



Civil Resolution Tribunal

Date Issued: August 27, 2019

File: SC-2019-001378

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shaw v. Campbell*, 2019 BCCRT 1017

BETWEEN:

WENDY SHAW

APPLICANT

AND:

KEN CAMPBELL

RESPONDENT

AND:

WENDY SHAW

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Wendy Shaw, and her husband drove the respondent Ken Campbell's truck to the Baja of Mexico. The parties had agreed to temporarily swap trucks. Mr. Campbell's truck broke down in the middle of the Baja peninsula, requiring significant repairs to the transmission. Ms. Shaw paid for the repairs and to deliver the truck back to Mr. Campbell in Canada. Ms. Shaw claims a total of \$4,590.00 for the repairs and truck delivery.
2. Mr. Campbell claims his truck was in a "complete state of readiness" when the Shaws drove it to Mexico. He says that when Ms. Shaw returned his truck its transmission, front steering alignment and tires were damaged. By counter-claim, Mr. Campbell claims \$4,995.00 to repair the truck to its pre-trip condition.
3. The parties are each 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. 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.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under 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.

ISSUES

8. The issues in this dispute are:
 - a. To what extent, if any, Ms. Shaw is entitled to reimbursement of \$4,590.00 for repairs and delivery of the truck.
 - b. To what extent, if any, Mr. Campbell is entitled to payment of \$4,995.00 to repair his truck.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Shaw bears the burden of proving her claims on a balance of probabilities. Mr. Campbell bears the same burden on the counter-claim. I have only addressed the evidence and arguments to the extent necessary to explain my decision. I note Mr. Campbell provided little in the way of submissions or evidence in this dispute.
10. The following undisputed facts were submitted by Ms. Shaw. The Shaws were driving to the Baja of Mexico. Their friend Mr. Campbell wanted bodywork and painting done on his truck because it was cheaper in Mexico. The Shaws agreed to drive Mr. Campbell's truck to Mexico so the work could be done on the truck down there. The Shaws left on January 12, 2018.

11. On their drive, the transmission failed somewhere in Mexico on the Baja peninsula. The Shaws contacted Mr. Campbell who was overseas at the time. Mr. Campbell asked the Shaws to repair the truck in Mexico. It is undisputed that he agreed to reimburse the costs of repairs. The Shaws took the truck to a Mexican mechanic and paid \$4,864.38 CAD to repair it. It is undisputed that Mr. Campbell asked them to bring the truck back to Canada. However, Mr. Shaw became very ill and the Shaws had to fly home. On Mr. Campbell's agreement, the Shaws paid someone else \$600.00 USD to drive the truck as far as California. Then a friend of Ms. Shaw's drove the truck the rest of the way from California to Mr. Campbell's hometown in British Columbia for \$500.00 CAD plus expenses. It is again, undisputed that Mr. Campbell agreed to reimburse Ms. Shaw for the transport costs. After several months, Mr. Campbell paid Ms. Shaw a total of \$2,000.00.
12. I find Mr. Campbell agreed to reimburse Ms. Shaw her full costs of repairs and transport. However, I find Mr. Campbell paid only a portion of Ms. Shaw's total costs.
13. Ms. Shaw provided receipts for the \$4,864.38 she paid the mechanic in Mexico to repair the truck. She also provided a signed statement from the person who delivered the truck to California. The statement affirms that Ms. Shaw paid him \$600.00 USD for delivery. Ms. Shaw does not say the currency conversion rate or the date Mr. Campbell was to repay the money. On today's currency rate, I find it is about \$796.00. Ms. Shaw provided a witness statement from her friend that drove the truck from California to British Columbia. Based on his statement and the applicant's submissions, I find Mr. Campbell agreed to reimburse Ms. Shaw \$500.00 CAD for the friend's time and fuel, plus extra for his additional costs. Ms. Shaw claims \$397.40 for the extra costs, which I find is supported with a copy of the friend's credit card statement. Ms. Campbell has not disputed the accuracy of any of these claimed amounts. His dispute relates to the condition of the truck.
14. I find Ms. Shaw has established that she paid a total of \$6,557.78 CAD to repair and deliver Mr. Campbell's truck. Mr. Campbell reimbursed Ms. Shaw \$2,000.00 CAD.

Therefore, I find Mr. Campbell must pay a total of \$4,557.78 CAD on the outstanding debt.

15. As for Mr. Campbell's counter-claim, I find Mr. Campbell has not established that Ms. Shaw is liable in any way for damage or repairs to his truck. As mentioned, Mr. Campbell carries the burden of proof on the counter-claim. He provided no evidence to establish the cause of the truck's transmission failure in Mexico. He also provided no objective evidence such as a mechanic's statement or photographs, to prove the truck's pre-trip condition or that it had damage when it was returned. Even if the truck had the alleged damage, the truck was driven over 3,000 kilometers back to Canada by someone other than Ms. Shaw. Considering Mr. Shaw's illness and Mr. Campbell's consent, I find it was reasonable that Ms. Shaw paid someone else to drive the truck back. I find Mr. Campbell has failed to establish that Ms. Shaw caused any damage to his truck. I also note that Mr. Campbell gifted the truck to a family member and never incurred the expense to repair it to establish a loss. I dismiss Mr. Campbell's counter-claim.
16. The *Court Order Interest Act* applies to the tribunal. I find that Ms. Shaw is entitled to pre-judgment interest on the \$4,557.78 debt. Ms. Shaw does not say when the parties agreed the debt would be repaid. I find April 1, 2018 is a reasonable repayment date. This is around the date Mr. Campbell received his truck back from Ms. Shaw. I have calculated *Court Order Interest Act* interest from April 1, 2018 to the date of this decision. This equals \$105.15.
17. Under section 49 of the CRTA 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 Ms. Shaw is entitled to reimbursement of \$175 in tribunal fees. Ms. Shaw did not claim any dispute-related expenses. As Mr. Campbell was unsuccessful in his counter-claim, I find he is not entitled to any reimbursement of tribunal fees or dispute-related expenses.

ORDERS

18. Within 30 days of the date of this order, I order Mr. Campbell to pay the Ms. Shaw a total of \$4,837.93, broken down as follows:
 - a. \$4,557.78 as reimbursement for the debt.
 - b. \$105.15 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in tribunal fees.
19. Ms. Shaw is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
20. Mr. Campbell's counter-claims are dismissed.
21. Under section 48 of the CRTA, 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 CRTA, 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.

Trisha Apland, Tribunal Member