Civil Resolution Tribunal

Date Issued: May 31, 2019

File: SC-2018-008493

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dracup v. Rising Sun Auto Import Inc.*, 2019 BCCRT 669

B E T W E E N :

Brian Dracup

APPLICANT

A N D :

Rising Sun Auto Import Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. The applicant Brian Dracup says the respondent Rising Sun Auto Import Inc. performed unauthorized repairs to his 1994 Mitsubishi Delica L400 (car). The applicant says the respondent charged him $2,047.36 although he had only agreed to have an oil change, tightening of belts holding the cooling fan in place, a new

cooling fan, and replacement of the coolant expansion bottle plus “reasonable labour”.

2. The applicant says that when he contested the bill, the respondent refused to give him his car keys until its account was paid in full, and then said they would start charging him $400 per month in storage if the car was left with them.

3. The applicant asks that the respondent refund him the $1,250 charged for parts and labour for repairs that he did not authorize, such as new batteries and charges related to the AC system.

4. The respondent says the applicant agreed to all of the work that was completed. It says the invoice accurately reflects the parts and labour required for the scope of work authorized by the applicant. The respondent asks that the dispute be dismissed.

5. The applicant is self-represented. The respondent is represented by Wongil (Steven) Lee, who I infer is its principal.

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 118 of the *Civil Resolution Tribunal 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. In some respects, this dispute amounts to a “he said, he said” scenario with both sides calling into question the credibility of the other. The parties disagree about what was said in a phone call where the respondent says the applicant authorized certain repairs, but

the applicant denies doing so. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

8. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

9. 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.

10. Under tribunal rule 9.3(2), 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;
    a. order a party to pay money;
    b. order any other terms or conditions the tribunal considers appropriate.

ISSUE

11. The issue in this dispute is whether the applicant authorized certain repairs to his car that the respondent completed, and if not, what remedy is appropriate.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions, but refer to them here only to the extent necessary to explain and give context for my decision.

13. The parties agree on the following facts.
    a. On November 7, 2018, the applicant brought his car to the respondent's auto shop for repairs.
    b. On November 8, 2018, the applicant and respondent exchanged text messages and had a phone call to discuss the work to be done on the car.
    c. No written estimate of work to be done on the car was prepared.
    d. On November 8, 2018, the respondent completed various repairs to the car. After completing the repairs, the respondent sent the applicant the invoice via text message.
    e. On November 9, 2018, the applicant attended at the respondent's auto shop. The applicant and respondent discussed the invoice but were unable to come to an agreement.
    f. On November 13, 2018, the respondent sent the applicant a text saying that if he did not pay his invoice in full and collect the car, the respondent would (a) put the car in storage and charge the applicant $400 per month and (b) attempt to sell the car.
    g. On November 13, 2018, the applicant paid the full invoice and collected the car.

14. The parties disagree on what scope of repair work the applicant authorized the respondent to complete on the car on November 8, 2018.

15. To resolve this issue, I turn to the text messages exchanged by the parties.

16. On November 7, 2018, the respondent texted the applicant identifying the problem with the car was a “loose cooling fan” “hitting something as it rotates”. The respondent says the tensioning belt fan is loose.

17. The applicant responded saying “we will fix”. From this, it is clear that the applicant authorized work on the fan, which was completed as a fan replacement.

18. The respondent replied and wrote “we will check out any damage later today or tomorrow early morning. Keep u posted.”

19. The next morning, the respondent texted to say that, on initial inspection, the car required the following work:
    a. Reattach the air conditioning system
    b. Change all three power belts
    c. Replace the fan
    d. Dual battery
    e. AC recharging

20. Mr. Lee then followed up to report the car’s coolant expansion bottle was leaking. He asked for the applicant’s “thoughts” on replacing the coolant expansion bottle.

21. At some point afterward, Mr. Lee texted again saying that the car’s timing case was broken, describing it as “bad news” and asking that the applicant give him a call.

22. Then on November 8, 2018 at 1:59, Steve texted the applicant saying his air conditioning compressor had been damaged, describing this as “not good”.

23. On November 8, 2018, the applicant and respondent spoke by phone. During this time, the applicant says he limited the scope of repair that he wanted the respondent to perform on the car. In contrast, the respondent says the applicant authorized all repairs.

24. At 3:53 pm on November 8, 2018, Mr. Lee texted the applicant an invoice for $2,047.30 for the work completed. The details of the invoice are as follows:
    a. inspect front end damage & R/R related work $693.00 (broken down as a $99 per hour charge and charged for a 7 hour period),
    b. dual battery $320,
    c. ac mounting bracket, used $60,
    d. clutch fan assembly, used $40,
    e. new coolant expansion bottle assembly, original $275,
    f. set of ac o rings, original $30,
    g. used radiator assembly, $95,
    h. 2 alternator belts, 1 ac belt, $95,
    i. ac inspection $70,
    j. shop supply, coolant $35, and
    k. R/R engine oil with filter, 15W-40 castrol diesel $115.

