



Civil Resolution Tribunal

Date Issued: May 17, 2022

File: SC-2021-004235

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Premier Auto Transmission Ltd. v. Duncanson*, 2022 BCCRT 588

B E T W E E N :

PREMIER AUTO TRANSMISSION LTD.

APPLICANT

A N D :

HERBERT HUGH DUNCANSON

RESPONDENT

A N D :

PREMIER AUTO TRANSMISSION LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about van transmission repairs and computer damage. The applicant and respondent by counterclaim, Premier Auto Transmission Ltd. (Premier), says the respondent and the applicant by counterclaim, Herbert Hugh Duncanson, hired it to repair his van's transmission. Premier claims \$1,555.98 in unpaid work. Premier also claims \$750 in bailiff fees and \$100 in lien registration fees as debt collection expenses.
2. Mr. Duncanson denies Premier's claims. Mr. Duncanson says that he does not owe anything for Premier's work because he did not authorize it. Mr. Duncanson also says that Premier did not repair his van's transmission. Further, he says that Premier's claimed expenses are excessive and were not actually incurred.
3. Mr. Duncanson counterclaims against Premier for allegedly dropping his computer. Mr. Duncanson claims \$1,500 for computer damage. Premier says it is not responsible for this alleged computer damage. Premier says that Mr. Duncanson dropped his computer himself while he was attacking Premier's manager.
4. Mr. Duncanson is self-represented. Premier is represented by AA, a manager.

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). 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find

I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. 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.
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.

Lien claim

9. I find that Premier's claim for \$100 relating to lien registration under the *Repairers Lien Act* would be more appropriately resolved by the registrar as defined in the *Personal Property Security Act*. So, I refuse to resolve this claim under CRTA section 11(1)(a)(i).

ISSUES

10. The issues in this dispute are:
 - a. Does Mr. Duncanson owe Premier for unpaid work? If so, how much does he owe?
 - b. Is Mr. Duncanson responsible for Premier's alleged bailiff expenses?
 - c. Does Premier owe Mr. Duncanson damages for breaking his computer? If so, how much?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Premier, as the applicant, must prove its claims on a balance of probabilities. Mr. Duncanson has the same burden of proving his counterclaim. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Premier's claims for repair and collection costs

12. It is undisputed that Mr. Duncanson brought his van to Premier's auto repair shop on April 16, 2021 complaining that the transmission was slipping.

13. Premier says that it needed to remove the transmission to diagnose the problem and it says that Mr. Duncanson signed an authorization form allowing this. Premier submitted a signed April 16, 2021 authorization form that says "transmission slipping diagnose and advice." Premier says that it inspected the transmission and recommended transmission repairs to Mr. Duncanson. Premier says that Mr. Duncanson approved the repairs and it performed the work.

14. In contrast, Mr. Duncanson says that he only asked for a quote when he dropped his van off at Premier's shop. Mr. Duncanson says he did not sign the work authorization form submitted by Premier and he says that form's signature was forged. Although the authorization form signature is very light and difficult to see, I find that it does look similar to Mr. Duncanson's admitted invoice signature. However, I find it unnecessary to determine whether the authorization form signature is authentic since the document's authorization of "diagnose and advice" is consistent with Mr. Duncanson's submission that he requested a quote, and not repairs.

15. Mr. Duncanson says he told Premier not to do any repairs before providing a quote. Mr. Duncanson says that Premier did not call him to describe the needed repairs or the estimated cost. Mr. Duncanson says that Premier performed the work without his agreement. Premier does not describe how Mr. Duncanson allegedly authorized the repairs, such as by telephone or in person or another method. Further, Premier did

not provide a statement from the worker that allegedly received Mr. Duncanson's authorization.

