



Civil Resolution Tribunal

Date Issued: January 22, 2021

File: SC-2020-005741

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Baik v. Bailey*, 2021 BCCRT 84

B E T W E E N :

SENGUK BAIK

APPLICANT

A N D :

STUART BAILEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about car repairs. The applicant, Senguk Baik, hired the respondent, Stuart Bailey, to fix his 1974 BMW 2002 car's dashboard, fuse box and engine harness. It is undisputed that Mr. Bailey did not complete the repairs or return Mr. Baik's parts. Mr. Baik asks for a refund of the \$585 he paid Mr. Bailey, a return of his parts, and damages of \$2,500 to repair his car.

2. Mr. Bailey says he is willing to return Mr. Baik's parts. However, Mr. Bailey says he is entitled to keep the \$585 because he has already performed repairs and bought parts. Mr. Bailey says he does not owe Mr. Baik damages to fix the car.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Must Mr. Bailey return all or part of the \$585?
 - b. Must Mr. Bailey return the dashboard and fuse box?
 - c. Does Mr. Bailey owe Mr. Baik compensation for damaging the car or failing to return his parts? If so, how much must Mr. Bailey pay?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Mr. Baik, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The following facts are undisputed. Mr. Bailey agreed to repair Mr. Baik's car's dashboard, fuse box and engine harness. Mr. Baik delivered his car dashboard and fuse box to Mr. Bailey for repairs. Mr. Bailey has not completed the repairs and he still has Mr. Baik's dashboard and fuse box.
11. The parties agree that they did not have a written contract. A verbal contract is enforceable like a written contract, but it can be harder to prove. The only evidence the parties provided documenting their agreement was a series of unclear, and often undated, text messages. As such, it is difficult to determine the contract terms.
12. The parties do not say when they entered the contract. However, based on the text messages exchanged between the parties, I find that the agreement was formed around the beginning of June 2020.
13. Mr. Baik says they did not agree on a price. Rather, he says the parties were going to determine the price after the project was completed. However, this is not consistent with the text messages. On May 31, 2020, Mr. Bailey texted a quote of \$1,200 plus the cost of parts. However, in another undated text exchange, the parties say that Mr.

Bailey charged \$400 for repairs and \$85 for materials. As discussed below, the parties also agree that Mr. Baik paid Mr. Bailey \$585 while Mr. Bailey was working on the project. In the absence of an explanation from the parties about these conflicting text messages, I am unable to determine the agreed contract price. However, since the contract was cancelled as discussed below, I find it unnecessary to make such a finding.

14. Neither party provided any evidence or submissions about the project's agreed completion date. Although Mr. Baik sent several text messages asking Mr. Bailey to complete the repairs before the end of June, there is no evidence before me that Mr. Bailey agreed to this deadline. So, I find that the parties did not have an agreed completion date. In the absence of an agreement, I find that it is an implied term that Mr. Bailey would complete the repairs in a reasonable time.
15. It is undisputed that Mr. Baik paid Mr. Bailey \$585. However, the parties disagree about what this payment was for. Mr. Baik says he paid the \$585 for the repair services. However, Mr. Bailey says Mr. Baik paid him \$100 for travel expenses, \$85 for parts and that Mr. Baik loaned him \$400 to repair his own car. It is undisputed that Mr. Bailey did not repay any of the \$400 he says Mr. Baik loaned him. Mr. Bailey says he is entitled to keep the \$400 because he was not paid for his repair services.
16. The parties did not provide receipts for any payments. The only documents provided relating to the payments were text messages which as noted are unclear and inconsistent with both parties' submissions. Mr. Bailey texted Mr. Baik on June 14, 2020 and asked for \$100 for parts. On June 18, 2020, Mr. Bailey said he needed \$400. There is also an undated text exchange where Mr. Baik agreed to let Mr. Bailey use \$300 as a retainer for future services.
17. I find that the parties' text messages are vague and fail to adequately explain what the \$585 was paid for. Based on Mr. Bailey's admission that he borrowed \$400, I find that Mr. Baik loaned Mr. Bailey \$400. In the context of the parties' contractual relationship, I find that the remaining \$185 payment was, more likely than not, a deposit for Mr. Bailey's repair services and parts expenses.

