



Civil Resolution Tribunal

Date Issued: June 7, 2022

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jackson-Lewis v. Berath (dba Gasket Headz)* 2022 BCCRT 667

BETWEEN:

RICKY JACKSON-LEWIS

APPLICANT

AND:

TYLER BERATH (Doing Business As GASKET HEADZ)

RESPONDENT

AND:

RICKY JACKSON-LEWIS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about payment for vehicle repairs and related issues.
2. The applicant, and respondent by counterclaim, is Ricky Jackson-Lewis. The respondent, and applicant by counterclaim, is Tyler Berath (Doing Business As Gasket Headz). Mr. Berath agreed to do some mechanical work on Mr. Jackson-Lewis's Toyota Highlander.
3. Mr. Jackson-Lewis undisputedly paid Mr. Berath \$1,725 in advance for parts. When no work was done for over 2 months, Mr. Jackson-Lewis took the Highlander back. Mr. Jackson-Lewis claims a refund of his \$1,725 payment, \$151.03 for the cost of towing, \$528.82 for missing parts and related charges, \$11.70 for brake fluid and \$1,433.25 for labour to reinstall removed parts, for a total of \$3,849.80
4. Mr. Berath says he purchased some parts but Mr. Jackson-Lewis refused to pay for the rear calipers which were an additional \$300, so Mr. Berath was not required to install the parts. Mr. Berath says he is not responsible for Mr. Jackson-Lewis's decision to remove the Highlander while it was disassembled and should not have to pay for the related expenses.
5. Mr. Berath loaned Mr. Jackson-Lewis his Ford Explorer for some of the time the Highlander was in Mr. Berath's shop. Mr. Berath counterclaims \$1,998 for the use of the Explorer, \$112 for missing "window vent covers", and \$728 for windshield damage.
6. Both parties are self-represented.

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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
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.

ISSUES

11. The issues in this dispute are:
 - a. Which party breached the contract to repair the Highlander, and what remedies, if any, are appropriate?

- b. Is Mr. Berath entitled to compensation for loaning Mr. Jackson-Lewis the explorer, or for alleged damage to that vehicle?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Jackson-Lewis must prove his claims on a balance of probabilities, meaning more likely than not. Mr. Berath must prove his counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Berath did not provide any evidence despite having the opportunity to do so.
13. In April 2021, Mr. Jackson-Lewis and Mr. Berath exchanged text messages and phone calls about repairing Mr. Jackson-Lewis's Highlander. Mr. Berath prepared a written quote that Mr. Jackson-Lewis accepted. I find this formed the basis of their contract. The quote said Mr. Berath was to purchase several listed parts for \$1,725. Mr. Jackson-Lewis undisputedly paid the \$1,725 in advance. The quote also included a labour estimate of \$600, but it is undisputed that the final labour cost was to be determined, and paid, upon completion of the work.
14. Mr. Jackson-Lewis says on June 12, 2021, he discovered that Mr. Berath never purchased the parts. Mr. Jackson-Lewis asked for his money back, but Mr. Berath refused. Mr. Berath says he purchased the parts that were in stock at his supplier, but the rear calipers (\$300) were not in stock and arrived 2.5 months later. Mr. Berath says Mr. Jackson-Lewis refused to pay the \$300 for the rear calipers. Mr. Berath says his policy is that if a customer does not pay in full for parts, he puts the job on hold. Mr. Berath says he was therefore was not required to complete the repairs.
15. I find Mr. Berath's submission inconsistent with his written quote, which stated the \$1,725 price explicitly included the \$300 calipers. Mr. Berath does not explain why he needed an additional \$300 for the calipers. He did not provide any records showing when he purchased or received the calipers. There is also no evidence of Mr. Berath ever asking for another \$300, although there are numerous texts where he asked for more time to complete the repairs, citing various reasons for the delay. Given the

evidence, I find Mr. Berath did not ask for another \$300, but even if he did, I find he was not entitled to refuse to install the parts, given the parts were paid for in full.