25. The applicant says he authorized the applicant to do the following repairs, only:
    a. oil change,
    b. three power belts replacement,
    c. fan replacement, and
    d. repair of the coolant expansion bottle.

26. Based on the respondent's invoice, I find that parts for these repairs cost $525 total.

27. The applicant says that he did not agree to the following repairs:
    a. reattachment of the air conditioning system,
    b. battery replacement,

c. timing case,

d. other air conditioning system repairs,

e. radiator assembly.

28. The parties agree that the timing case was not repaired by the respondent.

29. Based on the respondent's invoice, I find that parts for these repairs cost $610.

30. The parties filed Google Reviews of the respondent's auto shop, completed by non-parties, in evidence. I do not place any weight on these reviews. They are irrelevant because they address the experience of other customers only.

31. The applicant placed a Google Review online reporting on his poor experience with the respondent. The review was later removed. This evidence does not assist in resolving the credibility issue between the applicant and the respondent.

32. To resolve the credibility issue between the applicant and respondent about their verbal agreement, I turn to the parties' text discussion about air conditioning repairs on November 7, 2018. The text messages show the respondent asking the applicant if the air conditioning system works, and the applicant replying that it does. The respondent then offers further service for the car's air conditioning system, by text. I prefer the applicant's evidence that he verbally refused further work on the air conditioning system, because that is more consistent with his text that the air conditioning was working, than it is with the respondent's evidence.

33. In terms of the air conditioning bracket, which the respondent replaced but the applicant says he did not authorize, both parties filed photographs of the original bracket and the replacement bracket.

34. The applicant filed a photograph of his original bracket after he wiped off the surface residue with a damp sponge. On visual inspection, I find that the original bracket has structural integrity, with no reason to replace it. Based on these photographs, I find that the respondent included this replacement in the work to the car, but the

repair was unnecessary. The photographs show that the respondent could have tightened the existing bracket, without replacing it. Based on this evidence, I also prefer the applicant's evidence that he did not authorize the bracket replacement.

35. On the issue of the battery replacements, the applicant says that the car's batteries were only 6 months old. Although the car needed a jump start from BCCA to get it to the respondent, the applicant says he did not run the car because he feared damage if he let it run without repairing it first. The respondent says he tried to charge the batteries for 5 hours without success. I prefer the applicant's evidence, as 5 hours seems excessive to determine if batteries are functional.

36. The applicant says that when he attended at the respondent's auto shop just two business days after the repairs, he asked for the original batteries and was told they had already been "shipped to the manufacturer". The respondent did not explain, in submissions, why the batteries were not available, except to say that scrap metal pickers come by daily. It was unclear why a scrap picker would want batteries that were not working. Due to this conflict in evidence, I prefer the applicant's evidence that the batteries were replaced without his authorization.

37. The respondent installed a new radiator assembly. However, the text messages do not mention a replacement radiator assembly. As a result, I prefer the applicant's version of events, namely that he did not give verbal authorization for this repair.

38. While the respondent argued that because it did not repair the timing case, it must have respected the applicant's wishes as far as other repairs, I disagree.

39. Had the respondent used a written estimate, perhaps this dispute could have been avoided. While verbal agreements are harder to prove, they are still enforceable.

40. I find that the applicant's account of the verbal discussion is more consistent with the text messages exchanged.

41. For these reasons, I find that the applicant has proven that he authorized certain repairs and instructed the respondent not to proceed with repairs to the radiator

assembly, reattachment of the air conditioning system, battery replacement, and other air conditioning system repairs. The applicant authorizing only the repairs needed to get the car running again is also consistent with the car's age.

42. In terms of damages, I find the applicant's assessment that the repair work he authorized should have cost about $800 is accurate. I have found the cost of the authorized repairs, for parts, is $525.

43. The applicant has then attributed between 2 and 3 hours of labour for the above repairs, which I find is reasonable. On a judgement basis, I find that the authorized repairs should have cost $800.

44. For these reasons, I find that the respondent must refund the applicant $1,247.50 for unauthorized car repairs. The applicant is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from November 8, 2018, the date of the repair invoice.

45. 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 applicant is entitled to reimbursement of $125 in tribunal fees and $40 in dispute-related expenses for a corporate search and registered mail costs to deliver the Dispute Notice, which I find reasonable.

ORDERS

46. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $1,425.12, broken down as follows:

    a. $1,247.50 as reimbursement for the unauthorized repairs,

    b. $12.62 in pre-judgment interest under the COIA, and

    c. $165 for $125 in tribunal fees and $40 for dispute-related expenses.

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

48. 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.

49. 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.

Julie K. Gibson, Tribunal Member