



Civil Resolution Tribunal

Date Issued: June 3, 2022

File: SC-2021-008121

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parker v. Uwaifo*, 2022 BCCRT 656

BETWEEN:

MICHAEL PARKER

APPLICANT

AND:

MOSES UWAIFO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about vehicle damage during repairs.
2. The applicant, Michael Parker, says he agreed to buy a used transmission from the respondent, Moses Uwaifo, to install in his 2003 Nissan Pathfinder. Mr. Parker says that Mr. Uwaifo told him he was a mechanic and offered to install the transmission at

his shop, to which Mr. Parker agreed. Mr. Parker says Mr. Uwaifo misrepresented himself and his business. He says Mr. Uwaifo's transmission installation work was deficient, and that Mr. Uwaifo damaged his truck's body and engine. Mr. Parker claims \$5,000, for estimated engine repairs, and other various expenses related to Mr. Uwaifo's alleged substandard work.

3. Mr. Uwaifo says that he told Mr. Parker the transmission he agreed to sell him might not be compatible with Mr. Parker's truck, but that Mr. Parker insisted he go ahead with the installation. Mr. Uwaifo says he completed the requested installation, but that the truck would not start. He says Mr. Parker took his truck back and did not pay Mr. Uwaifo anything for the transmission or his labour. Mr. Uwaifo denies that he damaged Mr. Parker's truck.
4. The parties are each self-represented.

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. 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.

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.
9. In Mr. Parker's application to the CRT, he named the respondent as "Mozazi Uwaifo". CRT staff confirmed that Mr. Parker agreed to Mr. Uwaifo's request for a spelling correction to "Moses Uwaifo", and so this correction is reflected in the style of cause above, even though the Dispute Notice was not amended to reflect that correction.

ISSUE

10. The issue in this dispute is whether Mr. Uwaifo's work was deficient and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Parker must prove his claims on a balance of probabilities (meaning "more likely than not"). I note that Mr. Uwaifo made submissions but did not provide any evidence in this dispute, despite having the opportunity to do so. I have considered all of the parties' submissions and Mr. Parker's evidence, but I refer only to what I find is necessary to explain my decision.

12. I start with the undisputed facts. Mr. Uwaifo advertised parts for sale from a 2002 Infiniti QX4 on Facebook Marketplace. Mr. Parker responded to the ad on October 3, 2021 to ask if the transmission was still available. The parties negotiated a \$600 price for the transmission. Mr. Uwaifo also offered to remove Mr. Parker's old transmission and replace it with the transmission from Mr. Uwaifo's truck. The parties negotiated a \$1,300 total price for the transmission part and Mr. Uwaifo's labour. Mr. Parker agreed to supply transmission fluid and a filter for the installation work.
13. Mr. Parker met with Mr. Uwaifo on October 4, and test drove Mr. Uwaifo's Infiniti vehicle to confirm the transmission was in working order before leaving his Pathfinder truck with Mr. Uwaifo to replace the transmission. Mr. Parker admits that Mr. Uwaifo mentioned their vehicles were different years and models, and that Mr. Uwaifo said he was not sure the transmission replacement would work properly. Mr. Parker says he advised Mr. Uwaifo that his research showed the transmissions were compatible. It is undisputed that Mr. Uwaifo agreed to proceed with the transmission replacement. I find there is no evidence to support Mr. Uwaifo's submission that Mr. Parker "insisted" that he proceed with the replacement.
14. The parties' text messages in evidence show Mr. Uwaifo estimated the work would take 2 days to complete. Mr. Parker followed up daily and Mr. Uwaifo confirmed the job was going well but extended the time for completion. On October 8, Mr. Uwaifo texted Mr. Parker that the new transmission was in, but the truck would not start. Mr. Parker responded with some suggestions for Mr. Uwaifo to try. Later that evening, Mr. Uwaifo texted Mr. Parker that there was a problem because the transmissions were not the same, and he asked if they could meet the next day to discuss a solution.
15. Mr. Parker says when he went to the shop on October 9, Mr. Uwaifo confirmed he had not transferred the torque converter with the transmission. The text messages show the parties agreed Mr. Uwaifo would try changing the torque converter. Mr. Parker followed up several times and provided tips about how to properly line up the torque converter. On October 15, Mr. Uwaifo advised Mr. Parker that the vehicle still would not start and that he did not know what the problem was.

