



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gong v. Basicsmart Autowork (Big O Tires Burnaby – Graveley)*,
2021 BCCRT 982

B E T W E E N :

JIA HUI GONG

APPLICANT

A N D :

BASICSMART AUTOWORK (BIG O TIRES BURNABY – GRAVELEY)

RESPONDENT

AND:

JIA HUI GONG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about an aftermarket exhaust system (exhaust) installed in a car. The applicant and respondent by counterclaim, Jia Hui Gong, hired the respondent and applicant in the counterclaim, Basicsmart Autowork (Big O Tires Burnaby – Graveley) (Basicsmart), to install the exhaust in her car. Ms. Gong says that Basicsmart damaged various parts of the exhaust, and the work was deficient and not to professional standards. Ms. Gong claims \$1,825.95 in damages.
2. Basicsmart denies Ms. Gong's claim and says it professionally installed the exhaust according to industry standards. Basicsmart counterclaims \$817.13 for unpaid services.
3. Ms. Gong is self-represented. Basicsmart 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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Late Evidence

8. Basicsmart provided late evidence in this dispute. While I acknowledge Ms. Gong's objection to the late evidence, I allow it because it is relevant and she had an opportunity to respond to it, which is consistent with the CRT's mandate that includes flexibility.

ISSUES

9. The issues in this dispute are:
 - a. Does Basicsmart owe Ms. Gong \$1,825.95 in damages?
 - b. Does Ms. Gong owe Basicsmart \$817.13 for unpaid services?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Gong must prove her claims on a balance of probabilities. Basicsmart has the same burden for its counterclaim. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. On March 2, 2021, Ms. Gong brought her car and the exhaust to Basicsmart for installation. Ms. Gong told Basicsmart she wanted the exhaust to sound loud. The exhaust was from Ms. Gong's former car of the same make and model, but of an unspecified year. Basicsmart determined that the exhaust was too short to fit in the car. The parties agreed Basicsmart would weld on additional components to make

the exhaust fit in the car. On the same day, after the Basicsmart installed the exhaust, the police served Ms. Gong with a vehicle inspection order while driving her car for an alleged noise violation. All this is undisputed.

12. Ms. Gong says that Basicsmart's job was of poor quality and not to professional standards. She says that the exhaust was leaking at multiple points resulting in her smelling exhaust fumes while driving. She also says that she did not agree to add used mufflers to the exhaust. Last, she says that because of Basicsmart's poor workmanship, she received the inspection notice and had to take the car elsewhere to have it repaired. She claims \$1,825.95 for the repairs, the vehicle inspection fee, and an exhaust transportation cost. Ms. Gong does not provide a break down of the repairs and inspection fee costs.
13. Basicsmart says that its work was to professional standards, and it did everything according to Ms. Gong's instructions. Basicsmart says it warranties its work, but Ms. Gong declined to use its warranty, which is undisputed. I infer that Basicsmart means it is therefore not responsible for Ms. Gong's repairs and the transportation costs. Last, Basicsmart denies it is responsible for Ms. Gong's vehicle inspection fee because she requested a loud exhaust. Basicsmart counterclaims against Ms. Gong for unpaid services. It is undisputed that Ms. Gong initially paid Basicsmart \$817.13 for the installation but later reversed the charge through her credit card.

Vehicle inspection fee

14. I find that Basicsmart is not responsible for Ms. Gong's vehicle inspection fee for 2 reasons. First, Ms. Gong undisputedly requested Basicsmart to make the exhaust system loud. So, I find she accepted the risk of a vehicle inspection for noise. I find it would be unreasonable to hold Basicsmart liable for her choice. Second, Ms. Gong has provided no evidence to show that it was Basicsmart's installation rather than the exhaust system itself that caused the vehicle inspection. I do not accept Ms. Gong's argument that because she had never received an inspection order in the past with the same exhaust system, the inspection was therefore caused by Basicsmart's installation. I find it equally plausible that it was pure chance she had never received

an inspection order in the past. For these reasons, I dismiss this aspect of Ms. Gong's claim.

