



# Civil Resolution Tribunal

Date Issued: April 12, 2022

File: SC-2021-006066

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Delowsky v. Vic's Custom Exhaust Ltd.*, 2022 BCCRT 423

B E T W E E N :

DANIEL DELOWSKY

**APPLICANT**

A N D :

VIC'S CUSTOM EXHAUST LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. In July 2019, Vic's Custom Exhaust Ltd. installed a new muffler in Daniel Delowsky's vehicle. Mr. Delowsky says that Vic's Custom Exhaust negligently installed the muffler, which on August 5, 2019, allegedly caused a vehicle fire. Mr. Delowsky says that when he had his vehicle repaired, he had to pay a \$300 deductible and \$332.19 in GST. He also says his vehicle is worth \$8,000 to \$9,000

less because of the fire even after the repairs. He claims \$5,000 from Vic's Custom Exhaust, the maximum amount he can claim under the Civil Resolution Tribunal's (CRT) small claims jurisdiction.

2. Vic's Custom Exhaust denies that it negligently installed the muffler. It asks me to dismiss Mr. Delowsky's claim.
3. Mr. Delowsky is self-represented. Vic's Custom Exhaust is represented by its owner.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. As discussed in more detail below, Mr. Delowsky provided 2 documents several months past the CRT's deadline for providing evidence. Vic's Custom Exhaust objected to this late evidence. Given my conclusion that the 2 documents were ultimately unhelpful, I find that nothing turns on this late evidence. So, I decided to admit it, primarily because there is no prejudice to Vic's Custom Exhaust.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Vic's Custom Exhaust negligently install Mr. Delowsky's muffler?
  - b. If so, what are Mr. Delowsky's damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Mr. Delowsky as the applicant must prove his case on a balance of probabilities, which means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. As mentioned above, Vic's Custom Exhaust installed a new muffler on Mr. Delowsky's vehicle in late July 2019. Mr. Delowsky says that while he was driving on August 5, 2019, black smoke filled his vehicle. He says he pulled over and saw that the exhaust pipe was hanging down. He says that heat from the exhaust had melted part of his rear bumper. He says that this was Vic's Custom Exhaust's fault because he says it had inadequately welded the muffler to the vehicle.

12. Mr. Delowsky says that he made an ICBC claim. He says that ICBC determined Vic's Custom Exhaust was fully responsible for the damage. He says that ICBC hired a "fire inspector" who confirmed this in a written report.
13. However, the only documentary evidence Mr. Delowsky provided were the 2 late documents mentioned above. They appear to be parts of ICBC claims and insurance documents, although they are incomplete so it is impossible to tell with any certainty. Taken at face value, the only relevant information they contain is that Mr. Delowsky was not at fault for the vehicle damage and that he paid a \$300 deductible. Neither document says anything about Vic's Custom Exhaust.
14. Parties are told to provide all relevant evidence. As mentioned above, Mr. Delowsky claims to have written evidence that proves Vic's Custom Exhaust's liability. I find that these documents are obviously relevant, but he did not provide them. Mr. Delowsky provided no explanation about why not. Essentially, Mr. Delowsky's claim is based solely on his unsupported assertion that he has conclusive evidence of Vic's Custom Exhaust's liability.
15. With that, I find that Mr. Delowsky has not proven that Vic's Custom Exhaust was responsible for the vehicle damage. For this reason, I dismiss Mr. Delowsky's claim. I find that I do not need to address the parties' other arguments.
16. 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. Mr. Delowsky was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Vic's Custom Exhaust did not claim any dispute-related expenses or pay any CRT fees.

## **ORDER**

17. I dismiss Mr. Delowsky's claim, and this dispute.

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Eric Regehr, Tribunal Member