



Civil Resolution Tribunal

Date Issued: January 27, 2020

File: SC-2019-005802

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cole, dba 217Inmotion Towing v. Gill*, 2020 BCCRT 102

B E T W E E N :

MICHAEL JAMES COLE (Doing Business As 217INMOTION TOWING)

APPLICANT

A N D :

IVON GILL

RESPONDENT

A N D :

MICHAEL JAMES COLE (Doing Business As 217INMOTION TOWING)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Michael James Cole, doing business as 217Inmotion Towing, says he provided towing services to the respondent Ivon Gill, who failed to pay.
2. Mr. Cole claims \$2,250.00 total, which his Dispute Notice breaks down as \$500 for the tow, \$25 in GST, \$1,250 for “daily lost revenue”, and \$500 for inconvenience. By my calculation, his claim should total \$2,275.00 based on this breakdown.
3. Mr. Gill counterclaims for \$5,000 in damages, saying that Mr. Cole sold him a defective truck and later returned the truck damaged after the tow.
4. The parties are each 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 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.
6. 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.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
9. Mr. Gill initially filed a third-party Dispute Notice against R. R. Plett Trucking Ltd. and Plett Trucking Ltd. (RR Plett). Mr. Cole withdrew that dispute before any response was received. Under section 61 of the *Civil Resolution Tribunal Act* (CRTA), I have amended the style of cause to reflect only the remaining claims.

ISSUES

10. The issues in this dispute are:
 - a. Whether Mr. Gill owes Mr. Cole the claimed \$2,275 for the alleged unpaid tow service, loss of revenue and inconvenience?
 - b. Whether Mr. Cole sold Mr. Gill a defective truck, without warning him, or otherwise damaged the truck, such that Mr. Cole must pay Mr. Gill \$5,000 in damages.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Cole bears the burden of proof in his claim, on a balance of probabilities. Mr. Gill bears this same burden in his counterclaim. I have only addressed the evidence and arguments as I find necessary to explain my decision.
12. The following facts are uncontested:
 - a. In July 2019, Mr. Gill bought a 1984 Ford Knuckleboom truck (truck) from Mr. Cole for \$11,000.
 - b. On July 17, 2019, Mr. Gill contacted Mr. Cole to say the truck was not starting.

- c. Mr. Cole visited Mr. Gill that day but was unable to diagnose the issue.
 - d. Mr. Cole towed the truck to RR Plett in Langley, BC.
- 13. The parties disagree about whether and to what extent
 - a. Mr. Gill should pay Mr. Cole for towing the truck,
 - b. the truck was defective at the time of the sale, and
 - c. the truck was damaged during the tow.
- 14. I will start with the question of whether Mr. Gill owes Mr. Cole money for towing the truck. Mr. Cole has the burden of proof.
- 15. In early July 2019, Mr. Cole sold the truck to Mr. Gill. A few weeks later, Mr. Gill contacted Mr. Cole by text message, saying the truck was not running.
- 16. Mr. Cole filed a series of text messages in evidence, which show the exchange of information between him and Mr. Gill on July 17, 2019.
- 17. Based on these text messages, I find that Mr. Cole offered to tow the truck for a rate of \$125 per hour, for a minimum of 3 hours. Mr. Gill responded to say he would call if he needed towing. Sometime later, Mr. Gill texted “you carry on”. Mr. Cole then writes that if Mr. Gill called for a tow, he would try to get the truck running first and that towing “...would be a last resort.” Mr. Gill then responds “Yes..needed it working today..can pay your time if you can come now .” (quote reproduced as written)
- 18. Mr. Gill submits that he texted “you carry on”, meaning that he was not engaging Mr. Cole for towing service. I agree that he sent this text early in the exchange. However, I find this sentiment was then replaced by his express request for Mr. Cole to attend and help with the truck, including providing a tow if needed.

19. Based on the text messages, I find that Mr. Gill agreed for Mr. Cole to attend to try to fix the truck, and to tow it if needed, for a price of \$125 per hour and a 3-hour minimum.
20. The same evening, after towing the truck, Mr. Cole texted Mr. Gill an invoice for \$525, for 4 hours of work (\$500) plus tax (\$25). Mr. Gill texted to say the invoice would be paid. Mr. Gill did not pay.
21. I find that Mr. Cole has proven on a balance of probabilities that Mr. Gill agreed to have tow services for an agreed price of \$525. I order Mr. Gill to pay the \$525.
22. I dismiss Mr. Cole's claims for \$1,250 for "daily lost revenue", and \$500 for inconvenience. I find these are claims for time spent on the dispute. Section 20 of the CRTA provides a general rule that parties are to represent themselves in tribunal proceedings. Generally, the tribunal does not allow claims for time spent on the dispute, consistent with self-representation where legal fees are not reimbursed. I see no reason to deviate from that practice here: see *Yemchuk v. Aqua Paws Hydrotherapy Inc.* 2019 BCCRT 1435 at paragraph 24, which I find persuasive though it is not binding on me. Mr. Cole also did not prove that he suffered any loss in these amounts.
23. I now turn to Mr. Gill's counterclaim that Mr. Cole misrepresented the truck's condition when selling it to Mr. Gill.
24. In July 2019, Mr. Cole offered the truck for sale, describing it as being a 1984 model in "excellent shape" with new tires and a new adjustable pintle hitch and receiver.
25. Mr. Gill inspected the truck in person on July 4, 2019. Mr. Gill also insisted on an inspection by his mechanic, and Mr. Cole agreed. However, the evidence before me does not prove whether this inspection occurred.
26. Mr. Gill then purchased the truck for an agreed price of \$11,000.
27. Mr. Cole says that the truck had a hydraulic leak when he delivered it to Mr. Gill, and that he paid Mr. Gill \$500 to address the leak. Mr. Gill agrees.

