



Civil Resolution Tribunal

Date Issued: January 8, 2021

File: SC-2020-004890

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tichopad v. Redpath*, 2021 BCCRT 24

BETWEEN:

JIRI TICHOPAD

APPLICANT

AND:

MICHAEL REDPATH

RESPONDENT

AND:

JIRI TICHOPAD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a rented vehicle. The applicant, Jiri Tichopad, says that he rented his race car and trailer to the respondent, Michael Redpath, and to Adam Ingram. Mr. Ingram is not named as a party in this dispute. Mr. Tichopad says Mr. Redpath left the car and trailer at the racetrack and did not return it to the location the parties agreed to. Mr. Tichopad also says that he discovered the car and trailer were both damaged after he picked them up. Mr. Tichopad seeks \$2,100 for repair costs.
2. Mr. Redpath agrees that the car incurred some rubber marks on the passenger-side front bumper during one of the races. However, he says the rest of the alleged damage was already there when Mr. Redpath picked up the car. Mr. Redpath also says Mr. Tichopad agreed to pick up the car at the racetrack.
3. Mr. Redpath filed a counterclaim. He says the car was in poor condition and he was unable to participate in all of the races. He seeks a \$2,200 refund for the rental fees he paid to Mr. Tichopad.
4. The parties are each self-represented.
5. As discussed below, I find Mr. Tichopad's claim for vehicle damage is premature and so I have refused to resolve it.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary 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 in the interests of justice.
8. Section 42 of the CRTA says 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.
9. 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 CRT considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Whether Mr. Redpath damaged Mr. Tichopad's car, and if so, the appropriate remedy, and
 - b. Whether Mr. Tichopad misrepresented the car's condition when he rented it to Mr. Redpath, and if so, the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Tichopad must prove his claims on a balance of probabilities. Mr. Redpath must prove his counterclaim to the same standard. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.

12. It is undisputed by the parties that Mr. Tichopad owns a 1987 BMW race car (car). On September 12, 2019, the parties signed a "Race Car Rental Agreement".
13. The agreement contained the following terms:
 - a. Mr. Tichopad rented the car and a 19 foot trailer to Mr. Redpath and Adam Ingram for \$2,200. I cannot tell whether Mr. Ingram signed the agreement since the bottom portion of the 1 page agreement Mr. Tichopad submitted was cut off,
 - b. The rental was from October 11 to October 13, 2019 for a racing event being held at Mission Raceway (raceway),
 - c. Mr. Redpath and Mr. Ingram agreed to be 100% financially responsible for any damage to the car, its accessories, the trailer, and the trailer's accessories,
 - d. If the car was damaged during the rental, Mr. Redpath and Mr. Ingram agreed to compensate Mr. Tichopad in full up to the current value of the damaged car. The car was valued at \$12,000 US and the trailer was valued at \$6,000 US,
 - e. If any damage occurred, Mr. Redpath and Mr. Ingram agreed to "compensate for any body or mechanical damage or failure immediately upon the conclusion of repairs necessary to bring the car to the same condition" as before the rental,
 - f. There were no known mechanical issues with the car, and
 - g. The car had a slight cosmetic abrasion on the right side door cosmetic wrap and on the right rear quarter panel/fender.
14. Mr. Tichopad says the car was in "excellent cosmetic condition" and in "impeccable mechanical condition" when Mr. Redpath picked up the car and trailer from his house on October 11, 2019. Mr. Tichopad says Mr. Redpath was supposed to drop off the car and trailer at a location 54 kilometers from the raceway after October 13, 2019. Instead, he says Mr. Redpath "abandoned" the car and trailer at the raceway where he retrieved them. I note the agreement did not specify a drop off location.

15. Mr. Tichopad did not state the date he retrieved the car and trailer. He says he inspected the car on November 18, 219 and discovered the right corner, fender, bumper, and front spoiler were damaged. He also says he inspected the trailer and found the main door retaining clip was broken.
16. Mr. Tichopad says the repairs will cost \$2,100 and that he is waiting for the outcome of this dispute to repair the car.

Did Mr. Redpath damage the car?

