



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davison et al v. 673057 B.C. LTD. Doing Business As ROBIN'S SNOW & MARINE SERVICE*, 2018 BCCRT 916

B E T W E E N :

James Davison and Anthony Davison

APPLICANTS

A N D :

673057 B.C. LTD. Doing Business As ROBIN'S SNOW & MARINE SERVICE

RESPONDENTS

A N D :

James Davison and Anthony Davison

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant Anthony Davison (Tony) is the father of the applicant James Davison (Jim). For clarity, I will refer to the applicants by their first names, which is how the parties refer to themselves in the submissions before me.
2. The respondent 673057 B.C. Ltd. Doing Business As ROBIN'S SNOW & MARINE SERVICE (Robin's) repaired or rebuilt a snowmobile belonging to Jim, at Tony's request.
3. The snowmobile continued to have mechanical issues and the applicants took it back to the respondent for further repairs, on two occasions. The respondent refuses to give the snowmobile back to the applicants until they pay for the work completed. The applicants refuse to pay, saying that the further repairs were needed because the respondent did not do them right the first time. The respondent says the further repairs were needed as the applicants did not follow the respondent's advice on breaking in the snowmobile. The applicants want an order that the respondent release their snowmobile without further payment.
4. The respondent counterclaims for an order for \$2,872.78, the amount it says the applicants owe for the rebuilt snowmobile engine.
5. Both applicants are self-represented. The respondent is represented by Robin Reeb, a principal or an employee.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Whether the respondent should return the snowmobile to the applicants, and
 - b. Whether either applicant should pay the respondent, and if so, how much?

EVIDENCE AND ANALYSIS

11. In 2016 Tony took Jim's snowmobile to the respondent's shop for repairs. There is some dispute about whether the work was a rebuild of the machine or repairs. The difference is not important for this decision. I will refer to the work done as "repair" work without making a decision as to whether the repairs were a complete rebuild.

12. Tony says that he paid \$6,200 in cash for the repairs in the fall/winter of 2016. While he submitted a November 4, 2016 invoice for only \$3,625, I accept that Tony paid approximately \$6,200 for the 2016 repairs.
13. After two rides the snowmobile's engine stopped working. Tony took it back to the shop and the respondent rebuilt the engine a second time. Tony submits that the motor was replaced under warranty.
14. The respondent produced a February 7, 2017 invoice to Tony Davidson for \$2,872.78. There is a note indicating "rebuilt N/C". I interpret this to mean that Robin's repaired the engine a second time, in approximately February 2017, at no charge to Tony. This is consistent with the respondent's acknowledgment that it did not charge the applicants for the second repair to the snowmobile engine.
15. After two rides the snowmobile's engine stopped working again. Tony returned it to the shop a third time for further repairs. He was told that the third repairs would also be done under warranty. Tony did not indicate who told him this.
16. The respondent produced invoice #021665 dated April 21, 2017 to Jim/ Tony Davidson for \$2,187.36. Written on the invoice is "stopped?". From the invoice date, I take it that the applicants took the snowmobile back to the respondent's shop in March or April 2017.
17. Tony says that several months passed without any work done on the snowmobile. He said that he made himself a nuisance at the shop. He said that it was not until December 2017 that Robin's telephoned Jim to say that the snowmobile was ready to be picked up. Jim says that when he went to pick up the snowmobile, Robin's demanded payment of \$2,000.
18. I take the applicants to mean that, in December 2017, Jim was presented with the April 2017 invoice for \$2,187.36 when he went to pick up the snowmobile. This is consistent with the statement of the respondent's employee that the bill was presented to Jim when he arrived to pick up the snowmobile. The employee says that, a few days later, Tony came to the shop very upset and swearing. Another

employee wrote in a statement that the applicants were both loud when presented with the bill, swearing and shoving. Both of the employees say that the police were called to deal with Tony at the shop

