



Civil Resolution Tribunal

Date Issued: December 16, 2019

File: SC-2019-005075

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lehmann v. Bayview Custom Motorcycles 2011 Corp.*, 2019 BCCRT 1413

B E T W E E N :

PETER LEHMANN

APPLICANT

A N D :

BAYVIEW CUSTOM MOTORCYCLES 2011 CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about motorcycle repairs.
2. The applicant Peter Lehmann says he brought his motorcycle to the respondent Bayview Custom Motorcycles 2011 Corp. to have “severe engine knock” repaired. He says the respondent charged him \$3,076.47, but when he picked his motorcycle

up the engine knock was still there. The applicant says he then paid \$2,660.35 to have his motorcycle properly repaired elsewhere. The applicant claims \$2,055.66, which he describes as about 2/3 of the initial repair costs.

3. The respondent says the applicant brought his motorcycle in for “diagnosis and assessment”. The respondent says its technician explained the problem and that the respondent signed a Work Order authorizing it to go ahead with the proposed work. The respondent says the knock was repaired but that a further problem with noise remained that would require further diagnosis and repair. The respondent asks that the dispute be dismissed.
4. The applicant is self-represented. The respondent is represented by company president Paul Nielsen.
5. The applicant withdrew its claim against Paul Nielsen personally. I have amended the style of cause to reflect this change.

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* (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.
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 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.

ISSUE

10. The issue in this dispute is whether the work completed by the respondent was deficient such that it must pay a partial refund of \$2,055.66 to the applicant.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
12. On October 26, 2018, the applicant signed Work Order 100448 agreeing to have the respondent complete work to address a “Hard Primary Noise”, and rocker cover gasket leak on the applicant’s motorcycle, for a total of \$3,193.65. The Work Order includes a transmission rebuild and other diagnostics and repairs.
13. One aspect of the transmission problem was that the main transmission shaft was found to be outside factory-specified tolerances. Specifically, the dial indicator gauge was reading 0.015 for the main transmission shaft. According to the Harley-Davidson specifications filed in evidence, the main transmission shaft is to have runout of between 0.00 and 0.003 inches at most.

14. Work Order 100448 specifies that all service work performed by the respondent had a 30-day limited warranty.
15. On November 8, 2018, the respondent emailed the Work Order, describing it as an estimate for the applicant to review.
16. On November 9, 2018, the applicant paid \$1,000 the respondent a deposit to apply against the cost of the work outlined in the Work Order.
17. On November 23, 2018, the respondent invoiced the applicant \$3,076.47. The motorcycle's mileage was recorded as 37,262. The respondent noted on the invoice:

All transmission noise not present, smooth shifting, no noise present in primary, no kickback present on startup/shutdown.

18. Based on this note, I find that the repair had fixed the noise in the primary drive and otherwise addressed problems with the motorcycle's transmission. However, a remaining problem of "engine noise" was also recorded on the invoice. The note reads that the motorcycle needed further teardown/inspection for the problem of engine noise, which would be addressed on a separate Work Order.
19. Under Work Order 100448, I find that the applicant agreed to have extensive diagnostics and repairs completed on his motorcycle. The "Hard Primary Noise" describes noise from the primary drive on the motorcycle, which is the drive through which the engine transmits power from the crankshaft to the transmission. I also find that the applicant, himself a diesel engine mechanic, was aware of the extent and precise cost of these repairs before the work was completed. I find the applicant agreed to them by signing Work Order 100448.
20. I make this finding having considered the applicant's argument that he "disagreed" that the cause of the hard primary noise was "in the chaincase". If the applicant held that view at the time, I find he could have sought another opinion for the repair.

As he did not, I find he agreed to the tear down and rebuild of the transmission and the other work itemized in Work Order 100448.

