



Civil Resolution Tribunal

Date Issued: March 2, 2021

File: SC-2020-007093

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kenyon v. Lubert*, 2021 BCCRT 242

B E T W E E N :

DARRYL KENYON (Doing Business As DEVIL DRAG MOTORSPORT RENTALS)

APPLICANT

A N D :

KEVIN LUBERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicant, Darryl Kenyon, operates a boat rental business called Devil Drag Motorsport Rentals. The respondent, Kevin Lubert, rented a 2018 Heyday WT-2

Sportboat (boat). Mr. Kenyon says Mr. Lubert damaged the boat and lost a seat cushion. Mr. Kenyon also says he is entitled to contractual compensation for loss of use of the boat while it was repaired. Mr. Kenyon claims total damages of \$2,825.

2. Mr. Lubert admits damaging the boat and losing the seat cushion and he accepts responsibility for these losses. However, Mr. Lubert says that Mr. Kenyon claims excessive damages.
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. 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.
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.
8. I note that Mr. Lubert submitted evidence late. I find that Mr. Kenyon was not prejudiced by the late evidence because he had an opportunity to respond. So, I have allowed Mr. Lubert's late evidence and I have considered that evidence in my decision.
9. I also note that Mr. Kenyon has requested contractual compensation for loss of use of the boat while it was repaired in his submissions even though this claim was not stated in Mr. Kenyon's Dispute Notice. I find that there is no prejudice to Mr. Lubert in adjudicating this claim because Mr. Lubert had an opportunity to respond to the submissions. Further, I note that Mr. Lubert is not prejudiced by my consideration of this claim since I dismiss it for the reasons stated below. So, I have considered Mr. Kenyon's loss of use claim in my decision.

ISSUES

10. The issues in this dispute are:
 - a. How much compensation Mr. Lubert owes Mr. Kenyon for damaging the boat, losing the cushion?
 - b. Does Mr. Lubert owe Mr. Kenyon compensation for loss of use of the boat? If so, how much?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant, Mr. Kenyon, 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.

12. Mr. Kenyon and Mr. Lubert signed a boat rental contract on August 4, 2020. The contract had the following relevant terms:

- Mr. Lubert rented the boat from August 4 to August 6, 2020.
- Mr. Lubert agreed to pay for all loss and damage caused to the boat.
- Mr. Lubert agreed to pay \$165 per day for loss of use for the duration of boat repairs.

13. Mr. Lubert admits damaging the propeller, losing a cushion and scraping the rear right corner of the boat's gelcoat finish.

14. Mr. Lubert argues that Mr. Kenyon did not provide sufficient training or instructions for the operation and transportation of the boat. However, I do not find it necessary to determine whether the training was adequate because this was not required under the contract. Further, I find that alleged lack of training, even if proved, does not negate Mr. Lubert's contractual responsibility for the loss and damage.

Propellor and cushion replacement

15. Mr. Kenyon provided an August 27, 2020 invoice showing the replacement costs for the propellor and cushion. The invoice says the propellor cost \$800 and the cushion cost \$446.79. The invoice also charged \$66.26 for shipping and \$65.65 tax, totaling \$1,378.70. Mr. Lubert says he searched online and found that a similar propellor costs between \$768 and \$867. Mr. Lubert also says that he contacted the original boat dealership and it quoted \$453 to replace the cushion. I note that Mr. Kenyon's claimed replacement costs for the propellor and cushion are very similar to Mr. Lubert's quotes. So, I find that the \$1,378.70 invoice for the replacement of the propellor and cushion is reasonable.

16. Mr. Lubert argues that Mr. Kenyon should have obtained a repair estimate for the propellor. Mr. Kenyon says that there is no repair shop nearby so it would take a long time to repair it. Mr. Kenyon says repairs would cost Mr. Lubert more than

replacement because the boat was fully reserved in August and Mr. Lubert would be responsible for the contract's daily \$165 loss of use fee while the propellor was being repaired. In these circumstances, I am satisfied that Mr. Kenyon acted reasonably by replacing the propellor rather than trying to repair it.

