



# Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2021-001477

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Beuermann v. International Motorcycle Brokers Inc.*, 2021 BCCRT 914

B E T W E E N :

PAUL BEUERMANN

**APPLICANT**

A N D :

INTERNATIONAL MOTORCYCLE BROKERS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about motorcycle maintenance. The applicant, Paul Beuermann, took his motorcycle to the respondent, International Motorcycle Brokers Inc. (IMB), for repairs after an accident. While there, IMB performed routine maintenance on the motorcycle and charged Mr. Beuermann \$847.18, which he paid. Mr. Beuermann's insurer, the Insurance Corporation of British Columbia (ICBC), later wrote off the

motorcycle. Mr. Beuermann says that he never asked for the maintenance service and that IMB should not have done it to such a badly damaged motorcycle. He claims the return of the \$847.18 he paid.

2. IMB says that Mr. Beuermann asked it to do the routine maintenance, so he should have to pay for it. IMB also says that it did not know that ICBC would write off the motorcycle. IMB also says that it gave Mr. Beuermann a discount and a free maintenance service on a replacement motorcycle. IMB asks me to dismiss Mr. Beuermann's claims.
3. Mr. Beuermann is self-represented. IMB is represented by its owner.

## **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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Beuermann authorize IMB to do maintenance on his motorcycle?
  - b. Did the parties settle this dispute when IMB gave Mr. Beuermann a discount and did free maintenance on a replacement motorcycle?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Beuermann as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Most of the facts are undisputed. Mr. Beuermann bought a used motorcycle from IMB on January 25, 2018, for \$11,800. He was in an accident on March 28, 2019. I note that in the Dispute Notice Mr. Beuermann says that the accident was on March 25, 2019, but I find that this was a typo. IMB picked up the motorcycle from the accident site and brought it to its shop.
11. Mr. Beuermann says that he had booked an appointment with IMB for the week before the accident for routine maintenance known as a "first service". He says that he did not attend this appointment because he was sick. IMB does not dispute this so I accept that it is true.

12. While the motorcycle was at IMB's shop after the accident, it did the first service at a cost of \$847.18. According to the invoice in evidence, the first service involves a comprehensive inspection of the motorcycle and an oil change. IMB also did a repair cost estimate for the motorcycle and charged Mr. Beuermann \$145 for this service. IMB estimated that it would cost \$14,737.69 to repair the motorcycle.
13. On April 2, 2019, ICBC told Mr. Beuermann that IMB was not an ICBC-accredited repair shop, so ICBC could not accept its repair estimate. The motorcycle would need to be towed to an ICBC claim center for another estimate. IMB refused to release the motorcycle until Mr. Beuermann paid its \$992.18 invoice for the first service and estimate.
14. Mr. Beuermann went to IMB on April 3, 2019. He says that he had expected to pay just an estimating fee and was surprised to learn that IMB had done the first service on his damaged motorcycle. Mr. Beuermann says that he paid the invoice reluctantly because IMB would not release the motorcycle unless he did so. He says that nobody from IMB talked to him about the first service before doing it. ICBC later reimbursed him for the estimating fee.
15. On April 11, 2019, ICBC determined that the motorcycle was a total loss and wrote it off. ICBC paid Mr. Beuermann \$11,260 for the motorcycle.
16. Mr. Beuermann argues that he did not authorize IMB to do the first service. He says that it made no sense for IMB to do routine maintenance on a damaged motorcycle that might be written off.
17. IMB argues that Mr. Beuermann asked it to do the first service. IMB's evidence is vague about when it says Mr. Beuermann gave this authorization. There is no evidence that he asked for the first service after the accident, so I find that IMB relied on the missed appointment as its authorization to do the first service. IMB also says that it was "puzzled" to later find out that ICBC had written off the motorcycle, which was outside of its control.

18. I find that the missed appointment did not mean that IMB could proceed with the first service without Mr. Beuermann's fresh authorization or agreement. I agree with Mr. Beuermann that IMB should have known that servicing the motorcycle was likely a waste of time. I do not accept that IMB was surprised that ICBC wrote off the motorcycle. As mentioned above, IMB's own repair estimate was thousands of dollars more than the amount Mr. Beuermann had paid for the motorcycle over a year earlier. So, I find that IMB knew, or should have known, that ICBC would likely write the motorcycle off. In this circumstance, I find that it should have been obvious to IMB that the missed appointment did not mean that Mr. Beuermann had agreed to have IMB do the first service on his badly damaged motorcycle.
19. I also note that the invoice in evidence includes a place for the customer to sign to authorize IMB to do the first service. Mr. Beuermann did not sign the document, which also suggests that he did not authorize the first service.
20. I therefore find that Mr. Beuermann did not agree to have IMB do the first service. This means that the parties did not have a contract and IMB unilaterally performed the first service. I therefore find that Mr. Beuermann is entitled to a refund, subject to IMB's arguments about whether the parties settled Mr. Beuermann's claim.
21. On April 18, 2019, IMB sold Mr. Beuermann a new motorcycle. IMB says that it sold the motorcycle "at cost" and gave Mr. Beuermann a free first service. The invoice in evidence for this motorcycle shows a \$5,183.80 discount on the manufacturer's suggested price. There is also an invoice in evidence confirming that Mr. Beuermann received a free first service.
22. IMB does not say that the parties agreed that IMB would provide a discount and free first service as compensation for the wasted first service on the old motorcycle. IMB simply says that it did this because Mr. Beuermann was "upset". A settlement agreement is a contract, so IMB must prove that both parties agreed that Mr. Beuermann would waive his right to claim a refund for the wasted first service in exchange for the discount and free first service on his new motorcycle. There is no evidence of such an agreement. I find that IMB provided the discount and free first

service as a customer service gesture. I find that Mr. Beuermann did not waive his right to claim a refund by accepting the gesture.

23. For these reasons, I find that Mr. Beuermann is entitled to be reimbursed the \$847.18 he paid for the first service on the motorcycle.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Beuermann is entitled to pre-judgment interest on the refund from April 3, 2019, the day he paid the invoice, to the date of this decision. This equals \$24.88.
25. 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 find Mr. Beuermann is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

26. Within 30 days of the date of this order, I order IMB to pay Mr. Beuermann a total of \$997.06, broken down as follows:
  - a. \$847.18 in debt,
  - b. \$24.88 in pre-judgment interest under the COIA, and
  - c. \$125 for CRT fees.
27. Mr. Beuermann is entitled to post-judgment interest, as applicable.
28. 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 in effect until

90 days after June 30, 2021, which is the day that the state of emergency declared on March 18, 2020 ended, 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.

29. 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.

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Eric Regehr, Tribunal Member