



# Civil Resolution Tribunal

Date Issued: September 1, 2021

File: SC-2021-002494

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blain v. White's Diesel Power & Marine Inc.*, 2021 BCCRT 959

BETWEEN:

LIONEL BLAIN

**APPLICANT**

AND:

WHITE'S DIESEL POWER & MARINE INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about allegedly faulty boat engine repairs.
2. The applicant, Lionel Blain, took his boat to the respondent, White's Diesel Power & Marine Inc. (White's), for engine repairs. Mr. Blain says White's further damaged the motor by allowing the cylinders to rust and so the motor must now be rebuilt. Mr. Blain

also says that if White's had told him the full extent of the cylinders' damage allegedly found, he would not have authorized any repairs. Mr. Blain claims \$5,000, which he says is the cost of removing, rebuilding, and replacing the motor.

3. White's denies any wrongdoing. It says it correctly assessed the engine trouble and addressed the water found in the motor. It also says it did not cause any damage and that the cylinders showed long term damage which must have existed before it received the boat from Mr. Blain. I infer White's asks the dispute be dismissed.
4. Mr. Blain represents himself. White's is represented by an employee or owner.

## **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. 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.

## **ISSUES**

9. The issue in this dispute is whether White's was negligent in repairing the boat engine and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the applicant, Mr. Blain, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but only refer to that evidence necessary to explain and give context to my decision.
11. Mr. Blain took his boat to White's on August 19, 2020 for engine repair. He had previously had the engine's carburetor rebuilt and suspected that might be causing his engine problems. White's mechanic found salt water in the engine's cylinders, told Mr. Blain, and received his approval to replace a faulty exhaust riser and gasket, which White's mechanic believed allowed the water into the engine. Once those were replaced, White's mechanic determined the boat needed a new starter engine, which Mr. Blain approved. Once the starter engine was rebuilt and reinstalled, the White's mechanic turned the motor over, and it seized. The mechanic unseized the motor but Mr. Blain says it is now permanently damaged. None of this is disputed.
12. Mr. Blain says White's left salt water in the cylinders of the engine during the approximate 10 days it took to rebuild the starter engine. He says the water caused damage and rust to the cylinders, which led to the engine seizing and causing further engine damage. In contrast, White's says it found long term water damage to the cylinders after the engine seized, which shows the cylinders were damaged before its mechanic worked on the motor. White's also says it followed industry standard procedure in assessing and attempting to repair the engine.

13. Mr. Blain says White's may be liable for his damaged motor under the law of bailment and relies on *Kettle v. Lino's Sales Ltd. et al*, 2018 BCCRT 60, a case where the applicant's engine was stolen from the respondent's property. The law of bailment is about the obligations on a party to safeguard another person's possessions which, I find, does not likely apply here. That is because Mr. Blain argues that White's damaged the motor by failing to properly drain and lubricate the cylinders, while rebuilding the starter motor. Essentially, Mr. Blain alleges that White's negligence caused further damage to his boat motor. In any event, even if Mr. Blain argued that White's failed to properly safeguard his motor while it was in White's possession, I find the analysis is the same. The question is whether White's mechanic was negligent by failing failed to meet the industry standard, and whether that failure caused reasonably foreseeable damage to Mr. Blain's boat engine.
14. As noted above, the burden is on Mr. Blain to prove that White's engine repair work was faulty, or below the standard expected of a marine mechanic. Where the subject matter is technical or beyond common understanding expert evidence is often needed to help the decision maker determine the appropriate standard of care. Other times, a breach of the standard may be so obvious that it does not require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). I find that marine engine repair is outside ordinary knowledge and so requires expert evidence.
15. Mr. Blain relies on Mercury MerCruiser service bulletin No. 2001-13 "Gasoline Engines and Water Intrusion" to show what White's mechanic should have done when they discovered water in the engine. It is undisputed that Mr. Blain's boat is a MerCruiser and I accept that the boat's manufacturer would qualify as an expert on the boat's engine, under the CRT rules. However, I find the bulletins do not help me decide what the appropriate standard of care is here. This is partly because the bulletin provides technical information about water ingress into engines without explaining it in layperson's terms so the decision maker can understand it. More importantly, the bulletin does not apply that technical information to the facts in this dispute. In other words, the bulletin does not address whether the steps White's took to assess and repair Mr. Blain's engine fell below the expected standard of a

reasonably competent boat mechanic in these circumstances. So, I give little weight to the service bulletin.

