



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Forsythe v. Middleton*, 2022 BCCRT 519

B E T W E E N :

CHRIS FORSYTHE

APPLICANT

A N D :

BRUCE MIDDLETON, ANDREW MIDDLETON, and ABSOLUTE CLASSICS MARINE LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for installation of an engine on a boat. The applicant, Chris Forsythe, does business as Paradise Marine Services. Mr. Forsythe says the respondent, Absolute Classics Marine Ltd. (Absolute), hired him but failed to pay. Mr. Forsythe claims \$3,600.
2. Absolute says Mr. Forsythe's work was deficient and ended up costing it about \$15,000 in repairs, and so it says it owes nothing. Absolute did not file a counterclaim and seeks a set-off for those repairs as discussed below.
3. The respondents Bruce Middleton and Andrew Middleton are Absolute's owners. Those individual respondents did not file a Dispute Response as required and are technically in default as discussed below.
4. Mr. Forsythe is self-represented. Bruce Middleton represents Absolute.

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). CRTA section 2 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. CRTA section 39 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 of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.
9. As noted above, Bruce Middleton and Andrew Middleton did not file a Dispute Response as required. Technically, this means they are in default. However, I decline to hold either of them in default as it is clear Bruce Middleton represents all 3 respondents in his representation of Absolute. This conclusion is supported by the fact that the Dispute Notices for each of the 3 named respondents were all sent to the same address.

ISSUE

10. The issue in this dispute is whether Mr. Forsythe's engine repair work was deficient and to what extent, if any, he is entitled to \$3,600 as payment for his services.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Forsythe must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
12. As noted above, I have declined to hold Bruce Middleton and Andrew Middleton in default. As discussed further below, I find Mr. Forsythe's contract was clearly only with Absolute. A corporation is a separate legal entity distinct from its officers and owners. Mr. Forsythe makes no allegations about the Middletons personally. I

dismiss the claim against the Middletons and my analysis below addresses Absolute's liability.

13. The undisputed evidence is that Absolute sub-contracted to Mr. Forsythe the boat's engine installation. Mr. Forsythe did his work between May 2019 and June 9, 2019. They had no formal written agreement. Absolute's evidence shows it had bought the new engine for almost \$8,000 in April 2019.
14. Mr. Forsythe's claim is for payment of his \$3,600 invoice issued to Absolute on June 13, 2019, although I note Absolute says it did not receive the invoice until late June or early July. Nothing turns on that timing. The invoice described 40 hours at \$90 per hour, of "sub contracted labor for engine build up, install and wiring". The invoice was due on receipt.
15. On July 13, 2019, Mr. Forsythe issued another invoice to Absolute, for the same \$3,600, plus 2% interest. In addition, the work description was more detailed. It read (quote reproduced as written):

Sub contracted labor for engine build up, installation of engine and transmission assy and shaft alignment, build engine and boat wiring harnesses, solder and heat shrink all wire and install, install fuel pump and wire to activate on oil pressure, run engine, set up carb and general checkover.

16. Mr. Forsythe does not explain why his description of the work performed expanded in the 2nd invoice. However, based on the more detailed description I find Mr. Forsythe's contract was to install the engine so that the boat would run, which is undisputed. More on this below.
17. Mr. Forsythe then issued a 3rd invoice to Absolute on March 13, 2022, with the same work description as the 2nd invoice. However, this time it was 40 hours at \$120.405 per hour, and interest at 10% (I infer monthly). Mr. Forsythe does not explain the increased hourly rate for work already performed and also does not

explain the increased interest rate. Nothing turns on this, because in this dispute Mr. Forsythe claims only \$3,600 and non-contractual interest. It also does not matter given I have dismissed Mr. Forsythe's claim below.