17. For the above reasons, and Mr. Lubert owes \$1,378.70 for the replacement cost of the propellor and cushions.

Gelcoat repairs

18. Mr. Lubert admits damaging the boat's gelcoat finish at the rear right of the boat. The parties disagree about whether the damage was caused when Mr. Lubert transported the boat or when Mr. Lubert operated the boat. However, since Mr. Lubert accepts responsibility for this damage, I do not find it necessary to determine how the gouge occurred.
19. Mr. Kenyon provided an August 10, 2020 estimate that quoted \$953 to repair the gelcoat finish. However, the repair quote identified 2 gouges in the gelcoat. The quote estimates that 4.5 hours would be needed to repair the gouge at the right rear of the boat and 2.5 hours of labour would be needed to repair a gouge at the left front corner. Mr. Lubert admits that he caused the right rear gouge but he denies responsibility for the left front gouge.
20. In the parties' text messages discussing the damage, Mr. Kenyon only mentioned the right rear gouge. Further, Mr. Kenyon only provided a photograph of one gouge. Also, I note that the parties did not complete the post-rental inspection portion of the contract after Mr. Lubert returned the boat. For these reasons, I find that Mr. Kenyon has not proved that the left front gouge occurred during Mr. Lubert's rental. So, I find that Mr. Lubert is only responsible for the repair costs relating to the right rear gouge.
21. Since the gelcoat repair estimate says that 4.5 hours of labour are needed to repair the right rear gouge, out of a total estimated project length of 7 hours, I find that Mr. Lubert is responsible for 64% of the \$953 repair estimate. So, I find that Mr. Lubert owes \$609.92 for gelcoat repairs.

Propellor installation

22. Mr. Kenyon claims \$75 for the installation of the replacement propellor. Mr. Kenyon says his business installed it. He says the installation took 1.5 hours and his shop rate is \$50 per hour.
23. Mr. Lubert says that Mr. Kenyon agreed to not charge for the repair labour costs. Mr. Lubert provided Mr. Kenyon's August 30, 2020 text message which says that he will not charge for the repair labour if Mr. Lubert pays for the boat damage. I find that Mr. Kenyon's August 30, 2020 text message was an offer to settle a disputed claim, and not a binding promise to waive repair expenses. So, I find that Mr. Kenyon is not prevented from charging necessary repair costs.
24. Since Mr. Lubert does not dispute the necessity or reasonableness of Mr. Kenyon's propellor installation services, I find that he owes \$75.

Loss of use

25. Mr. Kenyon provided a November 23, 2020 statement claiming \$330 for loss of use of the boat. This claim is based on 2 days of loss of use at the contractual rate of \$165 per day. I note that Mr. Kenyon asked for compensation for 3 days of loss of use in his submissions. Although Mr. Kenyon does not explain this difference, I find from Mr. Kenyon's statement he has reduced his claim from 3 days loss of use to 2 days.
26. Mr. Kenyon says that he did not rent the boat out after Mr. Lubert damaged the boat. Mr. Kenyon says that a potential customer, EM, told him that the boat could be damaged by operating it before repairing the propellor. CRT rule 8.3 says that expert evidence can only be considered if the expert states their qualifications and I am satisfied that the expert has the education, training or experience to give that opinion. EM provided a statement saying that he based his opinion on his experience as a millwright. However, without further explanation of EM's expertise, I am not satisfied that EM's millwright experience is sufficient expertise to provide a mechanical opinion about a boat propellor. So, I do not consider EM's opinion in my decision.

27. Mr. Kenyon argued the propellor damage made the boat unusable. Other than the propellor damage, Mr. Kenyon was willing to rent the boat without repairs. However, Mr. Kenyon did not provide any evidence that the propellor damage made the boat unusable, other than EM's statement which I have not considered. So, I find that Mr. Kenyon has not proved his claim for loss of use.

CRT fees, interest, and dispute-related expenses

28. For the above reasons, I find that Mr. Lubert owes Mr. Kenyon \$2,063.62 for boat damage and loss of the cushion.

29. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Kenyon is entitled to pre-judgment interest on the \$2,063.62 from August 27, 2020, the date of the replacement cost invoice, to the date of this decision. This equals \$5.26.

30. 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 Mr. Kenyon was generally successful, I find that he is entitled to reimbursement of CRT fees of \$125.

31. Mr. Kenyon claims dispute-related expenses of \$88.30 for travel and office expenses. However, Mr. Kenyon has not described these expenses or provided receipts supporting this claim. So, I find that Mr. Kenyon has not proved this claim and I deny it.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Lubert to pay Mr. Kenyon a total of \$2,193.88, broken down as follows:

- a. \$2,063.62 for boat damage and property loss,
- b. \$5.26 in COIA pre-judgment interest, and
- c. \$125 in CRT fees.

33. Mr. Kenyon is entitled to post-judgment interest, as applicable.
34. 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.
35. 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