18. The text messages show that Mr. Baik frequently asked Mr. Bailey about the repair status. However, Mr. Bailey repeatedly responded that the project was delayed for a variety of unrelated, personal reasons. Eventually Mr. Baik asked Mr. Bailey to refund the money and return the parts on July 13, 2020. I find this text was a notice of Mr. Baik's intention to cancel the contract. On July 14, 2020, Mr. Bailey texted that he was unable to finish the project. I find Mr. Bailey's July 14, 2020 text was an acceptance of Mr. Baik's notice of termination of the contract. So, I find that the contract ended at that time.
19. Mr. Baik argues that Mr. Bailey breached the contract by failing to complete the repairs. It is undisputed that Mr. Bailey did not complete the agreed repairs. As discussed above, in the absence of an agreed completion date, I find that Mr. Bailey was required to complete the repairs in a reasonable period of time. Neither party provided evidence of how long these repairs reasonably should have taken or the parties' expectations when the contract was entered. Although approximately 6 weeks is a fairly substantial period of time, I find that Mr. Baik has failed to prove this was an unreasonably long period of time. So, I find that Mr. Bailey has not breached the contract by failing to timely complete the repairs.

Must Mr. Bailey return all or part of the \$585?

20. Since it is undisputed that Mr. Bailey did not return any of the \$400 loaned by Mr. Baik, I find that Mr. Bailey owes Mr. Baik a debt of \$400. Mr. Bailey argues that he is entitled to keep the \$400 because he was not paid for his repair services. I disagree. I find that the loan is unrelated to the repair services so Mr. Bailey cannot setoff any repair service fees from the loan.
21. Further, since Mr. Bailey has not completed the repairs, I find that Mr. Baik is entitled to a return of his \$185 deposit, subject to any setoff. Although Mr. Bailey has not completed the repairs, he argues that he has performed some labour and incurred some expenses working on the project. Generally, a contractor is entitled to reasonable payment for the work done. This is known in law as 'quantum meruit', or value for work done. So, Mr. Bailey may be entitled to a setoff from the deposit refund

for the value of his repair services. Mr. Bailey has the burden of proving these services.

22. I find that Mr. Bailey has not provided sufficient evidence to prove that he has provided any substantial repair services. Mr. Bailey has not provided evidence showing that his services provided any benefit to Mr. Baik. Further, Mr. Bailey has not provided any timesheets referencing his repairs or provided any estimate of the hours spent working on the project. Mr. Bailey provided several photographs of the car parts. However, I find these photographs do not prove how much labour, if any, Mr. Bailey provided. I find that Mr. Bailey has not proved that he has provided any repair services.
23. Further, Mr. Bailey claims to have spent approximately \$100 on parts for the project. However, Mr. Bailey has not provided any receipts or invoices to prove these expenses. In the absence of supporting documents, I find the Mr. Bailey has failed to prove that he has incurred any expenses on the project.
24. For the above reasons, I find that Mr. Bailey has not proved that he is entitled to any setoff from the deposit refund. So, I find that Mr. Bailey must repay Mr. Baik the \$400 loan and return the entire \$185 deposit.

Must Mr. Bailey return the dashboard and fuse box?

25. Mr. Baik asks for an order requiring Mr. Bailey to return his dashboard and fuse box. Section 118 of the CRTA grants the CRT the authority to order a party to return personal property. It is undisputed that the dashboard and fuse board are owned by Mr. Baik, and Mr. Bailey has retained possession of these parts after the contract ended. Although Mr. Baik says the parts are worth \$1,500, he has not provided any evidence supporting this valuation. In the absence of evidence of the parts' value, and because both parties agree to the return of the parts, I find it appropriate to order Mr. Baik to return to Mr. Baik his 1974 BMW 2002's dashboard, fuse box and any parts Mr. Baik provided to Mr. Bailey for repair.

Does Mr. Bailey owe damages to complete the repairs?