18. Absolute says that Mr. Forsythe's work is deficient, so I find it claims a set-off based on the law about deficiencies. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer must prove the deficiencies: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, expert evidence is required to prove a professional's or trade's work was below a reasonable standard: *Bergen v. Guliker*, 2015 BCCA 283. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
19. Absolute says when Mr. Forsythe delivered the boat in early July 2019 there were immediate issues with the engine, which was embarrassing given it was being launched at its customer's event. Essentially, Absolute says Mr. Forsythe installed the wrong size and type of water intake hose which kinked and restricted water flow, causing the engine to overheat. Absolute says a couple weeks later, after unsuccessfully trying to reach Mr. Forsythe about the above issue, it discovered other issues: a serpentine drive belt had been incorrectly installed, which was causing issues with water circulation in the engine, cables for the throttle and gear shift were mounted too close to the exhaust manifolds causing their protective casing to melt, there was an untightened bolt on the distributor causing the timing to go out, and a missing oil plug. Absolute says Mr. Forsythe never responded to its invitations to address the issues and ultimately the entire engine block had to be replaced, at a significant cost far in excess of Mr. Forsythe's invoice.
20. Absolute submitted an August 12, 2019 invoice for \$1,201.24 from Brandon Farmer of Doctorwake. The invoice confirms the issues as Absolute described, noting incorrect installation of hoses/fittings, shift and throttle cables, and a "stern nav light". While Brandon Farmer's qualifications are not specified, given he is clearly in

the business of marine engine repair I accept he is qualified to give an opinion about the engine's issues. Bearing in mind the CRT's flexible mandate and CRT rule 1.2(2), I accept the invoice comments as expert opinion under the CRT's rules.

21. Absolute also submitted a September 4, 2019 invoice from Brandon Farmer for \$297.25, which addressed the engine's "cap/timing" and control box. Next, Absolute submitted a \$6,497.04 Repair Order from Waypoint Marine Group that sets out the engine's replacement parts. Absolute also submitted proof that it paid these repair and replacement invoices.
22. Mr. Forsythe denies receiving any communication attempts from Absolute after he sent it his June 9, 2021 demand letter. Mr. Forsythe does not address Absolute's earlier communication efforts. I find Absolute did email him, as there is a copy of an October 8, 2019 email in evidence where Absolute raised the deficiency concerns. Absolute emailed again on January 2, 2020. There is no evidence before me that Mr. Forsythe ever responded, until June 2021 when he started this dispute. I find this one-sided communication does not support Mr. Forsythe's position and tends to favour Absolute's version of events.
23. In this dispute, Mr. Forsythe says the "water intake hose(s) that were installed were temporary" and that he told the Middletons that "it" needed to be fixed properly before the boat was run again. While Mr. Forsythe submitted what he says are his contemporaneous notes, he does not explain why it was the Middletons' responsibility to fix a hose Mr. Forsythe chose to temporarily install, not Mr. Forsythe. Further, it is clear from Absolute's submitted evidence, including emails to repair shops, that the Middletons deny ever being told about a temporary hose.
24. On balance, I find it unlikely that Mr. Forsythe ever told Absolute the hose he installed needed to be replaced. As noted, I find Mr. Forsythe's contract was to deliver the engine so that the boat would run, which I find meant run properly. The evidence shows Absolute needed the boat delivered for a customer's launch on water and that the launch went poorly because of the engine's issues. I find it

unlikely Absolute would have proceeded with the launch knowing a hose needed replacement.

25. Mr. Forsythe also says he did not “mount throttle or gear shift cables” and that Andrew Middleton did this work. Yet, Mr. Forsythe’s own contemporaneous notes do not mention anyone else working on the engine before it was shipped, although I acknowledge a June 7, 2019 note that did not mention a name but said “continue piecing things together, tripping over each other”. Mr. Forsythe does not explain why he expected to be paid for the engine’s installation if Mr. Middleton allegedly did some of the work. While I note Andrew Middleton did not provide a written statement, I find nothing turns on this since Mr. Forsythe only raised Mr. Middleton’s alleged role in his final reply submissions.
26. Next, Mr. Forsythe denies he left the boat with a missing oil plug and says if it had been missing he would have had an oil leak in his shop. Mr. Forsythe says the engine was shipped with “the distributor installed from the engine builder”. However, Mr. Forsythe submitted no evidence of the engine’s condition (such as photos or video) or evidence that it ran before it left his shop.
27. Overall, and placing significant weight on the expert evidence before me, I find it likely that Mr. Forsythe’s installation of the new engine caused the significant problems and ultimate damage, in part from overheating. I accept Absolute had to entirely replace the new engine and find it likely had to do so because of Mr. Forsythe’s faulty installation. Given I find the defects proven and because the repair costs far exceeded Mr. Forsythe’s invoice, I dismiss Mr. Forsythe’s claim.
28. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Forsythe was unsuccessful, I dismiss his claim for reimbursement of CRT fees. The respondents did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

29. I dismiss Mr. Forsythe's claim and this dispute.

Shelley Lopez, Vice Chair