



Civil Resolution Tribunal

Date Issued: April 28, 2022

File: SC-2021-007162

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bochtler v. West End Auto Body Ltd.*, 2022 BCCRT 499

B E T W E E N :

KURT BOCHTLER

APPLICANT

A N D :

WEST END AUTO BODY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle bumper. The applicant, Kurt Bochtler, took his vehicle to the respondent, West End Auto Body Ltd. (West End), to replace the bumper. Mr. Bochtler says he told West End he wanted to keep the old bumper, but West End threw it away. Mr. Bochtler claims \$1,200 for the value of the old bumper.

2. West End says that Mr. Bochtler failed to take the old bumper with him when he picked up his vehicle. It says Mr. Bochtler did not return their calls to pick it up, and it kept the bumper for 2 weeks before throwing it away. West End says Mr. Bochtler was not entitled to keep the bumper in any event, under his insurance contract. Further, West End disputes the claimed \$1,200 value, and says the broken bumper was likely worthless.
3. Mr. Bochtler is self-represented. West End is represented by an employee or principal.

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 to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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 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 West End owes Mr. Bochtler any compensation for discarding the old bumper.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Bochtler must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
10. The evidence shows that Mr. Bochtler made a claim to his vehicle insurer, Insurance Corporation of British Columbia (ICBC), for damage to the vehicle's front bumper. Mr. Bochtler took his vehicle to West End to complete the bumper repairs. It is undisputed that Mr. Bochtler told West End he wanted to keep the old bumper once the new one was installed.
11. I note that West End provided a December 6, 2021 email from ICBC, that stated customers are generally not allowed to keep old damaged parts, as they are only entitled to the new parts they receive during repairs. However, given that West End does not dispute it was prepared to let Mr. Bochtler take the old bumper, I find ICBC's

position on whether he was entitled to it is irrelevant. So, for the purpose of this dispute, I find the old bumper was Mr. Bochtler's property, subject to the principle of abandonment, as discussed below.

12. Mr. Bochtler says when he initially picked his vehicle up after the repairs, he forgot to check if the old bumper was in the back. He says he returned to West End the next day, and that West End told him somebody would call him back about it. He says West End never called, and when he returned to West End "a few days later", West End told him it had recycled the bumper.
13. In contrast, West End says that it left the old bumper out for Mr. Bochtler to take when he picked up his vehicle, but that he left it behind. West End says it tried calling Mr. Bochtler but there was no answer, and he did not return its calls. So, when Mr. Bochtler had not retrieved the bumper after 2 weeks, West End says its staff threw it away.
14. For the following reasons, I prefer West End's version of the timeline. First, the signed certificate of repair in evidence is dated June 11, 2021, which I find is likely the date Mr. Bochtler picked up his repaired vehicle. Second, West End provided a screenshot of 2 internal notes made on July 28, 2021, from what I infer is its customer management software system. The first note details how Mr. Bochtler had left the old bumper behind despite West End telling him where it was, that West End tried to call Mr. Bochtler about picking up the old bumper, and that staff ultimately threw it out 2 weeks later. The second note states that Mr. Bochtler came in about new damage he wanted repaired, which Mr. Bochtler does not dispute. It also states that Mr. Bochtler accused West End of lying about keeping the old bumper "for weeks" before throwing it out, and that he believed someone "took it home". Mr. Bochtler also does not dispute making these accusations.
15. I find the first note summarizing what had happened to the old bumper several weeks earlier, was likely made in response to Mr. Bochtler asking for the first time about the bumper when he returned on July 28. Overall, I find the notes would not make sense if Mr. Bochtler had learned within a few days of picking up his vehicle in mid-June that

West End had discarded the bumper, as he alleged. Specifically, I find Mr. Bochtler's accusation that West End lied about keeping the bumper, suggests he had not asked about the bumper in the 2 weeks after he picked up his vehicle. I also find it unlikely Mr. Bochtler would have returned to West End for further vehicle repairs, given his accusations.

16. On balance, I accept that West End attempted to call Mr. Bochtler to pick up the old bumper and kept it for 2 weeks before throwing it out. I also find that the first time Mr. Bochtler made any inquiries about it was almost 7 weeks after he picked up his repaired vehicle.
17. Mr. Bochtler did not provide the legal basis for his claim over the old bumper, but I find that the tort of conversion applies. Conversion is when a person wrongfully handles, disposes of, or destroys another person's personal property in a way that is inconsistent with the owner's rights: see *Li v. Li*, 2017 BCSC 1312 at paragraph 213. Mr. Bochtler argues that West End was wrong to throw away his old bumper when West End undisputedly knew he wanted to keep it.
18. For conversion to apply, Mr. Bochtler must prove West End's act was "wrongful", which means it must be unjust, unfair, or harmful: see *Charbonneau v. Mundie's Towing*, 2008 BCPC 239 at paragraph 13. I find that West End is essentially arguing that it was not wrong to throw away the old bumper because Mr. Bochtler had abandoned it. As the party seeking to rely on the abandonment principle, West End bears the burden of proof: see *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30.
19. Factors to consider when determining whether personal property has been abandoned include the passage of time, the nature of the transaction, the owner's conduct, and the nature and value of the property: *Jackson* at paragraph 30. As noted, I find West End waited 2 weeks before discarding the old bumper, which I find was a reasonable period under the circumstances of the parties' transaction. I find the parties had no agreement that West End would keep and store the bumper after Mr. Bochtler picked up his vehicle. Yet, I find the first time Mr. Bochtler inquired about it was almost 7 weeks later. Further, I find the most persuasive factor may be the old

bumper's condition. Photographs in evidence show the bumper was significantly scratched and dented, and its inner structure was cracked and broken in several places. It is undisputed that the old bumper was not repairable. Finally, Mr. Bochtler did not provide any evidence of the old bumper's value, so I find its claimed \$1,200 value unproven.

20. For the above reasons, I find Mr. Bochtler abandoned the old bumper before West End threw it out at approximately the end of June 2021. So, I find West End did not act wrongfully when it threw away the bumper, and it is not liable in conversion.
21. I also considered whether the law of bailment applies to this dispute. A bailment is a temporary transfer of personal property for safekeeping to another person, known as the "bailee". A bailee may be liable for loss or damage to the property in their safekeeping. However, for bailment to apply, the bailee must voluntarily accept responsibility for the property: see *Litchi v. Landmark Transport Inc. et al*, 2006 BCSC 344.
22. Here, I find West End did not agree to voluntarily store Mr. Bochtler's bumper after he picked up his vehicle. Even if Mr. Bochtler initially left the bumper behind by mistake, I find he failed to make timely inquiries about it and he abandoned it shortly after. Therefore, I find West End was not a bailee of Mr. Bochtler's old bumper when it decided to discard the bumper.
23. Even if I had found West End wrongfully discarded the either in conversion or bailment, as noted, Mr. Bochtler provided no evidence about the value of the old and damaged bumper. For all of these reasons, I dismiss Mr. Bochtler's 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. Mr. Bochtler was unsuccessful and so I dismiss his claim for CRT fees. West End paid no fees and claimed no dispute-related expenses, so I make no order.

ORDER

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

Kristin Gardner, Tribunal Member