



Civil Resolution Tribunal

Date Issued: May 26, 2021

File: SC-2020-008041

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keung v. LSB Motorsports Ltd.*, 2021 BCCRT 569

BETWEEN:

TIM KEUNG

APPLICANT

AND:

LSB MOTORSPORTS LTD.

RESPONDENT

AND:

TIM KEUNG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about car engine repairs. The applicant and respondent to the counterclaim, Tim Keung, hired the respondent and the applicant in the counterclaim, LSB Motorsports Ltd. (LSB), to repair his 2017 Volkswagen Golf car (car). Mr. Keung says LSB overcharged the parts' costs and he claims a \$4,500 refund.
2. LSB denies Mr. Keung's claim and says that Mr. Keung is not entitled to a refund because it properly charged Mr. Keung. LSB counterclaims for \$720 for unpaid parts for a second repair service.
3. Mr. Keung says he is not responsible for the second car repair costs because LSB's original repairs were allegedly defective. Mr. Keung also says the second car repairs costs are excessive.
4. Mr. Keung is self-represented. LSB is represented by an employee or principal.

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). 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. 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.

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.

Evidence resubmission

9. LSB submitted a spreadsheet file itemizing its charges and costs which I was unable to view. At my request, LSB resubmitted the spreadsheet. I find that Mr. Keung was not prejudiced by the resubmission of this evidence because he was given an opportunity to respond to the document and he did so. So, I have considered LSB's spreadsheet and Mr. Keung's response in this decision.

ISSUES

10. The issues in this dispute are:
 - a. Must LSB refund Mr. Keung's repair payment? If so, how much?
 - b. Does Mr. Keung owe LSB for unpaid repair parts?
 - c. Is Mr. Keung entitled to a set-off because LSB's repair work was defective?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Keung must prove his claims on a balance of probabilities. LSB has the same burden for its counterclaim. 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. It is undisputed that Mr. Keung brought his car to LSB in August 2020 for oil leak repairs and that Mr. Keung paid a \$5,000 deposit to start the repairs.
13. The parties did not have a written contract. Mr. Keung says LSB verbally quoted \$5,000 to \$6,000 or \$7,000 to \$8,000 if the engine block was damaged. LSB says it estimated the cost would be \$8,000. However, I find that nothing turns on this discrepancy because I find the contract price was based on LSB's labour and part costs, not a fixed price. I reach this conclusion because both parties agree that Mr. Keung was responsible for the parts' costs, though they disagree on the amount.
14. LSB says it charged Mr. Keung a 19 percent mark-up on parts which it says is within the automotive repair industries' standard. Although Mr. Keung says LSB verbally told him that it would not mark-up the parts' costs, I have not considered this submission in my decision because Mr. Keung only raised this in his final reply, after LSB had completed its submissions. I find it would unfairly prejudice LSB to consider new submissions from Mr. Keung's final reply which LSB did not have an opportunity to respond to. I find that it is common for businesses to charge a reasonable markup for parts, and I find a 19 percent mark-up, while high, is not unreasonable. Further, there is no evidence showing that a 19 percent parts mark-up is not within the automotive repair industries' standard as LSB claims. Based on the industry practice stated by LSB, I find that Mr. Keung implicitly agreed to pay LSB a 19 percent parts' cost under the contract.
15. LSB says, and Mr. Keung does not dispute, that the repairs were completed at the beginning of September 2020. LSB provided an October 9, 2020 invoice for \$3,880 for the balance of the repair services, which Mr. Keung paid.
16. Mr. Keung says he later discovered that LSB allegedly overcharged him and he demanded a refund. LSB says it charged Mr. Keung \$1,890 for labour which he does

not dispute. So, I accept that these labour charges are accurate. However, Mr. Keung disputes the parts' charges.

17. LSB provided 12 invoices, August 10, 2020 to September 8, 2020, totaling \$5,079.74, including GST, for parts for the first repair service.
18. Mr. Keung says he is not responsible for the August 29, 2020 for \$24.86 and the August 31, 2020 for \$177.86 because these invoices refer to different vehicle models. I agree. I find that these invoices do not match Mr. Keung's vehicle. So, I find that these invoices do not relate to this repair contract and Mr. Keung is not responsible for the August 29, 2020 invoice for \$24.86 or the August 31, 2020 invoice for \$177.86.
19. Mr. Keung also argues that several of the invoices are marked as duplicates. However, I find that LSB has only submitted one copy of each invoice. I infer that the 'duplicate' heading means that another copy of the invoices was generated which I do not find significant.
20. Mr. Keung provided his own estimate of the parts' costs from an online store. Mr. Keung provided a listing showing that parts from one supplier cost \$1,317.95 at the online store, but LSB charged \$3,885. However, LSB argues that Mr. Keung's price estimate is inaccurate because Mr. Keung lacks the expertise to know which parts are needed for the repairs. Since Mr. Keung has not provided any submissions or evidence showing that he has training or knowledge in these repairs, I am not satisfied that Mr. Keung is able to accurately determine which specific parts and quantities are needed. So, I do not find Mr. Keung's estimate reliable and I give it little weight.
21. Mr. Keung has the burden of proof and I find that he has not provided sufficient evidence to prove that the LSB's parts' invoices are inaccurate. So, other than the August 29, 2020 invoice for \$24.86 and the August 31, 2020 invoice for \$177.86, I find that Mr. Keung was responsible for the LSB's parts' invoices. This totals \$4,877.02, including GST. With the 19 percent mark-up, the parts cost \$5,803.65. As stated above, Mr. Keung also owed \$1,890 plus GST for labour, totaling \$1,984.50.

