



Civil Resolution Tribunal

Date Issued: December 13, 2017

File: SC-2017-002753

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *681288 BC LTD v. Hankin*, 2017 BCCRT 140

B E T W E E N :

681288 BC LTD

APPLICANT

A N D :

Susanne Hankin

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant is a vehicle repair company that does business as Werner's Auto Klinik (Werner's). The respondent Susanne Hankin's car needed repairs and Werner's did some investigations, which included the purchase of a new "instrument cluster".

2. This dispute is about \$807.60, which Werner's says Ms. Hankin owes for a new instrument cluster. Ms. Hankin has refused to pay because she says she did not authorize its purchase and it was ultimately unnecessary. Werner's is represented by its principal Werner Berger and Ms. Hankin is self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether Ms. Hankin owes Werner's \$807.60 for Werner's purchase of an instrument cluster.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The following is undisputed. Ms. Hankin's car would not start and she called BCAA, which towed her car to a Brian's Auto. Brian's Auto replaced her starter. There were ongoing electrical issues, so Ms. Hankin brought her car to Werner's for a diagnosis. Werner's found a number of things that were not working: speedometer, traction control, door locks, clock, and cruise control.
10. Werner suspected the problem was with the instrument cluster. Based on Ms. Hankin's expressed concern that BCAA may have connected the jumper cables improperly, Werner's contacted BCAA. According to Werner's email to the tribunal, BCAA said that it would do everything possible to resolve the issue if its driver connected the cables the wrong way. Based on BCAA's suggestion, Werner's obtained a used instrument cluster and installed it in Ms. Hankin's car, but that did not solve the problem. Werner's told BCAA that the vehicle should go to BMW for a diagnosis, and BCAA agreed. It is undisputed that at that point, Werner's concluded that BMW should make the final diagnosis. Werner's did not bill Ms. Hankin at this time for the instrument cluster work it had done to date because the job was not yet complete.
11. BMW's January 14, 2016 invoice confirms that BMW diagnosed the instrument cluster as the problem, and recommended installation of a new instrument cluster. However, this diagnosis was wrong. This BMW invoice also is clear that Ms. Hankin declined to have a new instrument cluster installed at that time as she wanted to think it over.
12. Werner's email to the tribunal outlined the relevant further history (my bold emphasis added):

[Ms. Hankin] then called me and confirmed BMW's diagnosis. **[The BCAA employee] again suggested for me to order a new instrument cluster, which I did.** I installed the unit but when I tried to program it, again it would not work and the problem still continued. **I re-installed [Ms. Hankin's] original cluster. [BCCA] at this stage instructed me to give the customer [Ms. Hankin] the car, the new instrument cluster and send her to BMW** as they had diagnosed the issue.

13. It is undisputed that Ms. Hankin then took her car and the new instrument cluster to BMW, which installed it. BMW identified a pinched wire behind the starter motor as the source of the electrical problems.
14. Ms. Hankin submits that while she wanted to return the new instrument cluster to Werner's, BMW installed and programmed it and charged her labour. Ms. Hankin says that this left her with no choice but to return the original and still-working instrument cluster to Werner's.
15. Ms. Hankin says Brian's Auto reimbursed her \$850.00 for their error, which she paid to Werner's. Thus, Ms. Hankin paid only \$850.00 of Werner's 'after the fact' December 6, 2016 invoice totaling \$1,657.00, leaving the \$807.60 balance claimed in this dispute.
16. Ms. Hankin submits her \$850.00 payment was fair, given she was still out of pocket and did not request the new instrument cluster and her original instrument cluster was never defective. Ms. Hankin further submits that Werner's accepted her \$850 settlement on November 24, 2016. She says Werner's never gave her an invoice for what is now being claimed and Werner's December 6, 2016 invoice is ambiguous.
17. As support for her position, Ms. Hankin provided a typed statement from the BCCA employee who was involved with the car issues. That employee wrote that BCCA agreed to pay Ms. Hankin \$1,150.00 towards a "used instrument cluster and

labour”, given the reports its driver may have damaged the original cluster. The BCCA employee further wrote (my bold emphasis added):

During the following month, Werner had attempted to install and program a used instrument cluster which would not program properly. After a second attempt with another used cluster failed to program, **a new cluster was ordered**. It would not program either **so Werner’s Auto Clinic suggested the car go back to the dealership to have it reprogrammed and re-diagnosed if necessary**.

18. Nothing turns on Werner’s diagnosis, as it is clear Werner’s deferred to BMW in that respect. Rather, this dispute comes down to 2 things. First, whether Werner’s improperly ordered a new instrument cluster without Ms. Hankin’s authorization, given it is the cost of that new cluster that is the basis for this dispute. Second, whether Ms. Hankin is responsible for the fact that BMW installed the new cluster rather than the original one.
19. This is a dispute about whether there was an agreement, or contract, between Werner’s and Ms. Harkin about the new instrument cluster. For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One party’s belief that there is a contract is not in itself sufficient. There must be what is known in law as a ‘meeting of the minds’ about the contract’s subject matter.
20. First, I find that it is undisputed that BCCA instructed Werner to buy a new instrument cluster, not Ms. Hankin. Werner’s own evidence to the tribunal acknowledges this fact. While BCAA was involved in paying for some of the car repairs, I do not have sufficient evidence before me on which I could conclude that

Ms. Hankin should be held personally responsible for the decision to purchase the new instrument cluster when she had not herself approved it and had already declined to buy one from BMW. I find that Ms. Hankin is not responsible for the original purchase of the new instrument cluster.

21. Second, I find that Ms. Hankin is not responsible for returning only the old instrument cluster to Werner's, rather than the new one it had purchased. The key here is that whether BCCA initially suggested it or not, it was ultimately Werner's decision to send BMW the new instrument cluster it had bought along with Ms. Hankin's vehicle. Werner's made no request for payment from anyone at that point, including Ms. Hankin. There is no evidence before me that Werner's gave either Ms. Hankin or BMW any instruction as to the preservation of the new instrument cluster.
22. In all of the circumstances, I cannot conclude that the applicant has proven that Ms. Hankin is responsible for the \$807.60 claimed. Ms. Hankin did not approve the purchase of the new instrument cluster at her expense. There was no 'meeting of the minds' between Ms. Hankin and Werner's about it. In the circumstances, I find the applicant has also not proven that Ms. Hankin's taking her car to BMW with the new instrument cluster amounted to her accepting responsibility for the cost of the new instrument cluster.
23. Given my conclusions above, I dismiss the applicant's claim. In accordance with the tribunal's rules, I find the applicant is not entitled to reimbursement of the \$175 he paid in tribunal fees, given he was not successful in the dispute. The respondent did not claim any fees or dispute-related expenses.

ORDER

24. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair