



# Civil Resolution Tribunal

Date Issued: August 17, 2020

File: SC-2020-001065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CF Industries Inc. v. Clauson*, 2020 BCCRT 919

BETWEEN:

CF INDUSTRIES INC.

**APPLICANT**

AND:

MATTHEW ARON CLAUSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is about a vehicle repair. The applicant, CF Industries Inc. (CF Industries), says it replaced the respondent's, Matthew Aron Clauson, vehicle's

turbocharger twice but ultimately Mr. Clauson took his business to another company and then refused to pay for one of the turbocharger replacements. CF Industries claims \$3,492.88. CF Industries is represented by an organizational contact.

2. Mr. Clauson says that CF Industries replaced 2 turbochargers on his truck and both times the materials and the work were defective. Mr. Clauson says that therefore he does not owe CF Industries anything but also notes that CF Industries invoices show it previously claimed the outstanding balance was \$908.88 and not \$3,492,88. Mr. Clauson represents himself.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
4. The CRT 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 "it said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the CRT'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 therefore decided to hear this dispute through written submissions.
5. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. 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.

## **ISSUE**

7. The issue in this dispute is whether Mr. Clauson owes CF Industries \$3,492.88 for a turbocharger replacement.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, the applicant CF Industries must prove its case on a balance of probabilities. However, Mr. Clauson says that CF Industries used faulty materials and performed defective work. Where a party alleges defective work, they bear the burden of proving the defect, see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

### ***Did CF Industries use faulty materials and perform defective work?***

10. On January 30, 2019, Mr. Clauson brought his truck to CF Industries to replace the turbocharger and gaskets and clean carbon from the air intake. Mr. Clauson says that he picked up the truck on January 31, 2019 and he texted CF Industries almost immediately that he had an air leak from the new turbocharger. Mr. Clauson says that as soon as he drove the truck a short distance coolant started pouring out. Mr. Clauson says that he noticed that a clamp was not installed so he installed it and topped the truck up with fluids.

11. Mr. Clauson says he brought the truck back to CF Industries on February 1, 2019 and it tried to correct the leak but Mr. Clauson was still not satisfied. Mr. Clauson says that CF Industries then sent him an invoice for \$3,736.41 for the turbocharger replacement. It is unclear on the evidence why, but this amount changed in later billings to \$3,492.88. The latter figure is the amount claimed in the Dispute Notice. Mr. Clauson says that the turbocharger was faulty, so he did not pay for the parts or labour.
12. Mr. Clauson says he brought the truck back on February 23, 2019 and CF Industries removed components to try to seal the leak. Mr. Clauson says CF Industries took pictures of the leaking area to send to the turbocharger supplier for warranty purposes and that these pictures show that CF Industries opened the engine allowing contamination to get in. After the work was done, Mr. Clauson says that he texted CF Industries on February 25, 2019 that the leak had improved but was still there.
13. The second turbocharger was installed on March 16, 2019. The March 19, 2019 invoice was for \$3,108.59. This invoice was paid in full, both labour and parts, by the supplier. Mr. Clauson says that when CF Industries replaced the turbocharger again, it had to perform other repairs that were caused by CF Industries' allegedly faulty work from the first installation. Mr. Clauson says CF Industries repaired thread to the exhaust gas recirculation (EGR) valve and that it had to repair turbo sensor electrical issues. Mr. Clauson says there were other repairs needed including fixing damage which contaminated the turbo intake. Mr. Clauson also says that CF Industries did not install the EGR valve bolts properly.
14. Mr. Clauson says that CF Industries repaired the threads by drilling metal to oversize holes and then cut new threads in the metal. He says that this led to metal contamination in the EGR system and that this "took out" the second turbocharger CF Industries installed.
15. Mr. Clauson says that he continued to hear abnormal noises from the turbocharger, so he took it to another shop because CF Industries was not available. He says that

the new shop, FT, found several issues which it linked to the previous installation. Mr. Clauson provided FT's work order and invoice which shows that the turbocharger was again replaced and that it ran well for a few days and then the engine seized. However, FT does not comment on CF Industries being responsible for the repairs that were necessary.