19. The respondent says that, during the third repair of the engine, it concluded that both engine failures were due to cold seizure, or sudden overheating. The respondent argued that the engine failures were both due to the manner in which the applicants used the snowmobile, contrary to advice provided to them by the respondent's employees. For this reason the respondent decided to charge the applicants for the third set of engine repairs.
20. I understand that neither applicant has paid either the February or April 2017 invoices (totaling \$5,060.14) and that the respondent still has the snowmobile.
21. The applicants say that they should not have to pay for the second and third engine repairs as the repairs were done under warranty. They also say they should not have to pay for the work as it was only needed because the original work done by the respondent (in late 2016) was faulty.
22. The respondent says that it only became aware that the engine failures were due to the applicant's actions, rather than any fault of the respondent's repairs, after the third engine repair. It says that the applicants should pay for the repairs as it was their fault the engine failed, due to the way they operated the machine. It says that it is holding the snowmobile, under section 2 or 3 of the *Repairers' Lien Act* (RLA) until the applicants pay the total amount of \$5,060.14.
23. The respondent says that, when the applicants refused to pay the April 2017 invoice, and because the respondent had to call the police to deal with the situation, the respondent withdrew its offer to not charge the applicants the amount of the February 2017 invoice. In its counterclaim the respondent asks for an order that the applicants pay the February 7, 2017 invoice in the amount of \$2,872.78. The respondent does not address the April 20, 2017 invoice in the amount of \$2,187.36 in its counterclaim.

24. Section 2 of the RLA says that anyone who fixes, repairs, or improves a chattel, including a snowmobile, is entitled to a lien over that chattel. It gives the repairer the right to sell the chattel to recover the amount owed if the amount is unpaid for 90 days. Section 2 of the RLA is not particularly helpful in this dispute as the issue is not whether the respondent has the right to sell the snowmobile. Section 3 of the RLA sets out the process for registering a finance statement with the Personal Property Registry against a chattel in the amount of an unpaid invoice relating to that chattel. There is no evidence before me that any such finance statement was filed regarding this snowmobile. I do not find that section 3 of the RLA is particularly applicable in this dispute.
25. What I must determine is whether the respondent has the right to hold onto the snowmobile until the February 7, 2017 and April 20, 2017 invoices are paid? I find that it does not.
26. I find that the parties agreed that the February 2017 second engine repair was done at no cost to the applicants. This is consistent with the notes on the invoice, Tony's statement, and the statements of the respondent's two employees. That is the agreement, or contract, entered into between Tony and the respondent. I do not find that it was an offer that the respondent could later withdraw. I find that Tony accepted the respondent's offer to repair the snowmobile a second time for no payment. The respondent cannot, on its own accord, change the terms of the contract at a later date, without Tony's agreement. The respondent is not, now, entitled to payment of that February 2017 invoice for \$2,872.78. The respondent's counterclaim fails.
27. I further find that the respondent is not entitled to payment of the April 7, 2017 invoice. Tony says that he was told that the third set of repairs would be completed under warranty. While he does not say who told him this, the respondent does not deny that any such agreement was made. It is clear to me that both applicants were surprised when presented with the April 2017 invoice in December 2017 for the third set of repairs. Tony acknowledges that he was upset and both employees of the

respondent agree that this was so. This indicates to me that the invoice was a surprise to the applicants, and contrary to the agreement made between the parties when the snowmobile was brought in for the third set of repairs in March or April of 2017.

28. I find that the agreement between the applicants and the respondent was that the third set of repairs would also be completed free of charge. As noted above, the respondent cannot change the agreement, or contract, without the applicants' agreement.
29. As the respondent is not entitled to payment of either the February 7, 2017 invoice or the April 20, 2017 invoice, I find that it has no right to continue to hold the snowmobile. I grant the applicants' request and order the respondent to return the snowmobile to either Jim or Tony.
30. The applicants have requested that I order the respondent not to "be doing it to others". The only issue properly before me is with regard to the applicants' snowmobile and the particular relationship between the applicants and the respondent. I decline to grant the applicants' request in this regard.
31. 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. I see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$125 in tribunal fees. There is no evidence of any dispute-related expenses. As the respondent was unsuccessful in its counterclaim it is not entitled to reimbursement of any tribunal fees or dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order the respondent to
 - a. return to either Jim or Tony the snowmobile at issue in this dispute, and

b. reimburse Jim and Tony \$125 in tribunal fees.

33. I dismiss the respondent's counterclaim.

34. 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.

35. 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.

Sherelle Goodwin, Tribunal Member