



# Civil Resolution Tribunal

Date Issued: June 24, 2022

File: SC-2021-008505

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Demetriooff v. Smith (dba Ernies Blackpoint Repair)*, 2022 BCCRT 739

B E T W E E N :

JARA DEMETRIOFF

**APPLICANT**

A N D :

CLINT SMITH (Doing Business As ERNIES BLACKPOINT REPAIR)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. The applicant, Jara Demetriooff, hired the respondent, Clint Smith (Doing Business As Ernies Blackpoint Repair), to diagnose why her vehicle was stalling. Miss Demetriooff says Mr. Smith agreed to limit the vehicle's repair costs to \$1,500. Miss Demetriooff says that after working on the vehicle for over a month, Mr. Smith advised her the engine needed replacement, and his bill was \$2,400. Miss Demetriooff says Mr. Smith

refused to release her vehicle unless she paid his bill, which she says she did not agree to and cannot afford. Miss Demetriooff claims \$5,000 for harassment and the cost of her vehicle, which Mr. Smith still has at his shop. In the alternative, Miss Demetriooff asks for an order that Mr. Smith return her vehicle to her, plus \$3,000 for costs associated with being without a vehicle for the past year and damages for harassment.

2. Mr. Smith says that Miss Demetriooff agreed to the vehicle repairs that he performed. He says he offered to store her vehicle at no cost for 2 months until she could pay his bill in full, but she has refused to pay. Mr. Smith says Miss Demetriooff now owes him several months of storage costs, and he wants her vehicle removed from his property. Mr. Smith denies harassing Miss Demetriooff.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.

6. 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.
7. 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.
8. I note the parties both confirmed their consent to disclose their communications during the facilitation stage of these proceedings. However, neither party included copies of any such communications in evidence, so they are not before me, and I have not considered them in these reasons.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the parties agree to limit the cost of Miss Demetriooff's vehicle repairs to \$1,500, and if so, did Mr. Smith breach the parties' agreement?
  - b. What is the appropriate remedy, if any?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Miss Demetriooff must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of the

parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

11. It is undisputed that Miss Demetriooff towed her 2006 Toyota Rav4 vehicle to Mr. Smith's shop on about May 13, 2021 because it was stalling and a "battery boost" had not fixed the problem. It is also undisputed that Mr. Smith advised Miss Demetriooff on May 26, 2021 that her vehicle needed a new electronic control unit (ECU), though the part was backordered.
12. Mr. Smith says he discussed with Miss Demetriooff the potential costs and pitfalls of investing in her vehicle, which he described as being in "poor shape". However, he says she wanted to go ahead anyway. He also says he specifically explained that there may be costs associated with programming the ECU part once it was received.
13. Miss Demetriooff does not particularly deny that Mr. Smith cautioned her about trying to repair her vehicle. However, she says that during their May 26 conversation, she advised Mr. Smith that her firm budget for vehicle repairs was \$1,500. She says Mr. Smith agreed that all costs to replace the ECU, including parts and labour, would not go beyond her \$1,500 budget. While Ms. Demetriooff agrees that Mr. Smith mentioned the potential ECU programming costs, she says he confirmed the overall cost would not exceed \$1,500.
14. Mr. Smith did not respond to Miss Demetriooff's allegation that he agreed to limit repair costs to \$1,500. I find this is a significant omission, given it is one of the main arguments underlying Miss Demetriooff's claim. Miss Demetriooff also provided a statement from her daughter, MD, who said they were present during their mother's telephone conversations with Mr. Smith over speaker phone and they heard Mr. Smith agree to the \$1,500 limit. On balance, given that Mr. Smith did not specifically deny it, I accept that Miss Demetriooff advised Mr. Smith that her repair budget was \$1,500, and that he agreed to cap the repair costs at that amount.
15. Mr. Smith says that when he installed the ECU part on about June 7, 2021, he discovered he was unable to program the part at his shop and required a dealership

to do so. Mr. Smith says he towed Miss Demetrioﬀ's vehicle to a Toyota dealership for the ECU programming, after which the vehicle still would not start, so he towed the vehicle back to his shop for further diagnosis. He says the new ECU revealed additional issues with the vehicle. After further troubleshooting, he ultimately concluded that Miss Demetrioﬀ's vehicle required a new engine.

16. Miss Demetrioﬀ says that after Mr. Smith got her vehicle back from the Toyota dealership, he called to tell her he had successfully started her vehicle. She says she could hear it in the background, but Mr. Smith said he still needed the car for "a few more days". She says Mr. Smith then left her a June 18, 2021 voicemail advising his bill for the work he had done so far was \$2,400, but the vehicle would not run and needed an engine replacement.
17. While Mr. Smith did not provide a copy of his invoice to June 18, 2021, he does not deny telling Miss Demetrioﬀ that his bill was \$2,400. Mr. Smith says that he kept Miss Demetrioﬀ advised of the costs during the repair process, which Miss Demetrioﬀ denies. Mr. Smith says he uses "Shopboss" management software, which allows him to text and email his clients, though he provided no evidence that he kept Miss Demetrioﬀ updated about the status of her vehicle or repair costs through this software. Given Mr. Smith's stated concerns about spending money on repairing the vehicle and the parties' agreement to limit repair costs to \$1,500, I would have expected Mr. Smith to document Miss Demetrioﬀ's authorization for repair costs over the agreed amount.
18. Overall, I prefer Miss Demetrioﬀ's detailed submissions about the difficulties she says she encountered in getting updates from Mr. Smith on the vehicle repair status and the lack of any communication from him about costs until June 18, 2021. On balance, I find that Mr. Smith did not advise Miss Demetrioﬀ that vehicle repairs had exceeded \$1,500. I also find Miss Demetrioﬀ did not agree at any time to pay Mr. Smith more than \$1,500. I find that in performing unapproved work for which he demanded payment of more than the agreed \$1,500, Mr. Smith breached their agreement.