So, Mr. Keung owed \$7,788.15 plus PST under the contract for parts and labour. This totaled \$8,333.32.

22. Since Mr. Keung owed \$8,333.32 under the contract but he was charged \$8,880, I find that Mr. Keung was overcharged by \$546.68. So, I find that LSB owes Mr. Keung a \$546.68 refund.

LSB's counterclaim for \$720 debt for unpaid repair services

23. It is undisputed that Mr. Keung's car started leaking oil after LSB's repairs. Mr. Keung said the engine leak occurred 3 or 7 days after the original repairs. LSB says that Mr. Keung told them about the new oil leak 2 weeks after it performed the repairs.
24. LSB says it told Mr. Keung to bring the car for another inspection and it would repair the car for the cost of parts only. LSB says Mr. Keung brought the car back to LSB a month after the first repair and it recommended upgrading the rear main seals which Mr. Keung approved. Since Mr. Keung does not dispute this, I accept this as accurate. Mr. Keung says that LSB did provide any quote before fixing the car again.
25. LSB says, and Mr. Keung does not dispute, that it completed the second repairs on October 13, 2020 and Mr. Keung picked up his car on October 17, 2020.
26. LSB provided an October 17, 2020 invoice for \$720 for parts which Mr. Keung has not paid.
27. LSB provided invoices totaling \$698.49, including GST, for parts for the second repair as follows:
 - a. Invoice dated September 17, 2020 for \$152.25
 - b. Invoice dated October 8, 2020 for \$234.15
 - c. Invoice dated October 14, 2002 for \$5.97
 - d. Invoice dated October 15, 2020 for \$220.62
 - e. Invoice dated October 15, 2020 for \$46.74

- f. Invoice dated October 16, 2020 for \$15.05
 - g. Invoice dated October 16, 2020 for \$23.71
28. LSB does not explain how it incurred parts' costs for Mr. Keung's repairs after it completed the repairs on October 13, 2020. In the absence of an explanation, I am not satisfied that the October 14 to 16, 2020 invoices relate to Mr. Keung's repairs. So, I find that LSB has failed to prove that Mr. Keung owes a debt for those parts.
29. Further, since LSB says that Mr. Keung brought the car back for the second repairs over a month after it completed the first repairs in early September 2020, I find that the second repairs did not start until October 2020. Based on this timing, I find that the September 17, 2020 invoice is not related to the second repairs as LSB claims.
30. The remaining parts invoice is dated October 8, 2020 for \$234.15 for a rear main seal upgrade matching Mr. Keung's car's model. As discussed above, I find that Mr. Keung approved this parts upgrade. So, I find that Mr. Keung owes LSB \$234.15 plus \$16.39 PST for these parts. This totals \$250.54, subject to a potential set-off discussed below.

Set-off

31. Mr. Keung argues that he should not be responsible for the second repair costs because LSB allegedly performed the first repair improperly. The burden to prove breach of contract for defective or substandard work is on the party who alleges the breach: see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. In this case, the burden is on Mr. Keung.
32. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence: see *Bergen v. Guliker*, 2015 BCCA 283. I find that a mechanic's competence is outside the scope of common understanding. So, I find expert evidence is necessary.

33. However, Mr. Keung has not provided an expert mechanic's statement saying that LSB's work was defective or improperly performed. Mr. Keung said he performed an internet search that says that engine oil leaks are caused by bad workmanship or defective parts. Although the CRT has the authority to allow hearsay evidence, I find that this evidence is not reliable because Mr. Keung has not provided or identified the internet materials he is relying on. Mr. Keung has only provided his summary of the evidence which is double hearsay. Further, Mr. Keung has not provided any evidence showing that this online information is relevant to his specific car. For the above reasons, I am not satisfied that this evidence is reliable and I give it no weight.
34. I find that Mr. Keung has failed to prove that LSB's work was defective. So, I find that Mr. Keung owes LSB \$250.54 for the second repair. Since LSB owes Mr. Keung a \$546.68 refund from the first repair, I find LSB must refund Mr. Keung \$296.14.
35. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Keung is entitled to pre-judgment interest on the \$296.14 from his date of payment to the date of this decision. Since LSB says Mr. Keung paid the invoice mid-September, 2020, I find that Mr. Keung is entitled to pre-judgment COIA interest starting on September 15, 2020. This equals \$0.92.
36. 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 that Mr. Keung was generally successful in his claim, so I find he is entitled to reimbursement of \$175 in CRT fees. I find that LSB was generally successful in its counterclaim, so I find it is entitled to reimbursement of \$125 in its CRT counterclaim fees. So, I find that Mr. Keung is entitled to \$50 difference in CRT fees. Neither party requested reimbursement of dispute-related expenses so I order none.

ORDERS

37. Within 30 days of the date of this order, I order LSB to pay Mr. Keung a total of \$347.06, broken down as follows:

- a. \$296.14 as a refund,
- b. \$0.92 in pre-judgment COIA interest, and
- c. \$50 in CRT fees.

38. Mr. Keung 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