16. It is undisputed that Mr. Parker went to Mr. Uwaifo's shop on October 16 to pick up his truck. Mr. Parker says he replaced his truck's starter because he thought it might be dead due to all the attempts to start it. He says he was ultimately unable to get his truck to run. The evidence shows Mr. Parker towed his truck first to his house, and later to Rain City Motor Sports Ltd. (Rain City) on October 18, to diagnose why it would not start.
17. Mr. Parker alleges that Mr. Uwaifo was unqualified to do the work. He says Mr. Uwaifo did not line up the torque converter properly and that he "forcefully and incorrectly" installed the transmission, which caused "catastrophic" engine damage and rendered the transmission unusable. Mr. Parker also alleges Mr. Uwaifo caused body damage.
18. As noted, Mr. Parker alleges Mr. Uwaifo misrepresented his qualifications to do the transmission work. Mr. Parker says he believed Mr. Uwaifo was a certified mechanic with a legitimate business, but that Mr. Uwaifo misled him.
19. The parties' October 4 text messages show that once they agreed on a price for the transmission part, Mr. Uwaifo stated: "I'm also a mechanic" and that he could do the transmission work at his shop. Mr. Parker says Mr. Uwaifo gave him a business card when they first met. The card in evidence is for "Mofix Autos" and states its services include "general auto repairs and dismantles". Mr. Parker says he researched Mofix Autos before leaving his truck with Mr. Uwaifo and found several current business pages online. Mr. Parker provided screenshots of various web pages, including one that stated Mofix Auto offered "transmission swap" services.
20. Mr. Uwaifo did not specifically respond to Mr. Parker's allegation that he misrepresented his qualifications or experience with transmission replacement work. However, even if Mr. Uwaifo is not a "certified" mechanic, I find there is no evidence that he represented himself as one. I also find there is no evidence that Mofix Autos was not a legitimate auto repair business. So, I find Mr. Parker's misrepresentation allegation unproven.
21. I turn to the question of whether Mr. Uwaifo's work was deficient.

Was Mr. Uwaifo's work deficient?

22. It is an implied term of any contract for professional services that the professional will perform their work to a reasonably competent standard. While there is no evidence before me about Mr. Uwaifo's specific qualifications, I find that he held himself out to be a professional mechanic, and so his contract with Mr. Parker was a contract for professional services.
23. When a customer alleges that a contractor's work was below the required standard, they must prove the deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Generally, an allegation that a professional's work was below a reasonably competent standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). Here, I find whether Mr. Uwaifo's mechanic work was substandard is outside common knowledge and therefore requires expert evidence.
24. Mr. Parker relies on Rain City's October 19, 2021 quote for repairs to show Mr. Uwaifo's installed the transmission incorrectly and caused the alleged damage. The quote includes a comments section, which states (reproduced as written):
- After removing transmission it appears as if the transmission was installed incorrectly. Damages indicate the torque converter was not lined up properly. Engine and transmission were forcefully mated causing the torque converter to push the fluid pump out and cause internal damage to the transmission and transfer case. During forceful installation the torque converter forced the crank out (approx. ½) walk. Customer requires new Engine (or rebuild) and transmission.
25. Rain City's quote does not include the mechanic's name who performed the diagnosis or their qualifications to provide expert evidence, as required by CRT rule 8.3. So, on

its face, the quote is not expert evidence. However, I accept that Rain City is generally in the business of auto mechanics and repair. Further, Mr. Uwaifo did not specifically question the Rain City mechanic's qualifications. I find it appropriate to exercise my discretion under CRT rule 1.2(2) and waive the requirements of rule 8.3 to promote the fair and efficient resolution of this dispute. For that reason, I accept Rain City's quote as expert evidence.

26. As noted, Mr. Uwaifo worked on the truck for 12 days, and he was unable to identify why the truck would not start. He says all his work was correctly done and says it is "not possible" to forcefully install a transmission. I infer from Mr. Uwaifo's submissions that it is his position the truck did not start because the transmission from his 2002 Infiniti QX4 was not compatible with Mr. Parker's 2003 Nissan Pathfinder.
27. Mr. Parker provided evidence from Wikipedia that suggests the Infiniti transmission is compatible with the Pathfinder. Given that Wikipedia articles are generally written by unknown authors, and they can be added to or changed frequently, I find their reliability is limited. Therefore, I place very little weight on the Wikipedia evidence.
28. At the same time, Mr. Uwaifo did not provide any evidence to support his position that the transmission was incompatible with Mr. Parker's truck engine. It is unclear why Mr. Uwaifo proceeded with the installation and repeatedly tried to start the vehicle if he believed the transmission was not compatible. I also note that the Rain City quote does not suggest the transmission it removed from Mr. Parker's truck was incorrect or incompatible with the engine. So, I find the balance of the evidence is at least slightly in Mr. Parker's favour that the transmission Mr. Uwaifo installed was compatible with Mr. Parker's truck.
29. Given the transmission was compatible, I find it should have worked had Mr. Uwaifo installed it correctly. In the absence of any evidence supporting Mr. Uwaifo's submission that a forceful installation was impossible, I am left with only Rain City's expert evidence.