17. Mr. Redpath admits there was some minor damage to the car when it came in contact with another car during a race. He says this left rubber marks on the car's front right-side bumper which can be buffed off. I find Mr. Redpath's description is consistent with photographs Mr. Tichopad submitted that showed damage to the front passenger side bumper. Aside from this, Mr. Redpath says the remaining damage Mr. Tichopad claims was present when he picked up the car on October 11. Mr. Redpath did not state whether the remaining alleged damage was consistent with the pre-existing damage described in the agreement. Mr. Redpath did not dispute the alleged damage to the trailer.
18. Mr. Redpath submitted a short video recording of the car's entire exterior that he says he recorded to show its condition before the first race. It showed a dent and marks on the passenger front door and scratches on the driver's door. It also showed the rear bumper on the driver's side was loose and a dent on the driver's side front bumper. Since Mr. Tichopad's claim is about damage to the front spoiler, and the passenger side corner, front bumper, and rear bumper, I do not need to consider the dents and scratches on the doors.
19. I find that the passenger side front bumper was damaged while the car was in Mr. Redpath's possession. However, I find Mr. Tichopad has not met his burden of proving the rear bumper or front spoiler, or the trailer's clips were also damaged. While Mr. Tichopad submitted a photograph of the passenger front bumper, he did not provide photographs showing damage to the car's front spoiler or rear bumper,

or the trailer. I note that Mr. Tichopad submitted a photograph of the rear quarter panel, but it was painted white and so it was not his car, which was painted blue.

20. According to the agreement, Mr. Redpath is 100% financially responsible for any damage and agreed to compensate Mr. Tichopad for any body damage “immediately upon conclusion of the repairs” to bring the car to the same condition it was in when it was rented. I find this means the car must first be repaired before Mr. Tichopad can seek compensation.
21. Since Mr. Tichopad admits that the car has not been repaired, I find Mr. Redpath’s obligation to compensate has not been triggered yet and so I find Mr. Tichopad’s claim is premature.
22. CRTA section 11(1)(c) says the CRT may refuse to resolve a claim that is impractical for the CRT to case manage or resolve. In these circumstances, I find it appropriate to refuse to resolve Mr. Tichopad’s claim for damages under that section.

Did Mr. Redpath breach the contract by leaving the car and trailer at the raceway?

23. Mr. Redpath says he left the car and trailer at the raceway with Mr. Tichopad’s consent and knowledge after track officials advised Mr. Redpath that his van was overloaded. Mr. Tichopad denies he agreed Mr. Redpath could leave the car and trailer at the raceway.
24. I find there was an implied term in the agreement that Mr. Redpath would return the car and trailer to a location specified by Mr. Tichopad. I find it unlikely Mr. Tichopad would have agreed to Mr. Redpath leaving the car and trailer at the raceway since it would be inconvenient for him to retrieve it. So I find Mr. Redpath breached the implied agreement term.
25. However, I find Mr. Tichopad is not entitled to any compensation since he did not make a claim for damages for this contract breach in this dispute.

Did the car have known mechanical issues?

26. Mr. Redpath says that Mr. Tichopad verbally stated the car was in good condition and also stated in the agreement that there were no known mechanical issues. However, Mr. Redpath says that problems with the car's fuel system caused the engine to stall while he was driving. He says that Mr. Tichopad knew about the mechanical issues. Mr. Redpath says due to the car's poor condition, he and Mr. Ingram were unable to finish races on October 12 and were unable to participate in the October 13 races. He seeks a refund of the \$2,200 rental fee.
27. Mr. Tichopad denies Mr. Redpath's allegations and says the car's mechanical condition was "excellent". He submitted several "race results" that he says show Mr. Redpath's race times during the rental period were consistent with Mr. Tichopad's race times before and after October 2019.
28. The race results show that Mr. Tichopad placed among the top 10 drivers before and after October 2019. His best race time was "1:20", I infer this is in minutes. The race results also showed on October 13, 2019 Mr. Redpath placed 25th and his best time was 1:37 minutes. Neither party explained whether the 17 second difference between Mr. Tichopad's and Mr. Redpath's best times was significant and so I find it was not. I also find that the race results show Mr. Redpath was in fact able to race on October 13, 2019, despite his statement to the contrary.
29. In order to show Mr. Tichopad misrepresented the car's mechanical condition, Mr. Redpath must prove not only that the car had mechanical issues, but also that Mr. Tichopad knew about them. While I find the car likely had mechanical issues, I find Mr. Redpath has not proved Mr. Tichopad knew about them and so, I find Mr. Tichopad has not met this burden. My reasons are as follows.
30. Mr. Redpath submitted several witness statements. The first was from Mr. Ingram, who stated the car stalled "multiple times" on the track while Mr. Redpath was driving. Mr. Ingram also stated that the car was undriveable on Sunday.

