



# Civil Resolution Tribunal

Date Issued: September 23, 2020

File: SC-2020-004003

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chaves v. Al Millar (Doing Business as Millar's Auto 2009)*, 2020 BCCRT  
1075

B E T W E E N :

HUMBERTO CHAVES

**APPLICANT**

A N D :

AL MILLAR (Doing Business As MILLAR'S AUTO 2009)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about car repairs.
2. The applicant, Humberto Chaves, paid the respondent, Al Millar (Doing Business As Millar's Auto 2009), \$1,707.39 to repair an overheating problem with his daughter's

2009 car in December 2019. Mr. Chaves says Mr. Millar's repair work was substandard, as the car began overheating again. Mr. Chaves asks for an order that Mr. Millar fix the car at no additional cost, or refund Mr. Chaves \$1,707.39 in repair costs.

3. Mr. Millar denies his repair work was substandard. He says he repaired the car's head gasket, as Mr. Chaves asked him to do. Mr. Millar says there was likely another problem with the car's engine causing the overheating. He asks that the dispute be dismissed.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT 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 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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**

9. The issue in this dispute is whether Mr. Millar was negligent in repairing the car and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the applicant, Mr. Chaves, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. Mr. Chaves took the car to Mr. Millar's repair shop in October 2019 because the car was overheating. Mr. Chaves told Mr. Millar that he believed there was a problem with the car's head gasket, which I infer is an engine part. Mr. Millar ran some tests on the car and agreed with Mr. Chaves that the overheating was likely a head gasket issue. Mr. Millar sent the cylinder head out to be tested and machined, then reinstalled the repaired head gasket. Mr. Millar test drove the car without any issue. On December 24, 2019 Mr. Chaves picked up the car and paid Mr. Millar \$1,707.39 for the repairs. None of this is disputed.
12. It is also undisputed that the car started overheating again sometime after December 24, 2019. Mr. Chaves describes the timing of the overheating differently in his Dispute Notice, his submissions in this dispute, and in his May 1, 2020 complaint letter to Mr. Millar. Based on all these documents, I find the car started overheating again sometime between 3 weeks and 2 months after December 24, 2019.
13. Mr. Chaves says he tried to contact Mr. Millar when the car started overheating again but received no reply. Mr. Millar denies receiving any messages from Mr.

Chaves. However, the parties agree that Mr. Chaves brought the car back to Mr. Millar's repair shop. Although neither party provides a date for the second repair shop visit, I find it was likely sometime in March 2020, based on the timelines provided by both Mr. Chaves and Mr. Millar. In any event, I find nothing turns on the specific date of the second repair shop visit. The parties agree that the car was overheating again when Mr. Chaves returned the car to the repair shop the second time.

14. Mr. Chaves says Mr. Millar must not have fixed the car properly the first time or it would not have started overheating again so soon after being repaired. Mr. Chaves says Mr. Millar told him during the second visit that the car had the same head gasket issue again. Mr. Millar agrees that, during his second inspection, he found damage to the head gasket again, but believes the overheating was caused by another engine problem, such as a crack in the engine block. Mr. Millar says he properly repaired the head gasket the first time, as Mr. Chaves asked him to.
15. As noted above, the burden is on Mr. Chaves to prove Mr. Millar's repair job was faulty, or substandard. Where the subject matter is technical, or beyond common understanding, expert evidence is often needed to help the decision maker determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 238). I find head gasket and engine repair is a technical subject and beyond common understanding. So, I find expert evidence is necessary.
16. Mr. Chaves says another mechanic told him that Mr. Millar should have conducted a compression test after fixing the head gasket, and that the engine block might be warped. I find this is not expert evidence as it is second-hand information and I do not know the mechanic's qualifications, or what the mechanic based his opinion on. I place no weight on this second-hand statement.
17. Although I accept the car started overheating again soon after Mr. Millar repaired the head gasket, I find that does not necessarily mean Mr. Millar's repairs were faulty. I note that the car is 11 years old and that there may be another underlying engine problem causing the car to overheat. Without expert evidence, I find Mr.

Chaves has failed to prove that Mr. Millar's head gasket repair was faulty or substandard.

18. I further find Mr. Millar's diagnosis of the overheating problem was also not faulty. Based on Mr. Millar's December 23, 2019 invoice and the submissions of both parties, I find Mr. Chaves specifically told Mr. Millar he suspected that the head gasket was causing the overheating, that Mr. Millar tested the head gasket, and that the test confirmed the head gasket was leaking which, I infer, means it was causing the overheating. I find Mr. Chaves did not ask Mr. Millar to conduct further engine tests to determine if there were other issues causing the car to overheat, other than the head gasket. So, I find Mr. Millar did the work he was hired to do and Mr. Chaves has failed to prove Mr. Millar's repairs were faulty.
19. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. However, as Mr. Chaves was unsuccessful in this dispute, I dismiss his claim for CRT fees. Mr. Millar did not pay fees or claim dispute-related expenses.

## **ORDER**

20. I dismiss Mr. Chaves' claims and this dispute.

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Sherelle Goodwin, Tribunal Member