



Civil Resolution Tribunal

Date Issued: May 5, 2022

File: SC-2021-009393 & SC-2021-005675

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gartside Marine Engines Ltd. v. Beneteau*,
2022 BCCRT 539

B E T W E E N :

GARTSIDE MARINE ENGINES LTD.

APPLICANT

A N D :

STANLEY BENETEAU, SUZANNE FRENETTE and PAUL SHIELD
YACHT SALES LTD.

RESPONDENTS

A N D :

STANLEY BENETEAU and SUZANNE FRENETTE

RESPONDENTS BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. These 2 linked disputes are about payment for yacht repairs.
2. The respondents and respondents by third party claim, Stanley Beneteau and Suzanne Frenette (Buyers), purchased a yacht from a third party, who is not named in this dispute (Seller). The respondent and applicant in the third party claim against the Buyers, Paul Shield Yacht Sales Ltd. (PSYS), brokered the sales agreement between Mr. Beneteau and Ms. Frenette and the Seller. The applicant, Gartside Marine Engines Ltd. (Gartside), made various repairs to the yacht in February 2021, while the purchase was being negotiated.
3. In SC-2021-009393, Gartside says it billed most of the repair work to the Buyers, as instructed by PSYS. It claims \$4,184.93 against PSYS and the Buyers as payment for the Buyers' outstanding invoice. Gartside says the Buyers and PSYS asked for the repairs to be done and so should pay the invoice. Gartside also says the Buyers are responsible to pay the invoice under the yacht sales agreement.
4. In SC-2021-005675 PSYS denies responsibility for the outstanding invoice. It says it only asked Gartside to do the repair work on behalf of the Buyers. PSYS also says the Buyers are responsible to pay the \$4,184.93 under the purchase agreement and that the Buyers told PSYS that they would pay Gartside's outstanding invoice.
5. Mr. Beneteau and Ms. Frenette deny any responsibility for the \$4,184.93 invoice. They deny asking Gartside to do the repair work or asking PSYS to arrange for it to be done. The Buyers also say they had no legal right to authorize any of Gartside's repairs as they did not own the boat at the time. They also deny telling PSYS they would pay the outstanding invoice.
6. Gartside is represented by its owner, Ben Gartside. PSYS is represented by its owner, Paul Shield. Mr. Beneteau and Ms. Frenette each represent themselves.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.
10. 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.
11. As a preliminary matter, Gartside was initially a co-applicant with PSYS against the Buyers in dispute SC-2021-005675. Gartside decided to withdraw its claim in that dispute, which all parties consented to. Gartside then filed a new dispute against the Buyers and PSYS collectively, which is SC-2021-009393. Given the nature of Gartside's claim against PSYS in SC-2021-009393 and PSYS' claim against the Buyers in SC-2021-005675, I find PSYS's claim against the Buyers is essentially a third-party claim. In other words, PSYS can only claim against Ms. Frenette and Mr.

Beneteau if PSYS is first found responsible for paying Gartside's outstanding invoice. I have amended the style of cause above to reflect the third-party nature of PSYS' claim against the Buyers in SC-2021-005675 and Gartside's withdrawal from that dispute.

ISSUES

12. The issues in these linked disputes are:
 - a. Must the Buyers or PSYS pay Gartside's outstanding invoice (SC-2021-009393)?
 - b. If PSYS is responsible to pay the invoice must the Buyers reimburse PSYS that amount (SC-2021-005675)?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one the applicant Gartside must prove its claim on a balance of probabilities (meaning "more likely than not"). PSYS has the same burden in proving its third-party claim against the Buyers. I have read all the parties' submissions and weighed their evidence, but only refer to that necessary to explain my decision.
14. As noted, the Buyers purchased a 33-foot yacht from the Seller. The sale closed around March 6, 2021. Gartside did repair work on the yacht between February 8 and 19, 2021. None of this is disputed.
15. Gartside says PSYS told it to invoice certain work to the Seller and the remaining work to the Buyers. So, it created 2 invoices, dated February 19, 2021. Invoice #33728 for \$235.40 describes repairing an electrical breaker behind the engine panel, and supplying various parts, including a cutlass bearing. The invoice is addressed to the Seller. As I explain in more detail below, this invoice has been paid and so only invoice #33700 remains outstanding.

