



Civil Resolution Tribunal

Date Issued: August 13, 2019

File: SC-2019-000238

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Koch*, 2019 BCCRT 966

BETWEEN:

ALLISTER BROWN

APPLICANT

AND:

DUSTIN KOCH

RESPONDENT

AND:

ALLISTER BROWN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for work on a 1982 BMW car. The applicant and respondent by counterclaim, Allister Brown, says that near the end of November 2018 he worked on the Dustin Koch's car. Mr. Brown says Mr. Koch still owes him \$995 for parts and labour.
2. The respondent and applicant by counterclaim, Mr. Koch, disagrees and says Mr. Brown never finished the work, disabled his car, and took some parts. Mr. Koch counterclaims for \$457.27 in expenses incurred, plus orders for Mr. Brown to remove a lien on the car and to stop harassing him.
3. The parties are self-represented.

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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. In some respects, both sides have called into question the credibility of the other. 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.
6. 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.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - 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.
9. The respondent requests an order that Mr. Brown stop harassing him. I do not have the jurisdiction to grant such an order. Claims for restraining or no-contact orders fall outside of the tribunal's small claims jurisdiction that is set out in sections 118 and 119 of the CRTA. I refuse to resolve this issue.
10. The respondent also requests the removal of a lien registered under the *Repairers Lien Act*. However, I have no jurisdiction to grant either injunctive relief (to remove the lien) or declaratory relief (to declare the lien invalid). I therefore refuse to resolve this issue.

ISSUES

11. The issues in this dispute are
 - a. whether Mr. Koch owes Mr. Brown \$995 for motor vehicle servicing; and

- b. whether Mr. Brown should pay Mr. Koch \$557.27 for the costs of repairing and towing Mr. Koch's car and replacing missing items from the car.

EVIDENCE AND ANALYSIS

12. 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.

The Unpaid Invoice

13. Mr. Brown is not a licensed mechanic but has worked on BMW cars as an enthusiast for over 50 years. A family member introduced Mr. Brown to Mr. Koch in September or October 2018. Mr. Brown worked on Mr. Koch's car for a few days and Mr. Koch paid him in cash. This transaction went smoothly.
14. Near the end of November 2018, Mr. Koch delivered the car to Mr. Brown for further work. On December 3, 2018, Mr. Brown texted Mr. Koch that his car was ready. Mr. Brown picked Mr. Koch up but after inspecting the vehicle he refused to pay the agreed-upon price of \$995.
15. The events of December 3, 2018 are further documented in multiple police reports. Mr. Koch verified at the time that his car was in working order by running it. However, Mr. Brown said he had not replaced the master cylinder of the vehicle. As I shall explain below, I find that replacing the cylinder was part of the agreed-upon work. Mr. Koch tried to renegotiate a new price, but Mr. Brown refused. Mr. Koch tried to drive away in his car, but Mr. Brown disabled it by pulling out some wires. Mr. Brown also moved and parked his own vehicle to block Mr. Koch's car from leaving the driveway.
16. At that point Mr. Koch called the police. Mr. Koch's car was towed to a mechanic and Mr. Brown's car was towed and parked across the street because he refused to move it. Mr. Brown subsequently returned Mr. Koch's car keys and manual by

giving them to the police. There is no indication that the incident resulted in any criminal charges.

17. The parties agree that Mr. Brown was to be paid \$995 for the work done in early November and late December 2018. However, an important matter is whether Mr. Brown performed all the agreed-upon work. In this case, I find that he has not.
18. Text messages show that Mr. Brown agreed to replace the master cylinder and associated slave cylinders in the brake and clutch systems. He estimated that this would cost about \$400 plus tax and included it as work to be done under the global total of \$995. However, he never did this.
19. Mr. Brown submits that fixing the pre-existing cylinders was better than replacing them. However, he did not explain why he did not reduce the price of the work. Further, in a June 2, 2019 spreadsheet of work done, he did not include fixing the cylinders. In a December 31, 2018 invoice, the mechanic recommended replacing the brake master cylinder (for \$810), rear wheel brake cylinder (for \$380), clutch master cylinder (for \$710), and clutch slave cylinder (for \$470). This recommendation is consistent with the cylinders still needing work done on them.
20. In any event, Mr. Koch did not agree to any change in the scope of work and only learned of the change when it was time to pay. Mr. Koch therefore should not have to pay the full price of \$995.
21. I next consider the value of the work that was actually completed. After Mr. Brown's car was towed to a mechanic on December 3, 2018, the mechanic reviewed Mr. Brown's work the following day. He reviewed the list of tasks Mr. Brown texted he had completed but identified other tasks as incomplete or requiring further work. I attach significance to the mechanic's evidence as it provides the most impartial indicator of what work was done on Mr. Koch's car.
22. In a spreadsheet dated June 2, 2019, Mr. Brown broke down how he calculated the parts and labor for his work. I have added up the hours spent on the tasks verified as completed by the mechanic: oil change (1), repair and flush of hydraulics (3),

hazard flasher switch (0.6), glove box repairs (1.2), brake pad sensor (0.5), door catch adjustment (0.5), for a total of 6.8 hours. No time entry was provided regarding replacement of the right license plate light. At his stated rate of \$40 per hour, this equals \$272. Mr. Brown also provided a list of parts. I find relevant items total \$297.

