



# Civil Resolution Tribunal

Date Issued: April 28, 2021

File: SC-2020-007230

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Erikson v. Stevens*, 2021 BCCRT 449

B E T W E E N :

E ANN ERIKSON

**APPLICANT**

A N D :

COLIN STEVENS (Doing Business As C&SKI SMALL ENGINES)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about boat and engine repairs. The applicant, E Ann Erikson, hired the respondent, Colin Stevens (Doing Business As C&Ski Small Engines), for boat and engine repairs. Mrs. Erikson says the repairs were deficient. She claims \$2,327.71 as a refund for Mr. Stevens' engine repairs, \$1,662.89 as reimbursement for engine repairs completed by a third party, \$681.99 for replacing a gimbal, and

\$447 for replacing a coupler. These claims total \$5,199.59, but Mrs. Erikson claims only \$5,000 as compensation, which is the monetary limit in the Civil Resolution Tribunal (CRT)'s small claims jurisdiction.

2. Mr. Stevens disagrees with Mrs. Erikson's claims. He denies his repairs were deficient. He also says the issues identified by the third party were not within the scope of his work.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mrs. Erikson's claims.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. 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.
6. 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.
7. 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.

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 CRT considers appropriate.

### ***The CRT's Small Claims Monetary Limit***

9. I find from the parties' submissions that the claims in this dispute are for damages. The CRT's jurisdiction over such claims is limited to \$5,000 under CRTA section 118(1) and the *Tribunal Small Claims Regulation*. I conclude that by proceeding through the CRT, Mrs. Erikson has abandoned any claim she might have above \$5,000, to fit within the CRT's small claims monetary limit.

### **ISSUE**

10. The issue in this dispute is whether Mr. Stevens' work was deficient and if so, what remedy is appropriate.

### **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mrs. Erikson as the applicant must prove her claims on a balance of probabilities. I have reviewed all the parties' submissions and evidence, but only comment on them as necessary to explain my decision.
12. I begin with the undisputed facts. Mrs. Erikson owns a 1991 Champion Cabin Cruiser boat. Around 2016 Mrs. Erikson did not properly winterize her boat and the engine block froze. Mrs. Erikson took her boat to Mr. Stevens for repairs. He installed a used engine block and other parts itemized in a November 2, 2016 invoice.
13. Mrs. Erikson did not use the boat again until 2017. At the time, she found the engine ran "very hot" and emitted a "hot smell". The bilge also malfunctioned. Mrs. Erikson winterized the boat and returned to Mr. Stevens in October 2018 for him to diagnose and repair the problem.

14. As documented in an October 10, 2018 invoice for \$2,327.71, Mr. Stevens decided the engine assembly needed reboring and the crankshaft needed further machine work. He had a third party complete these tasks. He reinstalled the engine, replaced the water pump impeller and changed the engine oil and filter. As stated above, Mrs. Erikson seeks a refund for these repairs.
15. Mr. Stevens says that, aside from engine trouble, Mrs. Erikson did not mention any other problems at the time. He says she did not mention bilge or other issues. I find this was likely the case based on the work described in the invoice.
16. In 2019 Mrs. Erikson took the boat out. Water began to enter the boat at a rate that she says could have sank it. The boat also ran roughly. She took the boat to a third-party mechanic, CCM, on August 25, 2020. CCM worked on the boat over multiple days in August and September 2020. It documented its work and provided comments in an invoice.
17. CCM found several items in need of repair and I highlight some of these below. CCM wrote that the water leak was caused by a loose motor and drive leg. It explained that this was due to a worn out and loose shaft gimbal ring. It said this could have caused the boat to sink. CCM also wrote, "THIS SHOULD HAVE BEEN CAUGHT" and "DEALT WITH". It also said this problem "WAS/IS VERY OBVIOUS". CCM took a video, submitted by Mrs. Erikson, of a CCM employee lifting and shaking the drive leg to demonstrate how loose it was. CCM charged \$681.09 for a new gimbal ring, which Mrs. Erikson claims reimbursement for. Mrs. Erikson also seeks reimbursement of \$1,662.89 for labour charges related to the gimbal replacement.
18. CCM also found the engine needed some parts replaced. It charged \$447.99 for a new engine coupler, which Mrs. Erikson claims reimbursement for.
19. CCM identified and fixed other issues. For example, it remounted the entire engine harness, explaining that it was "INSTALLED BACKWARDS!". CCM scraped silicone off the engine risers, explaining that it had to be removed because it could melt and fail. CCM also found and removed debris in the bilge. It explained this would prevent

the bilge from working. CCM also noted the motor oil was overfilled and emptied it a bit. It also identified and fixed issues with the steering mechanisms. It found the temperature sensor was not hooked up. There are more items that I have not listed here.