21. The applicant now says he disagreed that there was a primary drive noise and a separate engine noise. However, based on the documentary evidence created at the time of the repair, I prefer the respondent's evidence on this point.
22. On November 24, 2018, the applicant paid the \$2,076.47 to the respondent.
23. On November 24, 2018, the respondent generated another Work Order, 100475, which is also signed by the applicant. It contains a handwritten note reading "All Parts from Trans/Primary Upstairs In Box!".
24. Work Order 100475 contains a note that the rattle in the motorcycle's engine appears to be from the rear cylinder area. The November 24, 2018 Work Order describes a plan to address a rattle in the engine/drivetrain possibly coming from the rear cylinder area.
25. On December 10, 2018, the applicant emailed the respondent writing "NEW PLAN !!! if not started don't, I will ask you to take it to my home please." (quote reproduced as written) I find that this communication was the applicant's instruction that the respondent not proceed with Work Order 100475.
26. The next morning, Mr. Nielsen replied saying that the motorcycle was on schedule to go in the shop that day. He agreed to return the motorcycle to the applicant's home.
27. On December 12, 2018, the applicant asked that "all old parts" be delivered with the motorcycle when it was returned.
28. On December 12, 2018, Mr. Nielsen replied that the parts would be delivered to the applicant's home, with the motorcycle, possibly on that Friday. I find that Work Order 100475 was then deleted from the computer system, because the work was not going to proceed. The respondent retained the hard copy of Work Order 100475 and filed it as evidence in this dispute.

29. According to the respondent's written records, the applicant's motorcycle and parts were delivered to his home on December 15, 2018.
30. The applicant then travelled out of Canada for 4 months. Upon his return, he took his motorcycle to another mechanic.
31. In April 2019, the applicant had his motorcycle evaluated and repaired by MC of MC Hawgs. At that time, the motorcycle's mileage was recorded at 37,275 km. The invoice for the work reported a diagnosis of "cam chest noise, appears to be noisy lifter/cam follower." MC Hawgs then repaired or replaced the cams, lifters, cam plate, oil pump, push rods and oil and filter on the motorcycle. These repairs, including 5 hours of labour, cost the applicant \$2,780.06. According to the applicant, lifter replacement resolved the engine noise problem.
32. MC provided a written opinion that, upon inspection of the motorcycle parts that were removed by the respondent, the compensator sprocket is still "serviceable" other than normal wear and tear. He stated that the transmission bearings feel smooth with no signs of failure, and the main shaft assembly shows no run out or visible signs of wear and tear. He says that these components did not need to be replaced.
33. I find that the standard of repair for Work Order 100448 requires expert evidence. Having said that, MC's statement is not based on examining the motorcycle itself, nor the work done. Rather, it is based on examining the parts that were removed. While some parts may not have needed individual replacement, MC does not explain they worked with other parts of the transmission. Put differently, the labour cost associated with piecemeal replacement may sometimes outrun the cost of new parts. I do not have enough evidence to make this determination, and the burden in this claim is on the applicant. For these reasons, I do not accept MC's statement as proof of a failure by the respondent to meet a reasonable standard for mechanical motorcycle work.

34. The applicant also filed an October 7, 2019 handwritten statement from a machinist DJ:

Run out on geared shaft found to be within tolerance of less than two ten thousandths of an inch. Which is less than 20% of one thousandths of an inch.

35. I acknowledge that DJ's letter says that the "geared shaft" was showing a tolerance of 0.0020, just inside the upper limit for acceptable factory specifications. However, it is not clear how DJ tested the shaft, given that it had already been removed from the motorcycle. DJ did not explain how a dial gauge indicator of 0.015 pre-service would accord with his measurements, if at all.

36. The applicant says DJ's statement is an evaluation of the motorcycle's transmission shaft after it was removed from the motorcycle. Again, neither DJ nor MC offered an opinion that the transmission work completed by the respondent fell below a reasonable standard for a motorcycle mechanic in the circumstances.

37. The applicant submits that the only problem causing noise was the lifter, and that the respondent should have made this diagnosis correctly before starting Work Order 100448. I disagree. The applicant makes this submission with the benefit of hindsight. I find that, had there been an obvious and sole cause of noise due to a specific lifter in November 2018, the applicant would not have signed the work order authorizing a transmission rebuild to address the hard primary noise.

38. The applicant also submits that the respondent's mechanic never checked his motorcycle's oil filter. However, while Work Order 100448 contains estimates for oil top up, it does not include a replacement oil filter. As such, I find the applicant has not proven that the respondent failed to check the filter, simply because the filter cap was not changed.

39. For these reasons, I dismiss the applicant's claim for a refund for the respondent's mechanical work on his motorcycle.

40. 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. As the respondent was successful but paid no tribunal fees, I make no order in this regard. The respondent did not claim dispute-related expenses. As he was unsuccessful, I dismiss the applicant's claims for tribunal fees and dispute-related expenses.

ORDER

41. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member