



Civil Resolution Tribunal

Date Issued: January 15, 2019

File: SC-2018-002444

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Musseau v. Dustin Webb (Doing Business as Back Door Fab)*,
2019 BCCRT 59

B E T W E E N :

Kellan Musseau

APPLICANT

A N D :

Dustin Webb (Doing Business as Back Door Fab)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for mechanical repairs to a truck.
2. The applicant, Kellan Musseau, took his 1984 Toyota 4Runner truck to the respondent, Dustin Webb (Doing Business as Back Door Fab), for extensive

repairs. The applicant says the respondent took much longer than was promised, failed to complete the repairs, damaged the truck, and made it unsafe to drive. He seeks a refund of \$1,025 for transmission removal and re-installation, and a refund of \$600 for engine removal and re-installation.

3. The respondent says he completed the repairs as requested. He says the truck was running when the applicant picked it up.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
7. 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.

8. 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

9. The issue in this dispute is whether the applicant is entitled to a refund for truck repairs, and if so, how much.

EVIDENCE AND ANALYSIS

10. 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.
11. The applicant says he learned about the respondent's mechanical services through the respondent's Facebook business page. The evidence shows that the applicant sent the respondent a Facebook message on January 26, 2018. He said his truck had a "major timing chain rattle", and that he was looking to rebuild or swap the engine, as well as swap out the transmission. He asked if the respondent did this type of work, and the respondent replied that the work would be "no problem", and they were all things he had done before.
12. The applicant had a phone conversation with the respondent, and then brought his truck to the respondent's shop on February 2, 2018. The applicant says the respondent told him at that time that the repairs would take 1 week. The evidence shows that the truck was not available for pickup until April 2, 2018. However, I find the applicant is not entitled to any refund due to delay. The electronic messages in evidence show that the parties had no agreement about when the truck repairs would be finished. Rather, the electronic messages in evidence show that the respondent took the truck apart in early February, and then had several text

exchanges and at least 1 conversation with the applicant about how the repairs should be completed, how long it would take, and how much it would cost. For example, in a February 21 exchange on Facebook messenger, the parties discussed whether the respondent should take the old motor to a machine shop to have machining work performed. The applicant agreed to this machining work, and there was no discussion about how long the machine shop would take, or how long after that the respondent would re-install the motor. In a March 6, 2018 message, the applicant wrote that he understood the delay and that it was out of the respondent's hands, although he had not realized he would be without his truck for so long.

13. For these reasons, I find the applicant is not entitled to any refund of the \$5,120 repair invoice due to delay. However, I find the applicant is entitled to a refund due to the quality of the repairs. I find the applicant has established that the truck ran poorly when he picked it up, and that the repairs were not completed to a reasonable standard. My reasons follow.
14. On March 31, the respondent texted the applicant and said the truck was running smoothly and quietly. The applicant picked up the truck on April 2 around 10:00 am. At 11:05 am, he texted the respondent and said the truck was "gutless" when running below 2000 revolutions per minute. He asked the respondent to try tuning the engine it again. The respondent replied that he was "heading out for a bit." The applicant replied that the power was becoming worse as the truck heated up, and that he would be surprised if he made it home. He texted that he lost about 35% of the truck's power after 10 minutes of driving. The respondent replied that he would be "back in a bit", but did not respond further.
15. That afternoon, the applicant texted the respondent a photo showing that the coolant tank was empty, and he asked if the respondent had forgotten to put in the coolant. The respondent did not reply.
16. On the evening of April 2, the applicant emailed the respondent. He said he was disappointed in the respondent's work. He described concerns about the repair

delays and the price. He said that after waiting 2 months and paying \$5,100, he expected a truck that was repaired properly and ready to drive. The applicant said that after driving 1 kilometer, the timing was off, coolant was leaking, the ignition did not work, and the truck had lost half of its power. The applicant also said the transmission was not installed with the correct mounts. The applicant said he barely made it home, and had to stop at 2 auto parts stores on the way. He asked the respondent to negotiate a settlement by offering a price reduction.

17. I place significant weight on the applicant's April 2 text messages and email, as they were written at the time of the events in question, and document the concerns the applicant had as soon as he drove the truck. The respondent did not see the truck after that, despite being asked to inspect it, and has not provided any evidence to establish that the truck was running well when the applicant picked it up. I agree with the respondent's submission that the truck was not new, and would not run like a brand new truck. However, based on the text messages in evidence, I accept the applicant's evidence that the truck was running poorly after he picked it up, contrary to the respondent's statement that it was running well. The fact that the applicant was driving the truck again in June and July 2018 is not determinative, as he says he performed his own repairs after picking up the truck from the respondent in April.
18. The legal standard for mechanical repairs is discussed in the BC Provincial Court's decisions in *Le Bel v. ICBC et al*, 2016 BCPC 126 and *Panaich v. Abbotsford Truck & Trailer Repair*, 2016 BCPC 34. In paragraph 34 of *Panaich*, the court said that a mechanic owed a duty to their customers to perform mechanical repairs to the standard of a "reasonably prudent mechanic." The court said that perfection is not required, but a mechanic must do their job in a reasonably prudent manner and meet the standard of care reasonably expected of persons in their field.
19. The respondent submits that since his business was unlicensed at the time of the repairs, and the transaction was a "back yard cash deal", he is not liable to pay any refund. I disagree. Since the respondent advertised his services and charged for the repairs, his mechanical work must meet the standard set out above. I find the work

did not meet that standard, as the truck ran poorly. In making that finding, I note that the respondent did not dispute the applicant's assertion that the respondent did not test drive the truck. The respondent says post-repair adjustments may have been necessary, and the applicant chose not to come back. However, I find that the text messages and email show that the applicant asked for a tune up or other remedy for the problems he reported, and the respondent offered none.

20. The respondent's submissions and evidence show that he did extensive work in removing the motor and transmission, and then re-installing the rebuilt motor and a different transmission. This labour is not disputed. However, as set out above, regardless of that labour the truck ran badly after it was picked up. Based on the repairs requested in the applicant's original Facebook message, I find that a reasonable repair would require the truck to run well at regular highway speeds. The evidence provided by the applicant, including photos and a video, show that the truck had significant problems, including a lack of power, a cut radiator hose, and missing bolts in the transmission mounts. Based on this evidence, I find the respondent's repairs did not meet the required standard for mechanical work, and the applicant is entitled to a refund.
21. Because the applicant did his own repairs after April 2, there is no evidence before me about the cost of further repairs. Also, the evidence shows that some of the respondent's work was not re-done. For example, the applicant did not remove the motor or transmission in order to fix them. For these reasons, and on a judgement basis, I find the applicant is entitled to a refund of half of the labour costs for the engine and transmission installation. This equals \$750. The applicant is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA), from April 2, 2018.
22. 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. The applicant was substantially successful, so I find he is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

23. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$883.21, broken down as follows:

- a. \$750 as a refund for mechanical repairs
- b. \$8.21 in pre-judgment interest under the COIA, and
- c. \$125 for tribunal fees and dispute-related expenses.

24. The applicant is entitled to post-judgment interest, as applicable.

25. 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.

26. 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