28. A purchaser is expected to reasonably assess a vehicle's condition before purchasing it. In private used car sales, unless the seller commits fraud or conceals defects, the purchaser assumes the risk for any defects in the condition or quality of the vehicle, subject to certain *Sale of Goods Act* (SGA) implied warranties. The general principle is referred to as the doctrine of *caveat emptor* or "buyer beware". See *Rusak v. Henneken*, [1986] B.C.J. No. 3072 (S.C.); *Smith v. Wild Grizzly Transport Ltd.*, 2018 BCCRT 203. "Buyer beware" applies but is qualified by the implied durability warranty in section 18(c) of the SGA.
29. Turning to the implied condition of durability, section 18(c) of the SGA says that goods must be "durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale ...".
30. Whether or not the truck was reasonably durable as required by the SGA involves an assessment of the facts in context to determine what is reasonably durable in the circumstances. See: *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII), *James v. Mountain Equipment Co-operative*, 2018 BCCRT 521; *Penny v. Earthy*, 2018 BCCRT 851.
31. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court noted that several factors are considered when determining whether a vehicle is durable for a reasonable period of time, including age, mileage, price, the use of the vehicle, the reason for the breakdown, and expectations of the parties as shown by any express warranties. In *Sugiyama* the claimant purchased a car that broke down after driving it 616 kilometers. The court determined that the car was still durable for a reasonable time because one had to consider its age (8 years old), mileage (over 140,000 kilometers), and price of about \$5,000.
32. Mr. Gill says Mr. Cole told him the truck had no "major mechanical issues." Given that Mr. Cole agreed to a mechanical inspection and permitted Mr. Gill to look at the truck in person, I find that such a representation is not misleading. As well, Mr. Cole

made clear that this was a 1984 model truck, which implies a level of wear and tear consistent with a 35-year-old vehicle.

33. Mr. Gill submits that he found out that Mr. Cole's description of the truck was untrue. Mr. Gill submits that he has evidence of an extensive repair bill over \$2,500, and that some sort of vehicle safety inspection expired a "long time ago" as shown in the "ICBC system". However, Mr. Gill did not provide any documentary evidence to prove these submissions. Mr. Cole says the truck had plates, a current inspection sticker in the window and a current Alberta commercial vehicle inspection at the time of sale.
34. Mr. Gill also says he had a witness to the telephone conference with Mr. Cole where Mr. Cole allegedly made assurances about the truck's condition. However, Mr. Gill did not provide any witness statements.
35. While I accept that the truck broke down and required a tow within the first month that Mr. Gill owned it, I find that Mr. Gill has not proved that Mr. Cole misrepresented the truck, nor that the truck was less durable than it should be given its 35-year age. In making this finding, I accept Mr. Cole's uncontested evidence that at the time of breakdown, the truck was mired in muddy debris with large logs piled against it, suggesting that the truck was being used to haul material far larger than what it was rated to do.
36. Mr. Gill says Mr. Cole returned the truck after towing with damage to its wheels and an engine leak. However, Mr. Gill did not file any mechanic inspection report, invoices for repairs, photographs or any other independent evidence to prove that the truck was damaged by the tow.
37. Mr. Gill's submissions are inconsistent about the cost of the truck damage. At one point, he submits that damage to the truck exceeded \$20,000. His counterclaim is for \$5,000, the tribunal's monetary jurisdiction limit.
38. Given the scant evidence filed, I find that Mr. Gill has not proven that Mr. Cole misrepresented the truck at the time of sale. Mr. Gill also did not prove that the truck

was returned damaged after the tow. I would have dismissed the claim for truck damage in any event, because Mr. Gill did not prove the claimed damage.

39. Given my conclusions above, I dismiss the counterclaim.
40. The *Court Order Interest Act* applies to the tribunal. Mr. Cole is entitled to pre-judgment interest on the \$525.00 from July 17, 2019, the date of the invoice, to the date of this decision. This equals \$5.47.
41. 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. Because Mr. Cole was partly successful, I find it appropriate that Mr. Gill pay 50% of Mr. Cole's tribunal fees, which is \$75. As discussed above, I dismissed Mr. Cole's claims for dispute-related expenses.

ORDERS

42. Within 15 days of the date of this order, I order Mr. Gill to pay Mr. Cole a total of \$605.47, broken down as follows:
 - a. \$525.00 in payment for the towing invoice,
 - b. \$5.47 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$75.00, being 50% of the Mr. Cole's tribunal fees.
43. Mr. Cole is entitled to post-judgment interest, as applicable. The parties' remaining claims are dismissed, including Mr. Gill's counterclaim.
44. 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.

45. 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.

Julie K. Gibson, Tribunal Member