16. Premier submitted an April 16, 2021 invoice for \$2,355.98 for the repairs. Mr. Duncanson signed the invoice below a typed statement saying that "I hereby acknowledge my indebtedness for the total amount of this invoice." It is undisputed that Mr. Duncanson paid Premier \$800. Premier says that Mr. Duncanson promised to pay the invoice balance on April 23, 2021. Mr. Duncanson says that he only paid Premier the \$800 to get his van back.
17. Premier claims that Mr. Duncanson owes the \$1,555.98 invoice balance.
18. So, did Mr. Duncanson authorize Premier's transmission repair work? I find that Premier has not proved that he did. In reaching that conclusion, I have considered Mr. Duncanson's signature on the invoice acknowledging the debt to Premier and his \$800 partial payment. I find that these actions are consistent with Premier's submission that Mr. Duncanson hired it. However, I find that they are also consistent with Mr. Duncanson's explanation that he only paid the \$800 to get his van released from Premier's shop.
19. Further, Mr. Duncanson says the transmission operated worse after Premier's work than before. Although expert evidence would be required to determine whether Premier's repairs complied with standard of care, I find that, as a driver, Mr. Duncanson is qualified to provide his impression of how the transmission felt while driving before and after Premier's repairs. Premier did not dispute this, or provide a mechanic's statement describing the transmission's condition after its repairs. So, I accept as accurate Mr. Duncanson's submission the transmission felt worse while driving after Premier's work. As a result, Mr. Duncanson says that he needed to repair the transmission at another repair shop.
20. Though Mr. Duncanson says that he took his van to another repair shop on April 21, 2021, he submitted an August 3, 2021 transmission repair invoice for \$2,991.19. Based on the invoice date, I find that second transmission repairs were performed on

August 3, 2021. I find the second transmission repairs are significant because Premier's invoice included a 6-month or 5,000 kilometer warranty for its transmission work and the August 3, 2021 transmission was within that date and kilometer range. If Mr. Duncanson had hired Premier for the transmission work as Premier claims, I find it unlikely that Mr. Duncanson would pay another shop \$2,991.19 for transmission repairs rather than pay Premier the claimed \$1,555.98 invoice balance and have it repair the transmission under Premier's warranty. Rather, I find it more likely that Mr. Duncanson took his van to another shop for repairs because he did not authorize Premier's work.

21. For the above reasons, I find that Premier has not proved that Mr. Duncanson authorized the repairs. So, I find that Mr. Duncanson did not hire Premier and he does not owe for Premier's work. Based on this finding, I also find that Mr. Duncanson does not owe Premier for its alleged bailiff expenses. So, I dismiss Premier's claims.

Mr. Duncanson's counterclaim for computer damage

22. It is undisputed that AA, Premier's manager, approached Mr. Duncanson on April 22, 2021 while he was sitting outside his van in a parking lot. This encounter occurred at a location relatively far from Premier's business location. AA asked Mr. Duncanson about the payment of Premier's repair invoice. Though this incident occurred outside of Premier's workplace, I find that AA approached Mr. Duncanson in his capacity as Premier's manager to discuss its business. As such, I find that Premier is responsible for AA's conduct under the concept of vicarious liability, which says that employers are responsible for their employee's work-related conduct (*B.(P.A.) v. Children's Foundation*, 1997 CanLII 10834 (BC CA)).
23. Mr. Duncanson says that AA damaged his computer by grabbing it and intentionally dropping it. In contrast, AA says that Mr. Duncanson tried to assault him with the computer and AA pushed it away trying to defend himself. AA says that, as a result, Mr. Duncanson dropped his computer himself.

24. I find that Mr. Duncanson's counterclaim is based on the tort of conversion. The tort of conversion includes wrongfully damaging another person's property. The tort of conversion is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights (see: *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104). So, Mr. Duncanson must prove that Premier wrongfully damaged his computer with either the effect or intention of interfering with Mr. Duncanson's rights.
25. Here, I find Premier's submission that Mr. Duncanson dropped the computer during a physical altercation that he started to be equally as likely as Mr. Duncanson's submission that Premier intentionally dropped the computer. As noted, Mr. Duncanson bears the burden of proving his counterclaim on a balance of probabilities. Since I find each party's alleged version of events equally likely, I find that Mr. Duncanson has not met his burden of proving that Premier's wrongful caused the alleged computer damage. So, I dismiss Mr. Duncanson's counterclaim as unproven.

CRT fees and dispute-related expenses

26. 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 see no reason in this case not to follow that general rule. Since neither party was successful in their claims or counterclaims, I find that neither party is entitled to reimbursement of their CRT fees. Neither party claimed reimbursement of dispute-related expenses.

ORDER

27. I refuse to resolve Premier's claim for \$100 relating to the lien registration.

28. I dismiss Premier's remaining claims and Mr. Duncanson's counterclaim.

Richard McAndrew, Tribunal Member