31. Based on Mr. Redpath and Mr. Ingram's statements, I accept that the car stalled during the races and so had mechanical issues during the rental period. However, there is no evidence Mr. Tichopad was aware of these mechanical issues when the car was rented on October 11, 2019.
32. Mr. Tichopad says Mr. Redpath left the tank open and over 4 liters of rainwater entered the fuel cell fuel tank. Mr. Tichopad says this caused over \$900 of mechanical damage that required professional repairs. I infer Mr. Tichopad is alleging Mr. Redpath is responsible for mechanical issues during the race event since he left the tank open. Mr. Redpath denies there was water in the tank and says Mr. Tichopad did not produce evidence to substantiate his allegation. Since Mr. Tichopad did not submit any receipts, invoices, or other evidence to support his allegation, I give it no weight.
33. Mr. Redpath and Mr. Ingram both stated that other drivers at the event who had previously raced against Mr. Tichopad stated the car's stalling issue was "well known". However, Mr. Redpath did not provide statements from those drivers or provide an explanation for failing to do so. I find these alleged statements to Mr. Redpath and Mr. Ingram are hearsay. While hearsay evidence is admissible in CRT proceedings, in the circumstances I give it no weight since it was vague and lacked details about the witnesses' identities, when the witnesses were aware that the car had mechanical issues, or what the issues with the car were.
34. Mr. Redpath also submitted statements from BR and NT who were at the race event at the raceway. I give little weight to either statement for the following reasons.
35. First, the statements contained opinions about the condition of the fuel system. In order to provide an opinion, the witness must set out their qualifications to provide such an opinion and the facts on which their opinion is based (see *Ruttan v. The Owners, Strata Plan NW 902*, 2020 BCCRT 1328 paragraph 48, although I am not bound by this decision). BR did not provide either in his statement. Although NT stated he was a professional driver and owned Morrisport Advanced Driving, I find

that this did not mean he had the qualifications to give opinion evidence about whether the fuel system was faulty.

36. In addition, BR and NT both referred to discussions with Mr. Tichopad about the car's mechanical condition. I infer that neither BR nor NT directly participated in these discussions and that more likely than not, either Mr. Redpath or Mr. Ingram told BR and NT about them afterwards. I find BR and NT's comments are double hearsay since they reiterated conversations that were described to them. Again, while hearsay evidence is admissible in CRT proceedings, I find these statements are unreliable and give them no weight.
37. Mr. Redpath says 2 BMW mechanics he spoke with on October 12, 2019 stated that there was "a fault in the fuel system". Again, I find the mechanics' alleged statements to Mr. Redpath are opinion evidence and hearsay. In the circumstances I give Mr. Redpath's evidence no weight since he did not provide written statements from either of the mechanics or provide an explanation for failing to do so.
38. Mr. Redpath also says during the race event, the car's owner typically either provided or paid for "mechanic support", but Mr. Tichopad did neither. I give Mr. Redpath's allegation no weight since there was no term in the agreement and no evidence that Mr. Tichopad agreed to do either.
39. Since Mr. Redpath did not prove that Mr. Tichopad knew about mechanical issues with the car, I find Mr. Redpath did not prove Mr. Tichopad breached the agreement and I dismiss Mr. Redpath's counterclaim.
40. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since neither party was successful, I dismiss both Mr. Tichopad's and Mr. Redpath's claims for CRT fees. Neither party claimed dispute-related expenses.

ORDERS

41. Under CRTA section 11(1)(c), I refuse to resolve Mr. Tichopad's claim for damage to his car. I dismiss Mr. Tichopad's remaining claims.

42. I also dismiss Mr. Redpath's counterclaim.

Rama Sood, Tribunal Member