30. On balance, I find that Mr. Uwaifo's transmission work was substandard. I base this conclusion on Rain City's comments that the torque converter was not lined up properly and the transmission was forcefully installed, which resulted in internal damage to such an extent that both the transmission and the engine require replacement.
31. Mr. Parker does not claim anything for the required transmission replacement, as he needed a new one anyway. However, Mr. Uwaifo does not dispute that Mr. Parker's engine was functioning normally before he started work on the truck. So, I find Mr. Uwaifo is liable for the engine replacement.
32. The Rain City quote is for \$2,200 plus tax to replace the damaged engine, including parts and labour. In addition, an October 21, 2021 Rain City invoice shows Mr. Parker paid \$492.80 for the diagnosis. I find these amounts reasonable, and so I order Mr. Uwaifo to pay \$2,956.80 for the required engine replacement and diagnosis.
33. Mr. Parker also says that Mr. Uwaifo dented his driver's side rear door, spilled oil in the truck's interior floors, and placed oily parts on his seats, which Mr. Uwaifo does not particularly deny. I find these allegations are supported by the photographic evidence and Mr. Parker's texts to Mr. Uwaifo immediately after retrieving his truck from Mr. Uwaifo's shop. So, I find Mr. Uwaifo is responsible for the repair and remediation of this claimed damage.
34. Mr. Parker provided a March 24, 2022 estimate from Kingsway Auto Detail for "oil and dirt removal". The description includes a deluxe detail, including shampooing the carpets and scrubbing the seats. I find this \$350 estimate reasonable to remediate the oil spills and order Mr. Uwaifo to pay that amount.
35. Mr. Parker provided a March 26, 2022 estimate from Circuit Collision & Autoglass (Circuit) to repair body damage on his truck. The Circuit estimate includes 21.6 hours relating to the driver's side rear door damage, at a rate of \$80 per hour plus tax. Based on this undisputed estimate, I find Mr. Uwaifo must pay Mr. Parker \$1,935.36 for the door dent.

36. Mr. Parker also provided 4 invoices from Lordco Auto Parts (Lordco) for various parts and materials he purchased for his truck between October 4 and 17, 2021. I find he is entitled to reimbursement for the October 4 invoice totalling \$203.30 for the transmission fluid and filter he agreed to provide for Mr. Uwaifo's transmission replacement work, which was ultimately wasted.
37. Similarly, I find Mr. Parker is entitled to reimbursement of a second October 4 Lordco invoice totalling \$44.78 for oil and a filter. I find the parties' text messages show that Mr. Uwaifo also agreed to replace the truck's upper oil pan gasket. So, I find this expense reasonable and also wasted because the engine needs replacement.
38. I find Mr. Parker has not provided any supporting evidence that the other 2 Lordco invoices for a starter and a crankshaft were necessary expenses resulting directly from Mr. Uwaifo's deficient work. So, I decline to order their reimbursement.
39. Mr. Parker claims \$250 in towing expenses. I find the initial tow from Mr. Uwaifo's shop to Mr. Parker's home, and the second tow to Rain City were necessary due to Mr. Uwaifo's deficient work. These tow expenses total \$190, which I find reasonable and order Mr. Uwaifo to pay.
40. However, Mr. Parker claims for towing his truck to a storage facility, and he also claims \$255 in storage fees. Mr. Parker did not explain why it was necessary to store his vehicle. I infer that he is awaiting the outcome of this dispute to incur the repair costs. However, I do not find Mr. Uwaifo should be responsible for these expenses as they are not the direct result of his deficient work but are due to Mr. Parker's decision to wait to repair his vehicle.
41. In summary, the combined total of Mr. Parker's proven damages is \$5,680.24. I note that Mr. Parker filed his CRT application for dispute resolution before he received many of the repair estimates set out above. I find he claimed \$5,000 because that was the CRT's small claims monetary limit. In his submissions, Mr. Parker asks to be awarded the \$5,000 maximum, so I find he has abandoned the amount of his claim above \$5,000. I order Mr. Uwaifo to pay Mr. Parker \$5,000.

42. The *Court Order Interest Act* (COIA) applies to the CRT. I note the CRT's small claims monetary limit is exclusive of COIA interest and CRT fees. As Mr. Parker has not yet incurred many of the repair costs, I find he is not entitled to pre-judgment interest on those amounts. However, I find he is entitled to pre-judgment interest under the COIA on \$930.88, for the Rain City diagnosis, the 2 Lordco invoices, and the ordered towing expenses. I find it is appropriate to order pre-judgment interest on those expenses from October 21, 2021, the date the last expense was incurred. This equals \$2.59.
43. 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. I find Mr. Parker is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

44. Within 30 days of the date of this decision, I order Mr. Uwaifo to pay Mr. Parker a total of \$5,177.59, broken down as follows:
- a. \$5,000 in damages for Mr. Uwaifo's substandard mechanic work,
 - b. \$2.59 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
45. Mr. Parker is entitled to post-judgment interest under the COIA, as applicable.
46. 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.

47. 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.

Kristin Gardner, Tribunal Member