16. CF Industries disagrees with Mr. Clauson's version of events and says that when Mr. Clauson first brought the truck in there were already multiple things wrong with it, but Mr. Clauson refused to take care of the problems. It says that all repairs it made were performed in a "trade acceptable manner." CF Industries says that the issues were not with the turbocharger or with its work but with the truck itself and points to the fact that the problems continued after Mr. Clauson went to FT for service.
17. The emails show that after the second turbocharger was installed the parties had an ongoing disagreement about what was causing the failure of the truck's turbochargers and the other issues. On May 16, 2019, CF Industries sent Mr. Clauson an email saying that the turbochargers kept failing because of a lack of lubrication. CF Industries indicated the truck's crankshaft seal was leaking and behind the crankshaft is the engine's oil pump. CF Industries said that this explained why all 3 turbochargers were damaged including the first one and the two that CF Industries installed in February and March.
18. In a September 10, 2019 email CF Industries stated that if Mr. Clauson wanted CF Industries to abandon the amount owing, Mr. Clauson should provide a detailed failure record from FT who rebuilt the engine stating that there was no lack of lubrication in the returned turbochargers or any debris damages to the exhaust turbines.
19. In a January 10, 2020 email CF Industries sent Mr. Clauson a follow-up email that it was aware that since Mr. Clauson's second turbocharger replacement he had 3 other turbochargers replaced and that the engine seized. CF Industries told Mr. Clauson that no faulty parts or workmanship on CF Industries part could possibly

have resulted in this recurring issue. It does not appear that Mr. Clauson responded to this email.

20. As noted, the onus is on Mr. Clauson to prove the CF Industries work was defective. I find evidence from those in this occupation is necessary where the alleged breach is about a technical matter or matter on which an ordinary person may not be expected to have knowledge: *Burbank v. R.T.B.*, 2007 BCCA 215. I find expert evidence is especially needed in this dispute as the claim is about highly technical issues. It is not readily apparent that CF Industries' work resulted in the repeated need for the turbocharger replacement or caused other damage, as alleged. It is also not clear that the turbocharger was faulty.
21. I have reviewed all of the evidence including the multiple pictures of the truck's engine and other parts. Although Mr. Clauson says the pictures show that the work was substandard, I am not able to determine that without expert evidence. It is unclear from the pictures when things occurred or what caused them. Notably, Mr. Clauson did not file evidence from an expert to prove that CF Industries' work was deficient. As noted, to find that CF Industries' work was negligent, I would need evidence from someone qualified to complete such work indicating that the work was substandard. I find that Mr. Clauson has failed to meet the burden upon him to prove that CF Industries' work was defective.

### **Remedy**

22. Having determined that Mr. Clauson did not prove that CF Industries' work was defective or that the parts were faulty, the question is whether CF Industries is entitled to the amount claimed for its work. I note that although CF Industries claims \$3,492.88, the evidence shows that it issued a credit of \$2,583.00 on this invoice. Also, on September 7, 2019, CF Industries sent a demand letter only requesting the \$909.88 it said was outstanding. CF Industries has not explained why it issued this credit or why it is now claiming the full amount of the invoice.

23. Mr. Clauson provided texts from September 7, 2019 where he asked CF Industries why the supplier covered both parts and labour on the second turbocharger but not on the first. Mr. Clauson says that he spoke to FT who did his repairs after CF Industries and it assured him that CF Industries' labour cost would be covered if the parts were under warranty. However, Mr. Clauson did not provide a statement from FT confirming this.
24. CF Industries replied that the supplier paid for the labour on the second installation because it was covered by the warranty but not the original installation. I do not see how this explains the difference. Mr. Clauson brought up at the very beginning of this dispute that the supplier should have paid this cost as well. CF Industries did not provide any evidence from the supplier that it did not reimburse this amount. CF Industries did not explain the amount it is claiming and has not addressed this point in its submissions. Since the parts were covered by warranty it is not clear why the labour would not be, just as they were on the second installation.
25. CF Industries also did not provide any information about what kind of warranty this was and how it was different from the second one which covered both parts and labour. Because CF Industries claimed the full amount of \$3,492.88 and did not discuss the credit that it applied, I am unable to even tell whether the \$909.88 was for labour. CF Industries did not provide any breakdown of costs and did not justify what it claims is owing.
26. Having reviewed all the evidence, I find that CF Industries is not entitled to the \$3,492.98 claimed. I also find that CF Industries has not proved that it is entitled to the \$909.88 cost either. Therefore, I find that CF Industries has not proved that there is any amount outstanding on the invoice.
27. Under section 49 of the CRTA and the CRT's rules, the CRT 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. CF Industries was unsuccessful in its claim for reimbursement of the invoice, so it is not entitled to reimbursement of its tribunal fees. Neither party made a claim

for expenses.

**ORDER**

28. I dismiss CF Industries' claims and this dispute.

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Kathleen Mell, Tribunal Member