



Civil Resolution Tribunal

Date Issued: June 14, 2022

File: SC-2021-008004

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clearly Plumbing And Drainage Ltd. v. Gerlak Holdings Ltd.*,
2022 BCCRT 692

B E T W E E N :

CLEARLY PLUMBING AND DRAINAGE LTD.

APPLICANT

A N D :

GERLAK HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a replaced transmission. The applicant, Clearly Plumbing and Drainage Ltd. (Clearly), says the respondent, Gerlak Holdings Ltd. (Gerlak), replaced its van's transmission without authorization. Clearly also says Gerlak should have advised that the van's transmission was covered under a manufacturer's warranty so

it could be repaired elsewhere at no cost. Clearly seeks \$3,700.45 as a refund for the transmission work it paid for.

2. Gerlak disagrees. It says Clearly's representatives provided verbal permission for the repairs and later paid for the work without complaint. It says Clearly has not proven that the van's transmission is under warranty.
3. Clearly's owner, Vincent Singh, represents it. Gerlak's owner, Gerry Kreuzkamp, represents it.
4. For the reasons that follow, I dismiss Clearly's claims.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38,

the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did the parties agree on the van transmission repairs?
 - b. Did Gerlak breach any obligation to advise Clearly that its transmission was under warranty?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Clearly must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background. Clearly dropped off its van at Gerlak's business in October 2020. Clearly then asked Gerlak to inspect the van and find out why it was losing power.
12. Gerlak provides the following version of subsequent events. Its employee phoned Clearly to advise that the van's transmission needed to be repaired and the van would

be ready for pickup on October 30, 2020. Clearly's representative authorized the repairs and Gerlak replaced the transmission. Gerlak says that when Clearly's employee picked up the van on October 30, 2020, Clearly advised it would call later to pay for the work through a credit card.

13. Clearly disagrees and says Gerlak replaced the transmission without permission. For the reasons that follow, I find Gerlak's version of events is supported by the evidence.
14. Gerlak's evidence shows it sent Clearly an invoice on March 10, 2021, for transmission repairs. The amount was \$3,700.45. There is no evidence, such as emails or text messages, that show Clearly objected to receiving a bill or otherwise having the work done.
15. Further, the evidence shows Clearly paid the invoice. On balance, I find it unlikely that Clearly would have made the payment if it never authorized the transmission repair. Gerlak's representative, Mr. Kreuzkamp, says that he spoke to Clearly's representative, Mr. Singh, about payment on March 24, 2021. He says Gerlak agreed to discount the bill of \$3,700.45 to \$3,313.24. I find this likely occurred because another version of Gerlak's invoice shows this discount as a line item. It says, "As Agreed Upon with Vinnie". Mr. Singh does not dispute this. A transaction receipt shows that Clearly paid the revised amount of \$3,313.24 on March 25, 2021.
16. As I have found the parties agreed for Gerlak to do the transmission repairs, I next consider issue of the transmission's warranty. Clearly says Gerlak should have warned it that the van's transmission was still covered by a manufacturer's warranty. Clearly says it could have had repairs done elsewhere under the warranty at no cost. For the reasons that follow, I find it unproven that the van's transmission was under a manufacturer's warranty.
17. Gerlak's invoice said the van had a mileage of 104,393 kilometers at the time. Clearly provided a screenshot of the terms of a manufacturer's warranty that suggested the van's powertrain was still under warranty based on this mileage. In contrast, Gerlak provided a screenshot of a warranty from the same manufacturer that suggested the

warranty had expired based on the same mileage. There is no evidence before me to assist in choosing which warranty terms apply. As Clearly bears the burden of proof, I find it unproven that the transmission work could have been repaired at no cost under the warranty.

18. Further, I find it unproven that Gerlak was obligated to check or warn Clearly that the work might be covered by a manufacturer's warranty. The parties did not document their agreement apart from the invoice, so there are no written contract terms before me to support Clearly's submission. Clearly says Gerlak breached professional standards by failing to do advise about the warranty, but it provided no evidence about the standards of car mechanics.
19. Finally, there is also no indication that Gerlak's work was deficient or that it failed to fix the power loss issues that Clearly complained of.
20. Given the above, I find that Clearly is not entitled to a refund and I dismiss its claims.
21. 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 dismiss Clearly's claims for reimbursement of CRT fees. Gerlak did not pay CRT fees or claim dispute-related expenses.

ORDER

22. I dismiss Clearly's claim and this dispute.

David Jiang, Tribunal Member