16. Invoice #33700 for \$4,184.93 describes resealing the transmission, changing the “PSS seal”, changing the cutlass bearing, and a list of parts presumably used in the repairs. Invoice #33700 is addressed to Rick Beneteau.
17. Although none of the parties address it, I find Rick Beneteau and Stanley Beneteau are likely the same person. This is because Ms. Frenette and PSYS both refer to “Rick Beneteau” in their email correspondence, although the sales agreement and bill of sale both identify Stanley Beneteau and Suzanne Frenette as the Buyers.
18. Gartside says that on February 8, 2021, the Buyers and PSYS asked it to reseal the transmission, replace the “PSS seal”, repair an electrical breaker and replace the cutlass bearing on the yacht. Gartside provided no supporting evidence such as emails or employee witness statements outlining conversations with the Buyers. As noted, both Mr. Beneteau and Ms. Frenette deny asking Gartside to do any repair work. So, I find Gartside has failed to prove the Buyers directly hired Gartside to repair the boat.
19. Gartside argues the Buyers are responsible for paying Invoice #33700 under the yacht sales agreement. Under the legal doctrine of “privity of contract”, a contract cannot give rights or impose obligations on anyone who is not a party to the contract. As Gartside is not a party to the sales agreement between the Seller and the Buyers, it cannot enforce any terms about who agreed to pay for what repairs.
20. In any event, I find the sales agreement in evidence does not mention repair costs. Rather, it sets out a total price of \$88,500 for the yacht. So, I find the sales agreement does not assist in determining who should pay for the boat repairs.
21. PSYS agrees it asked Gartside to do the repair work. PSYS says it arranged the repairs on the Buyers’ behalf. If PSYS had authority to act as the Buyers’ agent in arranging the repairs, the Buyers will be responsible for paying Gartside.
22. The law of agency applies when a principal (the Buyers) gives authority to an agent (PSYS) to enter into contracts with third parties (Gartside) on the principal’s behalf.

The principal will be liable for the agent's conduct if the agent had actual or apparent authority (see *Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541).

23. Here, the evidence does not support that PSYS had actual authority to act as agent for the Buyers. First, the Buyers deny they authorized him to do so. Second, the yacht sales agreement names PSYS as broker but includes a clause that specifically says PSYS is not an agent for either the Seller or the Buyers. Third, I find the emails PSYS relies on do not support its argument that the Buyers asked PSYS to arrange for the yacht repairs on their behalf, as explained below.
24. On February 19, 2021, PSYS explained to the Buyers that it had told them that the transmission seal and driplless shaft seal needed repairs, which could be done at their expense, while the boat was "in the yard". I infer the driplless shaft seal is the "PSS seal". I find the yacht was "in the yard" between February 8 and 19, 2021, based on a February 19, 2021 invoice from Canoe Cove Marina Ltd. Although PSYS wrote that it understood the Buyers preferred to fund the needed repairs rather than pay for another engine inspection, I find this does not show the Buyers agreed to pay for those repairs or asked PSYS to arrange the repairs at that time.
25. This finding is supported by Ms. Frenette's February 22, 2021 response to PSYS in which she acknowledges the needed repairs were discussed, but denies an agreement was reached. She specifically wrote the yard work and repairs already completed were requested by the Seller and were "still subject to our negotiations". I find the Buyers, Seller, and PSYS continued to negotiate the terms of the agreement until February 25, 2021, based on their emails. On balance, I find PSYS did not have the Buyers' actual authority to arrange repairs on their behalf.
26. I also find PSYS did not have apparent, or ostensible, authority either. Apparent authority flows from the principal's words or actions which lead a third party to believe the agent has authority to bind the principal (see *Keddie*). In other words, did the Buyers act in such a way that it was reasonable for Gartside to believe PSYS was acting on their behalf. As noted, Gartside provided no evidence that it spoke with the Buyers at all, prior to the repair work being done. Neither did Gartside explain why it

believed PSYS made the February 8, 2021 request on behalf of the Buyers, or even if it held that belief at the time.

27. On balance, I find PSYS did not have actual or implied authority to arrange for Gartside's repair work on February 8, 2021. However, I find the Buyers ratified, or later authorized, PSYS' February 8, 2021 actions.
28. Agency by ratification occurs where an individual represents themselves as an agent, though not validly an agent at the time, and the principal later ratifies the action previously taken (see *Pasternak v. Morden*, 2022 BCSC 433). The test for ratification requires that the agent purported to act for the principal, the principal was competent, and that the principal was legally capable of doing the act themselves at the time of ratification (see *Community Savings v. United Assoc. of Journeymen et al.*, 2002 BCCA 214).
29. Applying the test for ratification, I find PSYS purported to act for the Buyers in arranging the repairs, as it undisputedly instructed Gartside to bill the Buyers for part of the repairs, and to bill the Seller for other repairs. There is no indication either Ms. Frenette or Mr. Beneteau were not competent at the time. Finally, I find Ms. Frenette was legally capable of authorizing the yacht repairs at the time. Contrary to their argument, I find the Buyers need not have owned the yacht to have authority to arrange for the repairs. Based on the emails in evidence, I find the Buyers had the Seller's consent to arrange for yacht repairs while it was in the yard and before the sales agreement closed.
30. In this case, I find the Buyers ratified PSYS' arrangement of the boat repairs. In her February 25, 2021 email to PSYS, Ms. Frenette agreed that she and Mr. Beneteau would pay "the Gartside invoice" if PSYS paid other costs, including the yard invoice, in order to close the yacht sale. As noted above, the yacht sales agreement does not refer to the Gartside invoice, the yard invoice, or any other costs. So, I find this agreement between the Buyers and PSYS was not part of the yacht sales agreement between the Seller and the Buyers. Rather, I find Ms. Frenette made an agreement with PSYS that the Buyers would pay the Gartside invoice, but not other costs PSYS