Exhaust repairs and transportation cost

15. 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. Here, the burden is on Ms. Gong.
16. Ms. Gong submitted in evidence photos and videos of Basicsmart's work and photos after the repairs. Ms. Gong also submitted in evidence a March 5, 2021 inspection report and letter from Herbert's Autobody Inc. (Herbert's). Herbert's says there were many cracks, improper welding, and leaks within the exhaust system. Herbert's also noted unexplained cuts to the exhaust bracket. Herbert's opined that the weld job was not to professional standards. Ms. Gong relies on Herbert's evidence as expert evidence.
17. Basicsmart challenges Herbert's evidence as expert. It says the author is not a licensed mechanic but does not say how it knows this. However, I find that I do not need to determine this point because I do not rely on Herbert's evidence as expert evidence. Expert evidence is necessary to help the decision maker to determine the appropriate standard of care where a subject matter is technical or beyond common understanding. Other times, a breach of the standard of care may be so obvious that it does not require expert evidence (see *Schellenberg v Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). I find that this is the case here and accept Herbert's evidence as a witness statement about what it observed.
18. Based on Ms. Gong's photos and videos, I agree with Herbert's observations. I find that the weld job was uneven and inconsistent throughout with obvious and widespread gaps and holes. My conclusion is supported by Ms. Gong's repair photos, which shows a clean, consistent, and seamless weld job with no obvious gaps and holes. I further find it is common sense that exhaust fumes would leak from such exhaust gaps and holes.

19. I find the parties' contract contained an implied term that Basicsmart would perform its services with reasonable professional skill and diligence consistent to industry standard. This includes installing an exhaust system that would not have widespread holes and leaks. Therefore, I find that Basicsmart breached the parties' contract by failing to professionally install the exhaust, which ultimately required repairs. The proper remedy for a breach of contract is to put Ms. Gong in the same position she would have been in if Basicsmart had performed the contract according to its terms (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39). For this reason, I find that Basicsmart must pay Ms. Gong for the repair costs.
20. As for Basicsmart's warranty, I find it was open for Ms. Gong to decline the warranty once it became clear to her that Basicsmart's work was deficient. In *Bell v. Whyte*, 2020 BCCRT 84 at paragraph 18, another tribunal member found that it may be reasonable for a party to hire a third party to fix deficiencies instead of giving the contractor an opportunity to address them if they have reasonably lost confidence in the contractor. Although this decision is not binding upon me, I agree with its reasoning and apply it here. It is apparent from the exchange of instant messages that the parties' relationship had deteriorated and that Ms. Gong no longer trusted Basicsmart. In these circumstances, I find that it was reasonable for Ms. Gong to choose a third party to repair the exhaust.
21. Ms. Gong submitted an invoice from Autodromo Racing and Development Ltd. (Autodromo) in the amount of \$1,650 for the repairs and the vehicle inspection. However, I find that Basicsmart does not need to pay Ms. Gong's this entire amount.
22. I find it appropriate to deduct the \$817.13 that Ms. Gong undisputedly paid Basicsmart but later reversed. I find this means that Ms. Gong accepted this amount was reasonable for the exhaust's installation if not for Basicsmart's breach of contract. To award Ms. Gong Autodromo's entire invoice amount would result in double recovery and would put Ms. Gong in a better position than she would have been in if not for the breach of the agreement (see *Henry v. British Columbia (Attorney*

General), 2017 BCCA 420 at paragraphs 29 to 30). This is because she would end up having the exhaust installed for free. In other words, the \$817.13 was an amount she would have paid in any event for the exhaust's installation if not for the breach of the agreement.