20. After completing its repair work, CCM tested the boat and found that it ran well. In total, CCM charged Mrs. Erikson \$4,820 for its work.

***Was Mr. Stevens' work deficient, and if so, what is the appropriate remedy?***

21. Mrs. Erikson says that Mr. Stevens' work was inadequate, particularly in 2018. She says CCM advised her that Mr. Stevens should not have installed a used engine block and that it was improperly placed, causing the gimbal and coupler to be "wrecked" and a leak to develop. She also says Mr. Stevens should have detected the loose drive leg and is responsible for the claimed items in CCM's invoice. She alleges that Mr. Stevens put her safety at risk by failing to test drive the boat.
22. Mr. Stevens disagrees. He says he installed a used engine block in 2016 to save Mrs. Erikson money and that obtaining a new one would have been difficult. He says that in retrospect it would have been better to use a new engine block but, in his words, "crap happens". He denies installing the engine block incorrectly and says the engine and drive functioned "perfectly" when he tested it in 2018. He says that in any event, his work should not have damaged the gimbal or caused the leak. He also says he did not test for leaks or problems affecting the steering lever shaft or bilge because Mrs. Erikson did not mention them at the time. He said he had no reason to suspect a leak and testing the boat in the water at the time was difficult. He also denies the drive leg was as loose as shown in CCM's video when he looked at it. He also said he advised Mrs. Erikson that the temperature gauge had to be replaced but he didn't have one in stock at the time.
23. Mr. Stevens also disagreed with many of CCM's comments. For example, he disagreed that silicone was unsuitable for the engine risers and said it was impossible

to install the engine harness backwards. For brevity I do not recite all his submissions here.

24. I find that Mrs. Erikson's claim is essentially that Mr. Stevens was professionally negligent. To prove negligence, Mrs. Erikson must show that 1) the Mr. Stevens owed her a duty of care, 2) he breached the standard of care, 3) Mr. Erikson sustained a loss, and 4) and the loss was reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 33.
25. In claims of professional negligence, an applicant generally must prove a breach of the standard of care through expert opinion evidence. This is because the applicable standard is generally outside the knowledge or experience of an ordinary person. See, for example, *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. As this case concerns specialized boat repairs, I conclude that expert evidence is necessary.
26. Mrs. Erikson relies on CCM's invoice. I do not find it to be expert evidence under the CRT's rules. This is because rule 8.3(2) requires an expert to state their qualifications in any written expert opinion evidence. The invoice lacks such information and I find it was written for the purpose of explaining the work done rather than providing an expert opinion.
27. Further, and more importantly, CCM did not comment on the key issues in this dispute. As noted earlier, Mrs. Erikson says CCM advised her that Mr. Stevens should not have installed a used engine block and he improperly placed it, causing damage to the gimbal and coupler. However, CCM did not write this in the invoice. It did not say what the standard of care was or if Mr. Stevens breached it. CCM did not comment on whether Mr. Stevens should have tested the boat on the water or if doing so would have been standard practice.
28. Although CCM said the loose motor and drive leg issues should have been identified, it did not comment on whether Mr. Stevens should have identified those issues during his work in 2018. As noted above, Mr. Stevens says the scope of his work in 2018 was limited and the drive leg was not as loose as shown in the video, taken 2 years

later in 2020. Without expert evidence I find Mrs. Erikson's claims unproven on a balance of probabilities.

29. Mrs. Erikson also said two boat shops advised her that putting used engines in boats was inadvisable. However, there is no expert evidence from the boat shops in this dispute.
30. For those reasons, I am unable to conclude that Mr. Stevens breached the standard of care. I dismiss Mrs. Erikson's claims.
31. 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. Mr. Stevens is the successful party. He paid no CRT fees and claimed no dispute-related expenses, so I order none for the parties.

## **ORDER**

32. I dismiss Mrs. Erikson's claims and this dispute.

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David Jiang, Tribunal Member