late."

[26.] Finally, Volkswagen cites Mr. Hudston's failure to wash or properly care for the vehicle as a cause for the corrosion. There is no evidence of this before me and to the contrary, I am in receipt of a report that speaks to the car's good condition and evidence that Mr. Hudston had the vehicle maintained with some regularity and care.

[27.] For his part, Mr. Hudston believed he had blistered paint and waited until the poor winter and spring weather had ended in June of 2017 to repair his vehicle. At the time, he had no intention of seeking warranty coverage and did not consider this as he believed the issue was related to a paint job. However, when advised by Carstar that the issue was corrosion perforation, he was also told it was fine to still drive the vehicle. He was unaware that his coverage hinged also on being "prompt" - until after he submitted an inspection request in October. The need to effect "prompt" repairs in order for them to be covered by warranty was not expressed in the original warranty, nor was the term defined. Counsel for Volkswagen offered no guidance on this point either. As this is a limiting factor, a means to deny warranty coverage and factor over which Volkswagen seems to have had so much discretion, I would have expected it to be brought to Mr. Hudston's attention by way of appearance in the original warranty documentation, not buried in terms and conditions in an online application once warranty work is requested.

[28.] Volkswagen has denied this is a case of corrosion perforation, but three technicians that inspected the vehicle, including the one who submitted pictures to Volkswagen for the inspection request in October 2017, suggest that it is. There was already an issue with perforation corrosion that was repaired previously by a shop approved by Volkswagen. Volkswagen's witness provided scenarios to

suggest that the corrosion on Mr. Hudston's vehicle is owing to other factors. However, I am not convinced that possibility that tree sap, bird droppings or surface damage to the paint from shoes or a seatbelt buckle were of sufficient magnitude in the location of the corrosion to be its cause. Volkswagen's own witness even admitted that corrosion occasioned by such factors is rare.

[29.] Given that the warranty was for a 12 year period, the public is left with a reasonable impression that a Volkswagen is a vehicle of some quality and durability. It seems unreasonable that this amount of body work was required on a vehicle that has such a reputation for quality, despite the fact that it was, by 2017, ten years old. Volkswagen has pointed out that the warranty does not cover damage of malfunctions occasioned by improper repair or collisions of the vehicle. There are no reported collisions on the vehicle and no one is alleging a default in any previous repairs of the vehicle, though on this point it is worth mentioning that the earlier body work to address corrosion perforation done on the vehicle in 2014 was performed by a body shop of Volkswagen's choosing.

[30.] There may also be protections pursuant to the *Consumer Protection Act*, though none of those were put before me.

[31.] In any case, given the evidence before me, I find for the Claimant, Mr. Hudston.

Dated at Truro, in the County of Colchester, in the Province of Nova Scotia, on November 7, 2019

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)

Shelly Martin
Adjudicator

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Hudston v. Volkswagen Group Canada Inc.*, 2019 NSSM 58

ORDER

BETWEEN:

RANULPH MICHAEL HUDSTON

[address deleted from electronic version]

CLAIMANT

AND

VOLKSWAGEN GROUP CANADA INC

c/o John Hunter

[address deleted from electronic version]

DEFENDANT

A hearing was held in the above noted matter on May 6, 2019. Both parties were present and upon hearing the parties, the following Order is made:

1. That the **CLAIMANT'S** action against the **DEFENDANT** is allowed.
2. That the **DEFENDANT** shall pay to the **CLAIMANT** the sum of \$7687.05.
3. That the **DEFENDANT** shall also pay to the **CLAIMANT** the costs of filing this action with the Small Claims Court of Nova Scotia.

Debt: \$7687.05

Costs: \$199.35

Total: \$7886.40

Dated at Truro, in the County of Colchester, in the Province of Nova Scotia. on the 7th day of November, 2019.

Original Court File Copy
Claimant(s)
Copy Defendant(s)

Shelly A Martin
Adjudicator