23. I also find there are further deductions to Autodromo's invoice that are appropriate. Ms. Gong's repair photos shows Autodromo installed new mufflers on the exhaust. However, on balance, I find that Ms. Gong had agreed with Basicsmart to install used mufflers. In an instant video message, Basicsmart had notified Ms. Gong that it would weld a preexisting muffler it had to the exhaust to make it fit the car. Ms. Gong undisputedly did not object to this. So, I find that Ms. Gong is not entitled to recover new mufflers from Basicsmart. The parties' evidence shows the muffler's price brand new to be \$139.95 each, which was undisputedly in USD. At the current exchange rate, this equals \$176.75 CAD. There is no evidence about shipping costs or taxes, so I make no findings about them. On a judgement basis, I deduct \$353.50 CAD for the 2 new mufflers from Autodromo's invoice.
24. Next, as I have dismissed Ms. Gong's inspection fee claim, I must determine how much Ms. Gong's inspection fee was. Autodromo's invoice does not distinguish the inspection fee from the repair costs. In the parties' correspondence, it shows Basicsmart quoted Ms. Gong \$157 plus taxes (\$175.84) for a vehicle inspection, which Ms. Gong appeared to have accepted. I find it is appropriate to deduct this amount from Autodromo's invoice.
25. I make no deductions for the alleged exhaust cuts, which Basicsmart denies it did. Based on the images submitted by Basicsmart, I find that the cuts were pre-existing and Ms. Gong's repair photos show that they were ultimately not repaired, so I find it did not form a part of the repairs.
26. Last, Ms. Gong filed an amended Dispute Notice to add a \$175.95 claim for exhaust transportation costs, which is supported by 3 cargo van rental receipts. However, I find the receipt for transporting the exhaust to Basicsmart was a cost Ms. Gong would have incurred despite Basicsmart's breach of contract. So, I find Ms. Gong is not

entitled to recover this amount. For the remaining 2 receipts, I find them unproven. It is unclear to me why there would be exhaust transportation costs when the exhaust was already installed in the car. If the exhaust was removed from the car, Ms. Gong has provided no submissions or evidence to support or explain this. For these reasons, I dismiss this claim.

27. In summary, I find that Basicsmart must pay Ms. Gong a total of \$303.53 in repairs, after deducting for the new mufflers, installation cost, inspection fee, and transportation costs.

Basicsmart's counterclaim for \$817.13 for unpaid services

28. As noted, it is undisputed that Ms. Gong's credit card company charged back Basicsmart \$817.13. Basicsmart counterclaims for this amount. However, given my finding on double recovery above, it follows that Basicsmart's counterclaim is dismissed.

29. I would also dismiss Basicsmart's counterclaim in any event because I find it is unproven. Virtually all of Basicsmart's counterclaim evidence and submissions address Ms. Gong's dispute, with 1 exception. Basicsmart submits that the holes in 1 of Ms. Gong's photos are "very common and normal". Yet, Basicsmart has provided no evidence to show that this is common and normal, such as photos from another vehicle with similar holes or expert evidence from other mechanics or welders. I further find this explanation unlikely given Herbert's evidence and Ms. Gong's repair photos, which do not show obvious holes. Other than this 1 submission, Basicsmart has provided no other submissions or evidence to prove it is entitled to payment from Ms. Gong. For these reasons, I dismiss Basicsmart's counterclaim.

Summary

30. I find that Basicsmart breached the parties' contract by failing to professionally install Ms. Gong's exhaust. So, I find that Ms. Gong is entitled to damages for exhaust repairs. However, I find that Ms. Gong has not proven her vehicle inspection fee claim

and a portion of her exhaust repairs. I also dismiss Basicsmart's counterclaim. Therefore, I find that Basicsmart must pay Ms. Gong a total of \$303.53.

31. The *Court Order Interest Act* applies to the CRT. Ms. Gong is entitled to pre-judgment interest on the \$303.53 from April 6, 2021, the date of the repair to the date of this decision. This equals \$0.59.

32. 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 Ms. Gong was partially successful, I find she is entitled to reimbursement of \$62.50 for half of her CRT fees. Basicsmart was unsuccessful, so I dismiss its claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Basicsmart to pay Ms. Gong a total of \$366.62, broken down as follows:

- a. \$303.53 for exhaust repairs,
- b. \$0.59 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

34. Ms. Gong is entitled to post-judgment interest, as applicable.

35. Basicsmart's counterclaim is dismissed.

36. 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 date of the end of the state of emergency declared on March 18, 2020, 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.

37. 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.

Roy Ho, Tribunal Member