16. Turning to the delay, I find it was an implied term of the parties' contract that Mr. Berath would repair the Highlander within a reasonable period of time. Delay does not normally amount to repudiation, which is where one party shows an intention not to be bound by the contract. However, I find the delay together with Mr. Berath's conduct amounted to a repudiation, for the following reasons.
17. First, although the written quote did not specify a completion date, it estimated 8 hours of labour. From the parties' texts I find Mr. Berath promised the repairs would be completed within a day after Mr. Jackson-Lewis dropped off the Highlander on April 6. Although Mr. Jackson-Lewis was accommodating of numerous short-term delays, I find the cumulative 2-month delay was disproportionate to the original 1-day time frame.
18. Second, I accept Mr. Jackson-Lewis' evidence that Mr. Berath never purchased the parts. Mr. Berath says he returned the parts "with a restocking fee", but he provided no supporting evidence. When Mr. Jackson-Lewis said in a June 14 text that Mr. Berath admitted he had not purchased any parts, Mr. Berath did not deny it. On balance, I find Mr. Berath did not purchase any parts despite collecting \$1,725 from Mr. Jackson-Lewis for that purpose.
19. Third, it is undisputed that in early June Mr. Berath asked for his Explorer back, but Mr. Jackson-Lewis was reluctant to part with it before the repair work was completed and while Mr. Berath still had the Highlander. Despite this, Mr. Berath went to Mr. Jackson-Lewis's workplace and, using a spare set of keys, took the Explorer, leaving Mr. Jackson-Lewis without a vehicle.
20. I find Mr. Berath's 2-month delay, failure to purchase any parts, and unilateral taking of the courtesy car amount to a repudiation of his obligations under the parties' agreement. So, I find Mr. Jackson-Lewis was entitled to treat the contract as being at an end and claim damages.

21. Damages for breach of contract are intended to put the innocent party in the position they would have been in if the contract had been performed. Mr. Jackson-Lewis claims \$1,725 as a refund of what he paid for parts. As no parts were installed, I am satisfied that Mr. Jackson-Lewis received nothing of value despite the Highlander being in Mr. Berath's shop for 2 months. In the circumstances, I find he is entitled to a full refund of \$1,725.
22. I turn to Mr. Jackson-Lewis's other claimed damages.
23. Mr. Jackson-Lewis hired a tow truck to collect the Highlander from Mr. Berath's shop. I accept that a tow truck was necessary because the Highlander was undisputedly undriveable at the time, being partially disassembled. Mr. Berath argues that Mr. Jackson-Lewis deprived him of the opportunity to return the Highlander with his own tow truck. Given the evidence, I am not satisfied that Mr. Berath would have done this if asked, and I find Mr. Jackson-Lewis was not required to give Mr. Berath this opportunity. So, I allow the claimed \$151.03, which is supported by an invoice.
24. Mr. Jackson-Lewis claims \$1,433.25 for labour to reinstall the parts he says Mr. Berath removed and refused to reinstall. He does not specify which parts these are. Mr. Jackson-Lewis provided an estimate from another mechanic for \$1,537.65, but the estimate is primarily the cost of parts (rotors, pads and calipers). I find these are new parts and not existing parts that need to be reinstalled. It is not clear what existing parts need to be reinstalled, or how much it will cost, so I find Mr. Jackson-Lewis has not proven this aspect of his claim.
25. Mr. Jackson-Lewis claims \$11.70 for brake fluid. It is undisputed that Mr. Berath drained the brake fluid as a necessary step in removing the calipers and accessing the e-brake components. I find the cost of replacement brake fluid flowed from Mr. Berath's breach of contract, and I allow the \$11.70 claim.
26. Mr. Jackson-Lewis says, and I accept, that his old rear calipers were missing when he had the Highlander towed. Mr. Jackson-Lewis claims \$328.82 for new rear calipers. He also claims \$200 for a related fee the installer imposed. Mr. Berath does

not challenge, and I accept, Mr. Jackson-Lewis's assertion that the installer charges this \$200 fee when new calipers are installed and old calipers are not exchanged.

