



Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-000051

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bierman v. Duncan Street Auto Ltd.*, 2018 BCCRT 723

B E T W E E N :

Hartog Bierman

APPLICANT

A N D :

Duncan Street Auto Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for boat motor repairs. The applicant, Hartog Bierman, says he hired the respondent, Duncan Street Auto Ltd, to fix an oil leak in his boat's motor. The applicant says the respondent failed to fix the leak. The

applicant seeks a refund of the \$2,000 he paid for the repairs, plus reimbursement of \$2,487.79 he paid another repair company to repair the leaks.

2. The respondent says there was nothing wrong with the work it performed on the boat, and that the boat was old and run down.
3. The applicant is self-represented. The respondent is represented by Marcel Viviers, a principal or employee.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

6. 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.
7. Under tribunal rule 126, 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

8. The issues in this dispute are:
 - a) Is the applicant entitled to a \$2,000 refund for boat motor repairs?
 - b) Is the applicant entitled to reimbursement of \$2,487.79 he paid another shop to repair the boat?

EVIDENCE AND ANALYSIS

9. 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.
10. Both parties provided evidence and submissions about an altercation that occurred when the applicant wanted to remove his boat from the respondent's premises, and the respondent refused to release the boat until the applicant paid the outstanding bill. That incident is not determinative of the issues before me in this dispute, which are about the financial cost of repairing the boat. For that reason, I make no findings about the incident.
11. The applicant says he took the boat to the respondent to have an oil leak in the motor repaired. This is confirmed by the April 1, 2017 work order provided by the respondent, which says "find & repair oil leaks."

12. The parties agree that the respondent worked on the boat motor. However, the applicant says that when he put the boat in the water and ran it, it still leaked oil. The applicant also says the respondent overcharged him by performing unnecessary work, and in particular unnecessarily removing the motor from the boat in order to work on it.
13. Mr. Viviers, on behalf of the respondent, says the applicant was a difficult customer, and that his boat was old and in poor repair. While Mr. Viviers says there was nothing wrong with the work the respondent did on the boat, he did not say that the respondent fixed the oil leak, and he not provide any evidence that the motor had been tested to ensure it was no longer leaking. While his handwritten, undated invoice says that someone ran the engine on April 29, there is no indication of any tests performed, or the results. The invoice does not say how long the engine ran, and does not confirm that there were no leaks.
14. The applicant provided a July 21, 2017 invoice from another repair shop, Dean's Marine, stating that they ran the boat and confirmed an oil leak coming from the timing cover, and that there was oil in the bilge. The mechanic noted on the invoice that the timing cover had not previously been removed. A prior document indicates that Dean's Marine first provided an estimate for this work on June 29, 2017.
15. I am persuaded by this evidence from Dean's Marine because it was provided in writing, and includes a detailed description of the visual and mechanical checks performed by the mechanic, as well as the resulting repairs. Also, the respondent provided no contrary evidence to indicate that the boat was oil-leak free when it was picked up by the applicant. Based on this evidence, I accept that the respondent failed to repair the motor oil leaks. The respondent's work order confirms that this was the primary term of the contract between the parties, so I find that the applicant is entitled to a refund of the \$2,000 he paid in repair costs. In making this finding, I note that the applicant provided the parts for the respondent's repairs himself, so the respondent is not out substantial costs for supplies.

16. Accordingly, I find the applicant is entitled to a refund of \$2,000 paid for boat repairs. He is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from April 30, 2017.
17. The applicant also claims \$2,487.79 for the work performed by Dean's Marine. I find he is not entitled to this amount, as it would result in double recovery. The evidence before me does not indicate that the applicant's boat was damaged by the respondent, only that it was not successfully repaired. After a breach of contract, the law says the applicant should be put in the same position they would have been if the breach had not occurred. I find that refunding the \$2,000 paid for repairs meets that goal, particularly since the invoice from Dean's Marine shows that it performed additional work that was not part of the contract with the respondent. While it was inconvenient for the applicant not to use his boat for several months, I find that this does not justify additional damages.
18. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was substantially successful, I find he is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

19. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$2,207.08, broken down as follows:
 - a. \$2,000 as a refund of repair costs,
 - b. \$32.08 in pre-judgment interest under the COIA, and
 - c. \$175 for tribunal fees and dispute-related expenses.
20. The applicant is entitled to post-judgment interest, as applicable.
21. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection

under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

22. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member