had incurred on their behalf such as the cost of removing the boat from water and storing it in the yard for repairs. Essentially, I find Ms. Frenette later authorized PSYS' arrangement of the boat repairs on behalf of the Buyers, even though PSYS did not have the authority to arrange them at the time.

31. The Buyers deny saying they would pay the invoice and, if they had said that, they did so in error. I find that unlikely, given the clear words used by Ms. Frenette in her email. Further, had the Buyers not agreed to pay the invoice, I would expect them to respond to PSYS' February 25, 2021 email, but they did not. Rather, the Buyers undisputedly completed the sale on March 6, 2021 and moved the yacht to another dock on March 27, 2021.
32. If the Buyers had not agreed to pay Gartside's invoice, I also would expect the Buyers to dispute the invoice directly with Gartside soon after receiving it, which I find they did not. Based on Gartside's emails, I find it sent Invoice #33700 to Ms. Frenette's email address on February 22, 2021. The evidence does not show the Buyers responded.
33. Although Ms. Frenette says she emailed both PSYS and Gartside on March 29, 2021 to complain of ongoing issues with the yacht, she provided only a typed letter, without any date, email address, or any indication it was sent as an email. Further, the document does not refer to Invoice #33700. So, I find the Buyers did not dispute the invoice on March 29, 2021.
34. Finally, it is undisputed, and Gartside's confirmation email to the Buyers shows, that Mr. Beneteau paid Gartside's Invoice #33728 by telephone on April 14, 2021. To clarify, that invoice was addressed to the Seller and sent by Gartside to PSYS for payment on February 22, 2021. Based on Gartside's emails with PSYS, I find Gartside forwarded Invoice #33728 to PSYS for payment on April 12 and that on April 14 PSYS told Gartside he had forwarded it to "Susan" for payment. I find it likely PSYS mistook Invoice #33728 for Invoice #33700 and forwarded #33728 to Suzanne Frenette for payment. I find it unlikely the Buyers would pay Gartside for the Seller's invoice if they thought they had no responsibility to pay Gartside at all.

35. Overall, I find PSYS entered into an agreement with Gartside for various yacht repairs on behalf of the Buyers. I find the Buyers later ratified PSYS' conduct by agreeing to pay Gartside Invoice #33700 for transmission resealing, PSS sealing, and installing the cutlass bearing. So, I find the Buyers are liable for paying the invoice directly to Gartside.
36. I find the Buyers must pay Gartside \$4,184.93 for Invoice #33700, less the \$235.40 they already paid in error for the Seller's invoice #33728. So, I find the Buyers owe Gartside \$3,949.53.
37. As I find PSYS was acting as agent for the Buyers, I find it is not liable to pay Gartside the outstanding balance. As PSYS has no obligation to pay the invoice, I find it has no standing to claim reimbursement of the invoice amount from the Buyers. I dismiss PSYS' claim in SC-2021-005675.

CRT Fees, Expenses and Interest

38. The *Court Order Interest Act* applies to the CRT. Gartside is entitled to pre-judgment interest on the \$3,949.53 outstanding balance from the February 22, 2021 billing date to the date of this decision. This equals \$21.33.
39. 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. I find Gartside was successful in this dispute against the Buyers and so find they must reimburse Gartside \$175 it paid in CRT fees. I find PSYS was not successful in its claim against the Buyers, and so is not entitled to reimbursement of its paid CRT fees.
40. Gartside claims no dispute-related expenses. I dismiss Ms. Frenette's \$500 dispute-related expenses claim for consulting an independent yacht sales broker. First, as the unsuccessful party, she is not entitled to reimbursement of any CRT fees. Second, Ms. Frenette provided no evidence of the \$500 expense she allegedly incurred or why she incurred it, so I would not have reimbursed it in any event.

ORDERS

41. Within 21 days of the date of this order, I order Ms. Frenette and Mr. Beneteau to pay Gartside a total of \$4,145.86, broken down as follows:
 - a. \$3,949.53 in debt,
 - b. \$21.33 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
42. Gartside is entitled to post-judgment interest, as applicable.
43. I dismiss PSYS' claim against Ms. Frenette and Mr. Beneteau. I also dismiss Ms. Frenette's dispute related expenses claim.
44. 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.
45. 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.

Sherelle Goodwin, Tribunal Member