19. Generally, damages for a breach of contract are intended to put the innocent party in the position they would have been in if the contract had been performed: *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. Here, if Mr. Smith had fulfilled his obligations under the agreement, he would have stopped working on Miss Demetriooff's vehicle after reaching the \$1,500 limit. This would not necessarily have left Miss Demetriooff with a working vehicle. However, she would not be obligated to pay Mr. Smith more than the agreed \$1,500 and she could then determine how she wanted to proceed.
20. So, what is the appropriate remedy? As noted, Miss Demetriooff requests that Mr. Smith either pay her \$5,000 for harassment and compensation for her vehicle, which he still has, or return her vehicle and pay her \$3,000 for her costs associated with being without the car since June 2021 and damages for harassment.
21. Turning first to Miss Demetriooff's allegation of harassment, even if I accepted that Mr. Smith had harassed her, which I find is not proven on the evidence, there is no recognized tort of harassment in British Columbia: see *Total Credit Recovery v. Roach*, 2007 BCSC 530. This means, Miss Demetriooff has no legal right to claim damages on the basis that Mr. Smith allegedly harassed her.
22. As for requiring Mr. Smith to pay Miss Demetriooff for her vehicle, I find that would potentially put her in a better position than if the contract had been performed. Miss Demetriooff provided a screenshot of a "Kelly Blue Book" private sale valuation for a similar vehicle at approximately \$7,000. However, I infer that this valuation is for a vehicle in running condition, and the condition of Miss Demetriooff's vehicle is unclear. There are no photographs and there is no evidence about the vehicle's anticipated repair costs if it requires a new engine as Mr. Smith suggests. Overall, I find Miss Demetriooff has not proven the vehicle's value, and I decline to order that Mr. Smith pay her to keep the vehicle.
23. I also find Miss Demetriooff has not proven her alleged damages for being without a vehicle for the last year. She says she incurred extra expenses for using home delivery services for grocery and household goods. Miss Demetriooff says she was

“careful” to include in her evidence only delivery expenses incurred after May 13, 2021. I find this suggests that she used such services before that date. Further, she admits to experiencing “escalating mobility issues”, so I find it is likely she would have continued to use delivery services, even with a working vehicle. Miss Demetriooff did not provide any detailed receipts, only the order totals. She also provided no evidence to support her estimate of a 20% mark-up on the in-store prices for having the goods delivered. Finally, as noted, I find Miss Demetriooff would not necessarily have had a working vehicle, even if Mr. Smith had adhered to their agreement to charge only \$1,500. In other words, I find it is likely she would have used home delivery services in any event. Therefore, I find Miss Demetriooff has not proven she is entitled to compensation for using home delivery services.

24. Under the circumstances, I find the most appropriate remedy is for Miss Demetriooff to retrieve her vehicle, in its present condition. Had Mr. Smith stopped working after reaching \$1,500 worth of services, this would have been an option open to Miss Demetriooff. Therefore, I order that Mr. Smith make Miss Demetriooff’s vehicle available for her to pick up, at a mutually agreeable time and date, not later than July 15, 2022. Miss Demetriooff is responsible for any costs associated with retrieving her vehicle, including any towing expenses.
25. I note that Mr. Smith says he still wants to be paid for his services. While the parties agreed Miss Demetriooff would pay Mr. Smith a maximum of \$1,500, she paid only the initial \$1,000 deposit. Miss Demetriooff provided bank records showing she e-transferred Mr. Smith the \$500 balance under their agreement on June 19, 2021. However, the records also show that Mr. Smith did not deposit the money, so it was returned to Miss Demetriooff’s account after 30 days. Mr. Smith provided no explanation for his failure to accept the \$500.
26. The only invoice Mr. Smith provided for his work was undated, in the amount of \$5,174.96, including \$4,500 in storage fees. Mr. Smith did not file a counterclaim in these proceedings for payment of his invoice or the \$500 outstanding from the parties’ agreement. Therefore, I infer it is Mr. Smith’s position that he is entitled to a set-off

for payment of this invoice. However, as I have not ordered Mr. Smith to pay Miss Demetriooff anything, there is nothing to set-off. So, I make no findings about whether Miss Demetriooff owes Mr. Smith anything further.

27. 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. While I find Miss Demetriooff was partly successful, neither party paid any CRT fees nor claimed dispute-related expenses, so I make no order.

## **ORDERS**

28. I order that Mr. Smith make Miss Demetriooff's 2006 Toyota Rav4 vehicle available for her to pick up, at a mutually agreeable time and date, not later than July 15, 2022. Miss Demetriooff is responsible for any costs associated with retrieving the vehicle, including any towing expenses.
29. 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.
30. 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.

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Kristin Gardner, Tribunal Member