16. Mr. Blain also provided a copy of a 2016 online opinion from Samrat Sur, who has university qualifications in mechanical engineering. Mr. Sur explains what engine seizure is and says there are many reasons why seizure can take place, including improper lubrication or dirt in a piston and cylinder wall system. I infer Mr. Blain says this supports his argument that White's failed to properly lubricate the cylinders in his boat engine. As with the service bulletin above, I find this online opinion does not address the particular facts in this case. In other words, it does not show that White's should have lubricate the engine's cylinders, that they failed to do so, and that such failure caused the engine to seize. In fact, Mr. Sur opines that failure to lubricate is only 1 of several reasons for engines to seize. I place no weight on Mr. Sur's online opinion.
17. I also place no weight on a letter from Scott Davidson, who says he expects any mechanic to inject oil and "roll the motor" when discovering water in the cylinders. This is because Mr. Davidson does not set out his qualifications for providing expert evidence about the industry standard, as required under the CRT rules.
18. Mr. Blain agrees that his engine was not working properly when he brought it to White's. However, he says the engine only seized completely when White's tried to start it after replacing the rebuilt starter engine, which he says shows the cylinders must have been damaged sometime between him bringing the boat in and when White's tried to restart it. Mr. Blain says, if the cylinders did previously have water in them, he would have experienced further engine trouble leading up to August 2020 and seen milky fuel.
19. It is undisputed that the boat had pre-existing engine difficulty, which Mr. Blain says was due to the faulty carburetor. Although I accept Mr. Blain's undisputed statement that he is a journeyman refrigeration mechanic, I find that does not qualify him to provide an expert opinion on whether a marine engine has pre-existing damage or

not. Further, I find any opinion Mr. Blain provides would not be neutral given he is the applicant, so I would not give it very much weight in any event.

20. Finally, White's says it drained the water from the cylinders when it discovered the problem and that it did lubricate the cylinders. I agree with Mr. Blain that White's invoice does not specifically list that step. However, I do not find that determinative, given the invoice's very brief description of work done over the course of several identified days. As noted, the burden is on Mr. Blain to show that White's failed to meet the industry standard. So, even if a reasonably competent marine mechanic would be expected to lubricate the cylinders or pistons while waiting to be able to start the engine again, I would find that Mr. Blain has not proven that White's failed to take this step.
21. Mr. Blain also says that, if the cylinders had pre-existing damage, White's should have conducted a more thorough compression test at the beginning of its assessment and told Mr. Blain about the cylinder damage before it started to repair the engine. Mr. Blain says, had he known of the alleged motor damage at that time, he would not have authorized White's to repair the engine. Mr. Blain relies on Mercury MerCruiser service bulletin No. 97-25 "Gasoline Engine Compression Test" to show that 2 compression tests were industry standard. As explained above, the service bulletin does not apply the technical information about compression tests to the facts present in this dispute, so I give it little weight.
22. White's says it conducted both compression tests, which showed multiple cylinder failures. I agree with Mr. Blain that there is no proof that White's did both tests. However, as noted above, it is up to Mr. Blain to prove White's failed to meet the industry standard, it is not up to White's to prove it did. Further, it is unclear whether cylinder failure means cylinder damage or just loss of pressure on testing. I find neither the service bulletin, nor any other evidence before me, shows that 2 compression tests would have shown whether the cylinders were damaged or not. So, I find Mr. Blain has failed to prove that White's should have, or could have, discovered the cylinder damage before rebuilding the starter. However,

23. I note that White's only discovered the cylinder damage after the engine seized. However, I find this alone is insufficient to prove the damage was caused by the negligence of White's mechanic. This is particularly so, given I find Mr. Blain has not provided sufficient expert opinion evidence to show that White's failed to meet the acceptable industry standard of a reasonably competent marine mechanic. So, I dismiss his claim.

24. 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. As Mr. Blain was unsuccessful in this claim, I dismiss his claim for CRT fees

## **ORDERS**

25. I dismiss Mr. Blain's claims and this dispute.

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Sherelle Goodwin, Tribunal Member