27. The original quote from Mr. Berath listed new rear calipers as a part to be purchased and installed. So, I find Mr. Jackson-Lewis' old rear calipers needed replacing. I do not allow the claim for \$328.82 for new rear calipers. However, I allow the \$200 claim for the installer's fee, which I am satisfied was made necessary because Mr. Berath removed the rear calipers.
28. In summary, I find Mr. Jackson-Lewis's total damages for Mr. Berath's repudiatory breach of contract amount to \$2,087.73, broken down as \$1,725 for the initial parts payment, \$200 for caliper fees, \$151.03 for towing fees, and \$11.70 for brake fluid.

Counterclaim

29. As noted, Mr. Berath loaned Mr. Jackson-Lewis his Explorer as a courtesy vehicle on April 16.
30. Mr. Berath claims \$1,998 for Mr. Jackson-Lewis's use of his Explorer for "over three months". I find Mr. Jackson-Lewis did not have the Explorer for that long, but nothing turns on this. The parties' text messages show that Mr. Berath freely offered the use of his Explorer at no charge, recognizing Mr. Jackson-Lewis's patience with the delays in repairing his Highlander. In the circumstances, I find Mr. Berath is not entitled to any compensation for the use of the Explorer.
31. So, what about the Explorer's alleged damage? When Mr. Berath loaned Mr. Jackson-Lewis his Explorer, this created a legal relationship of bailment. A bailment is the temporary transfer of property from the bailor (Mr. Berath) to the bailee (Mr. Jackson-Lewis). As a bailee, Mr. Jackson-Lewis was obligated to take reasonable care of Mr. Berath's Explorer. Where the property is damaged while in the bailee's possession, there is a presumption the bailee was negligent (see *Cahoon v. Isfeld Ford*, 2009 BCPC 334).

32. Mr. Berath alleges Mr. Jackson-Lewis damaged the Explorer's windshield. He says there was a pre-existing stone chip but Mr. Jackson-Lewis "hit a flock of birds and the whole passenger side was smashed." The parties' text messages show that on April 23, Mr. Jackson-Lewis reported a bird had flown into the windshield and left a "decent crack". He suggested they could "sort something out" when they exchanged vehicles. Mr. Berath responded that it was "all good man, the window cracked right in the line of sight the day I got it. No worries at all." Based on this, I find there was a pre-existing crack, not a chip as Mr. Berath alleges. Mr. Berath did not provide any photos showing the extent of the damage before or after the bird incident. So, I find it unproven that Mr. Jackson-Lewis caused any significant additional damage. Even if he did, I find a bird flying into the windshield would not automatically mean Mr. Jackson-Lewis was negligent. Further, Mr. Berath provided no estimate or invoice for windshield repair to support his claim. For all these reasons, I dismiss this claim.
33. Finally, Mr. Berath claims \$112 for a missing passenger window vent cover. Mr. Jackson-Lewis says he would have no reason to remove a window vent cover, and he was not aware of whether they were present or missing, as the Explorer was in poor condition. On balance, I find Mr. Berath has not proven that a window vent cover went missing while Mr. Jackson-Lewis had the Explorer. He also provided no evidence of the value of the window vent cover. I dismiss this claim.
34. The *Court Order Interest Act* applies to the CRT. Mr. Jackson-Lewis is entitled to pre-judgment interest on the \$2,087.73 damages from June 14, 2021, the date I find the contract was at an end, to the date of this decision. This equals \$9.24.
35. 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. Jackson-Lewis was substantially successful, so I find he is entitled to reimbursement of \$175 in CRT fees. Mr. Berath's counterclaim was unsuccessful, so I dismiss his claim for reimbursement of CRT fees. Neither party claimed dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order Mr. Berath to pay Mr. Jackson-Lewis a total of \$2,271.97, broken down as follows:
- a. \$2,087.73 in damages,
 - b. \$9.24 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in CRT fees.
37. Mr. Jackson-Lewis is entitled to post-judgment interest, as applicable.
38. I dismiss Mr. Jackson-Lewis's remaining claims and Mr. Berath's counterclaim.
39. 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.
40. 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.

Micah Carmody, Tribunal Member