



Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-006703

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Banovich v. Clarke dba First Place Plastic Welding*, 2022 BCCRT 435

B E T W E E N :

JOHN BANOVICH

APPLICANT

A N D :

GEORGE CLARKE (Doing Business As FIRST PLACE
PLASTIC WELDING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about allegedly failed repairs to a car's steering wheel. The applicant, John Banovich, paid the respondent, George Clarke (doing business as First Place Plastic Welding), \$472.50 to restore and repair cracks in a 1967 Oldsmobile Cutlass steering wheel. Mr. Banovich says the repairs were ineffective and Mr. Clarke refused

to provide a refund. Mr. Banovich claims \$604.80, the estimated cost of repairing the steering wheel elsewhere.

2. Mr. Clarke says that cracks likely reappeared in the steering wheel because of mistreatment following the repairs, so he owes nothing.
3. The parties are each self-represented in this dispute.

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.

ISSUE

8. The issue in this dispute is whether Mr. Clarke's steering wheel repairs met an applicable quality standard, and if not, does he owe Mr. Banovich \$604.80?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Banovich must prove his claims on a balance of probabilities, meaning "more likely than not." 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.
10. As shown in submitted photos, Mr. Banovich's steering wheel was heavily worn and badly cracked in several places. The parties agreed by email that Mr. Banovich would mail the steering wheel to Mr. Clarke, who would repair the cracks and paint it, and mail it back. Mr. Banovich sent the steering wheel in late February 2021, and Mr. Clarke returned it in April 2021. On April 22, 2021, Mr. Banovich complained of paint defects. Mr. Clarke arranged for a shop near Mr. Banovich to repair the paint defects at no extra cost. The shop returned the steering wheel to Mr. Banovich at the end of May 2021. Mr. Banovich paid Mr. Clarke's \$472.50 invoice. None of this is disputed.
11. On June 24, 2021, Mr. Banovich sent photos to Mr. Clarke that I find show several large cracks in the steering wheel. I find at least some of the cracks are obviously deeper than the steering wheel's paint layer. Mr. Banovich requested a refund, and Mr. Clarke refused to provide one.
12. Mr. Banovich alleges that Mr. Clarke's repairs were not of sufficient quality and failed. Mr. Clarke says he told Mr. Banovich that the repairs would not be perfect due to the poor condition of the steering wheel. However, I find the evidence does not show that Mr. Banovich accepted that Mr. Clarke's work might be flawed or of lower-than-usual quality.

13. I find that Mr. Clarke gave no express warranties about the quality of his work, but I find it was an implied term of the parties' agreement that the crack repairs would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). As the applicant alleging deficient work, Mr. Banovich bears the burden of proving that Mr. Clarke failed to perform the work in a reasonably professional manner.
14. I find that steering wheel cracks arising several weeks after Mr. Clarke completed his repairs is consistent with the repairs failing prematurely. However, I find that the specific cause of the post-repair cracks is a subject beyond ordinary knowledge and experience and requires expert evidence to prove.
15. Mr. Banovich submitted a letter from Don Winfield of STS Auto Interiors as expert evidence. Mr. Winfield said he was an experienced professional automobile upholsterer and interior restorer. An image of his business card indicated that he mostly focused on vehicle fabric and carpet. However, I find there is no evidence that Mr. Winfield has any professional expertise in steering wheel repair, plastic welding, or related disciplines. Under the CRT's rules, I find the evidence fails to show Mr. Winfield is qualified by education, training, or experience to give an expert opinion on the steering wheel cracks. I place no weight on Mr. Winfield's letter, which said that Mr. Clarke's wheel repair was done incorrectly and resulted in new cracks forming.
16. Mr. Banovich also submitted an opinion from Doug Lepak, owner and operator of "The Steering Wheel Guy". Mr. Lepak says he has 32 years of experience in restoring, customizing, and modifying thousands of steering wheels of various types. I find Mr. Lepak is qualified by experience to provide expert evidence on Mr. Banovich's steering wheel cracks. I accept his opinion as expert evidence under the CRT's rules.

17. Mr. Lepak said there are no explicit industry standards for restoring steering wheels. However, he said that photos taken by Mr. Banovich after Mr. Clarke's repair were sufficient for him to determine that the work done was unsatisfactory and crude. Mr. Lepak said the most likely reason the repairs failed was poor steering wheel preparation and use of inferior materials to fix any cracks and plastic warping. Mr. Lepak's opinion supports a finding that the crack repairs were deficient.
18. Mr. Clarke says that the post-repair cracks were likely caused by Mr. Banovich dropping the steering wheel, sanding it, using an incorrect cleaner before paint touch-ups, using a heat gun to dry paint touch-ups, or leaving the steering wheel in hot sun. Although Mr. Clarke says the dull appearance of steering wheel paint in submitted photos suggests Mr. Banovich did some of these things, I find his allegations are speculative and unsupported by other evidence. Further, as the respondent, I find Mr. Clarke is not sufficiently neutral to provide an expert opinion himself, and no expert evidence before me supports his allegations. Mr. Banovich denies mishandling the wheel, doing any sanding, cleaning, or paint touch-ups, or otherwise tampering with the wheel. He says the steering wheel was kept in his air-conditioned garage, out of the sun. On the evidence before me, I find Mr. Banovich likely did not mistreat the steering wheel in any of the ways Mr. Clarke alleges.
19. Having weighed the evidence, I find the steering wheel cracks that arose in late June 2021 were likely caused by Mr. Clarke's poor wheel preparation and repair materials. I rely in particular on Mr. Lepak's expert opinion that the work was unsatisfactory, which is not contradicted by other expert evidence. So, I find the steering wheel repairs did not meet a reasonably professional standard of quality, and I find this was a breach of the parties' agreement.
20. Damages for breach of contract are intended to put the innocent party in the position they would have been in if the contract had been performed as agreed. Here, if Mr. Clarke had met the contract's terms and adequately repaired the steering wheel, Mr. Banovich would have a fully repaired steering wheel with no cracks, at a cost of \$472.50. Mr. Banovich submitted a July 30, 2021 estimate from Bowtie Autoparts Ltd. that said

the cost to restore the steering wheel would total \$604.80. Although this is more than Mr. Clarke charged for his unsuccessful repair work, he does not directly dispute the estimate's accuracy, and I find it is reasonable. I allow Mr. Banovich's claim for \$604.80.

CRT Fees, Expenses, and Interest

21. The *Court Order Interest Act* (COIA) applies to the CRT. However, the evidence and submissions do not show that Mr. Banovich has re-repaired the steering wheel. So, under section 2(a) of the COIA, I find he is not entitled to pre-judgment interest, because he has not yet sustained the claimed loss.
22. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Mr. Banovich was successful in his claim, so I find he is entitled to reimbursement of the \$125 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

23. Within 30 days of the date of this decision, I order Mr. Clarke to pay Mr. Banovich a total of \$729.80, broken down as follows:
 - a. \$604.80 in damages for breach of contract, and
 - b. \$125 in CRT fees.
24. Mr. Banovich is entitled to post-judgment interest, as applicable.
25. 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.

26. 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.

Chad McCarthy, Tribunal Member