26. Mr. Baik also claims \$2,500 in damages to complete the repairs and fix damage Mr. Bailey allegedly caused by cutting the wires from the fuse box. As discussed above, I find that Mr. Baik has not proved that Mr. Bailey breached the contract by failing to complete the repairs on time.
27. I find that Mr. Baik has also failed to prove that Mr. Baik has damaged the car by cutting the wires from the fuse box. Mr. Baik says that Mr. Bailey damaged the car by cutting the wires instead of unplugging them. However, Mr. Baik has not provided evidence supporting this submission. Mr. Bailey says it was necessary to cut the wires and that Mr. Baik was present when this was done. I find that Mr. Baik has failed to provide sufficient evidence to prove that Mr. Baik breached the contract by cutting the wires.
28. Although Mr. Baik did not say this, I find that he also essentially arguing that Mr. Bailey was negligent. To prove negligence, Mr. Baik must show that 1) Mr. Baik owed him a duty of care, 2) Mr. Bailey breached the standard of care, 3) Mr. Baik sustained a loss, and 4) and the loss was reasonably foreseeable (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33).
29. Generally, in claims of professional negligence, an applicant must prove a breach of the standard of care through expert opinion evidence (See, *Bergen v. Guliker*, 2015 BCCA 283). I find that expert opinion evidence is necessary here, because the car repair is outside the knowledge and everyday experience of the ordinary person. Since Mr. Baik not provided an expert opinion, I find that he has not proved that Mr. Bailey was negligent.
30. Further, even if Mr. Baik had proved that Mr. Bailey breached the contract or he was negligent, I find that Mr. Baik has failed to prove that he has suffered damages. Mr. Baik provided a July 14, 2020 receipt for \$2,808.96 for repairs. For the following reasons, I do not find the receipt credible.

31. First, the receipt appears to be incomplete. The full name of the car owner is not stated, there is no record of the car's odometer reading, the receipt does not itemize the hours of labour, the labour rate or the dates of service. In addition, Mr. Baik sent an undated text message to Mr. Bailey saying that he was paying another mechanic \$1,500 to complete the repairs. Based on these irregularities, I am not satisfied that the July 14, 2020 document is a legitimate receipt for repairs to Mr. Baik's car.
32. Also, even if I had found the receipt credible, I would still find that Mr. Baik has not proved that he suffered any loss from Mr. Bailey's services because there is no explanation showing how much of the alleged \$2,500 of repairs was related to damage caused by Mr. Bailey. Before the project started, Mr. Baik sent Mr. Bailey text messages saying that other businesses would charge between \$2,200 to \$3,000 for the entire repairs. I find that the amount stated in Mr. Baik's July 14, 2020 receipt is comparable to the quotes he received before Mr. Bailey worked on the car.
33. For the above reasons, I find that Mr. Baik has failed to prove that he has suffered any damages. So, I dismiss this claim.
34. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Baik is entitled to pre-judgment interest on the \$585 deposit from July 14, 2020, the date the contract ended, to the date of this decision. This equals \$1.39.
35. 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. I find Mr. Baik is entitled to reimbursement of \$175 in CRT fees.

ORDERS

36. Within 30 days of the date of this order, I order Mr. Bailey to pay Mr. Baik a total of \$761.39, broken down as follows:
 - a. \$585 in debt for the loan and the deposit refund,

- b. \$1.39 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

37. I order Mr. Bailey to return to Mr. Baik his 1974 BMW 2002's dashboard, fuse box and any parts Mr. Baik provided to Mr. Bailey for repair. Mr. Baik may provide an address in writing for the parts' return within 7 days. Mr. Bailey must return the parts to the address provided by Mr. Baik, if any. If Mr. Baik does not provide an address within 7 days, Mr. Bailey may return the items to Mr. Baik's address listed on the Dispute Notice. Mr. Bailey must provide Mr. Baik 3 days of written notice of the date and time the items will be delivered. I order Mr. Bailey to return these items, within 30 days of this decision.

38. Mr. Baik is entitled to post-judgment interest, as applicable.

39. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

40. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member