23. Mr. Brown submits that he based his invoice in part upon a flat rate manual used by mechanics to calculate labor charges for repairs. However, Mr. Brown is not a licensed mechanic and the parties never agreed that the price of work would be based on time spent. Using my discretion, I estimate the value of the work done is the price of the parts (\$297) and half the sum of the labour cost (\$136), for a total of \$433.
24. Mr. Brown requested special, punitive, and aggravated damages. However, he did not provide any basis for such award. I decline to order any such damages, as Mr. Brown's claim is ultimately a dispute about the amount of a debt.

Cost of Car Repairs, Towing, and Replacing Car Items - Counterclaim

25. Mr. Koch counterclaims for \$457.27. He submits that this amount consists of car repair bills, a towing bill, and an additional amount for items missing from his car.
26. I shall first consider the towing bill of \$137.55, documented in a receipt marked paid and dated December 3, 2018. I find that Mr. Brown is liable for the towing bill as he had no legal basis for keeping for Mr. Koch's vehicle on his property.
27. I considered if Mr. Brown had such a legal basis under section 2 of the *Repairers Lien Act*. Section 2 provides that a mechanic that has provided money, skill, or materials on any item in altering, improving, or increasing its value is entitled to a lien for the amount of the money, skill, or materials provided. Mr. Brown said at the time he was owed \$995. However, I have decided he was owed the lesser amount of \$433. According to the police reports, Mr. Koch offered Mr. Brown \$500 upfront, with the full value of the work to be determined later. However, Mr. Brown refused.

As this offer was more than the value of what was owed, I find that Mr. Brown had no legal basis to keep Mr. Koch's vehicle on his property. Mr. Koch is liable for the towing bill of \$137.55.

28. I next consider the repair bills. Mr. Koch submits that Mr. Brown took a distributor rotor to disable his car. The mechanic advised that the rotor was missing and installed a new one. In these circumstances the tort of conversion is applicable. As noted in *Li v. Li*, 2017 BCSC 1312, the elements of the tort consist of the following, as applied to this dispute:

- a. a wrongful act by Mr. Brown involving Mr. Koch's goods;
- b. the act must consist of handling, disposing, or destroying the goods; and
- c. Mr. Brown's actions must have either the effect or intention of interfering with or denying Mr. Koch's right or title to the goods.

29. I find that Mr. Koch has proven the elements of this tort. Mr. Brown texted that he had cleaned the rotor and distributor cap as part of the list of tasks he had completed. However, the rotor was later missing. In the police reports before me Mr. Brown admitted to taking Mr. Koch's keys and car manual. In his submissions Mr. Brown noted he disabled the car and removed some parts. Some of these parts were placed in the trunk of Mr. Koch's car. I infer from his submissions that other parts are unreturned. I find it likely that Mr. Brown removed the rotor. A December 6, 2017 invoice from the mechanic shows that replacing the rotor cost \$152.42. I find that Mr. Brown is liable for this amount.

30. Mr. Koch also provided the above-mentioned December 31, 2018 invoice for \$67.30 from the mechanic. This invoice was part of the mechanic's investigation into what work was done and how to get Mr. Koch's car working again. I find that Mr. Koch is entitled to reimbursement of this amount.

31. The remaining portion of Mr. Koch's counterclaim is his claim for missing items from his car. However, aside from giving the example of the floor mat, Mr. Brown did not

describe what was missing in any detail and provided no values. Given the lack of information, I dismiss this portion of Mr. Koch's counterclaim.

32. In summary, I find that Mr. Brown has proven a claim for \$433. Mr. Koch has proven counterclaims of \$137.55, \$155.42, and \$67.30, for a total of \$357.27. Setting off these totals against each other results in the sum of \$75.73 for the applicant. I find that Mr. Brown is entitled under the *Court Order Interest Act* to pre-judgment interest on this amount from December 3, 2018, when payment was due.

Tribunal fees and expenses

33. 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. However, as there was divided success in this dispute, I find each party must bear their own tribunal fees or dispute-related expenses.

ORDERS

34. I order that within 30 days of this decision, Mr. Koch pay Mr. Brown a total of \$76.73, broken down as follows:
- a. \$75.73 in debt, and
 - b. \$1.00 in pre-judgment interest from December 3, 2018, under the *Court Order Interest Act* (COIA).
35. Mr. Brown is entitled to post-judgment interest under the COIA, as applicable.
36. I dismiss Mr. Brown's remaining claims and Mr. Koch's remaining counterclaims.
37. 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.

38. 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.

David Jiang, Tribunal Member