



Civil Resolution Tribunal

Date Issued: June 25, 2021

File: SC-2021-000315

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cumberland v. Super Steve's Tire Ltd.*, 2021 BCCRT 707

B E T W E E N :

PETER CUMBERLAND

APPLICANT

A N D :

SUPER STEVE'S TIRE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged damage to a car's wheels. The applicant, Peter Cumberland, says that on November 19, 2020 the respondent, Super Steve's Tire

Ltd. (SST), damaged all 4 wheels when changing the tires on his 2010 Ford Flex. Mr. Cumberland claims \$1,209.60 in repair costs.

2. SST denies damaging the wheels and says the damage is the result of normal wear and tear.
3. Mr. Cumberland is self-represented and SST is represented by an employee, DK.

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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. Mr. Cumberland submitted evidence late, namely SST's November 19, 2020 invoice for \$0 that set out its work changing the tires. I find this evidence is relevant and so I admit it, noting SST is not prejudiced as it had an opportunity to make submissions about it. I address the weight of relevant evidence below.

ISSUE

9. The issue in this dispute is whether SST damaged Mr. Cumberland's wheels when changing his car's tires, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mr. Cumberland has the burden of proving his claim, on a balance of probabilities. I have only referenced below what I find is necessary to give context to my decision.

11. The parties agree to the following facts:

- a. On October 20, 2020, Mr. Cumberland bought 4 new Goodyear tires from SST for his 2010 Ford Flex vehicle.
- b. Mr. Cumberland paid \$1,510.84 for the new tires.
- c. Several days later, Mr. Cumberland returned to SST to complain about a vibration issue with the new tires.
- d. The parties agreed that SST would replace the Goodyear tires with Michelin tires at no additional cost.
- e. The replacement Michelin tires were installed on November 19, 2020.
- f. Mr. Cumberland claims \$1,209.60 to repair damage to all 4 wheels when SST installed the replacement Michelin tires. A December 17, 2020 quote from Nu-Brite Wheel & Tire (Nu-Brite) supports this amount.

12. This dispute is over whether SST's tire removal machine caused damage to Mr. Cumberland's wheels, as he alleges. SST says the type of tire machine they use could not have caused the damage.
13. I do not accept Mr. Cumberland's own evidence about how SST should have removed his tires, as he is neither qualified on the evidence before me to provide that opinion nor sufficiently neutral. However, I do not find that expert evidence is required to show that changing tires should not have left gouges in the car's 4 aluminum wheels. I find this is within ordinary knowledge. Yet, at the same time, I do find expert evidence is required to show that the gouges likely resulted from SST's tire change, rather than some other cause, since this falls outside ordinary knowledge. Notably, there is no evidence that anyone saw the damage occur.
14. Mr. Cumberland submitted a series of photos of his car, to show there was no damage to his wheels in July and October 2020, before SST's wheel replacement in November 2020. I cannot see any visible wheel damage in the photos, and in particular there are no gouges like the ones in the photos taken after November 19, 2020.
15. In Mr. Cumberland's post-November 2020 photos of the wheels, I can see some black markings that appear to be pen marks (given some marks are written letters and numbers), and there are gouges in a few spots on each wheel near the rim, each with a uniform pattern that follows the wheel's curve.
16. Mr. Cumberland submitted a website article from "liveaboutdotcom" about "How Wheels Get Damaged". I place no weight on this article as it does not address how SST removed and replaced Mr. Cumberland's wheels.
17. However, Mr. Cumberland also submitted an April 9, 2021 opinion from Richard Forster, a general manager at Nu-Brite. Mr. Forster wrote he has 25 years' experience in the business of removing and mounting tires on wheels. He wrote the wheels' damage is likely the result of a "careless install with an old style turn table

tire machine”. I accept Mr. Forster’s opinion as expert evidence under the CRT’s rules, as I find he is undisputedly qualified to provide it.

18. I place significant weight on Mr. Forster’s expert opinion about how the damage occurred. I do not find SST’s own evidence to be sufficiently neutral to qualify as expert evidence under the CRT’s rules. SST says it uses nylon protective heads and that the marks do not align with their tire machine. Yet, SST did not submit any expert evidence to contradict Mr. Forster and did not deny it used an “old style turn table tire machine”. Further, I find SST’s speculation that prior service might have caused the damage unlikely, given the photos in evidence showing the wheels undamaged close in time to SST’s service. Notably, Mr. Cumberland denies he had had tires removed by anyone other than SST and there is no evidence before me to the contrary.
19. SST submitted a photo of its tire machine and video of it in operation. Contrary to SST’s submission, I do not agree the video shows it would be impossible for their machine to have caused damage to Mr. Cumberland’s vehicle. The video simply shows a tire’s removal, but it does not show the heads are nylon or that the tire machine, even with nylon heads, could not damage the wheel’s rim. The fact that it did not apparently damage the wheel in the video is not determinative of whether it damaged Mr. Cumberland’s wheels.
20. I do not accept SST’s assertion that the wheels’ damage is likely from wear and tear. I say this given Mr. Forster’s opinion and the dated photo evidence that shows the wheels undamaged shortly before SST’s November 19, 2020 tire change. SST submitted no plausible explanation for how the relatively symmetrical gouges on all 4 wheels could result from road use or wear and tear in such a short period of time. SST also has no record of there being pre-existing wheel gouges when it changed the tires on November 19, 2020. I expect if there had been such damage, SST likely would have noted it and did not do so. Finally, SST did not submit any witness statement from its technician that did the tire change in question or provide any explanation for its absence.

21. On balance, given my conclusions above, I find that SST damaged Mr. Cumberland's wheels during the November 19, 2020 tire change. I find SST must compensate Mr. Cumberland for his loss.
22. As noted above, Nu-Brite quoted \$1,209.60 to repair the wheels, and SST did not dispute this valuation. I find SST must pay Mr. Cumberland the claimed \$1,209.60.
23. The *Court Order Interest Act* (COIA) applies to the CRT. However, as Mr. Cumberland has not yet had the wheels repaired, under COIA section 2(a) I find there is no pre-judgment interest owing.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Cumberland was successful and so I find he is entitled to reimbursement of \$125 in paid CRT fees. Mr. Cumberland did not claim dispute-related expenses, so I make no order for them.

ORDERS

25. Within 30 days of this decision, I order SST to pay Mr. Cumberland a total of \$1,334.60 broken down as follows:
 - a. \$1,209.60 in damages, and
 - b. \$125 in CRT fees.
26. Mr. Cumberland is entitled to post-judgment interest, as applicable.
27. 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.

28. 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.

Shelley Lopez, Vice Chair