



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sampson v. Klein (dba AK Customs & Automotive)*, 2022 BCCRT 1248

B E T W E E N :

APRIL JOEANN SAMPSON

APPLICANT

A N D :

AL KLEIN (Doing Business As AK CUSTOMS & AUTOMOTIVE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. April Joann Sampson hired Al Klein to install a replacement engine in her daughter's car. Mr. Klein does business as AK Customs & Automotive. He charged Mrs. Sampson \$2,200 for the engine installation, which Mrs. Sampson says far exceeded his original quote. She argues that he spent too much time on the job and

charged a 10% “shop time fee” that she had not agreed to. She also says that he unnecessarily installed a new water pump and timing belt in the old engine in an attempt to repair it. She claims \$1,366, which she says is the amount her overcharged her, plus \$274.47, the cost of the water pump and timing belt. Mrs. Sampson is self-represented.

2. Mr. Klein says that he provided a rough estimate before starting the job and told Mrs. Sampson that work would be charged by the hour. He denies overcharging her. He also says that it was reasonable to attempt to repair the old engine. He is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 of this dispute call into question the credibility, or truthfulness, of the other. 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 *Yas v. Pope*, 2018 BCSC 282, 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.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. As mentioned above, Mrs. Sampson claimed against Mr. Klein doing business as AK Customs & Automotive. In his submissions, Mr. Klein denies that he is a business, saying that he repairs vehicles as a "hobby". The invoice at issue in this dispute has "AK Customs & Automotive" stamped at the top, so I find that Mr. Klein did business under that name. However, because a sole proprietorship is not a legal entity separate from the person who operates it, nothing ultimately turns on this.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Klein breach the parties' contract by attempting to repair the old engine?
 - b. Did Mr. Klein breach the parties' contract by spending too much time replacing the engine?
 - c. Did the contract allow Mr. Klein to charge a shop fee?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mrs. Sampson as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Most of the facts are undisputed. Mrs. Sampson's daughter's vehicle broke down in November 2021. The vehicle was towed to an auto repair shop (not Mr. Klein's).

According to a statement from the mechanic who inspected the vehicle (whose name is not legible on the statement), the engine was “no good”. On January 13, 2022, Mrs. Sampson had it towed to Mr. Klein’s shop so that Mr. Klein could install a used replacement engine, which Mrs. Sampson had bought separately. It is undisputed that Mrs. Sampson hired Mr. Klein to install the replacement engine even though it was her daughter’s vehicle.

11. The parties agreed to a \$60 hourly rate. Mrs. Sampson says that before she hired him, Mr. Klein’s son TK (who works with Mr. Klein) said that the job would take “approximately 10 or a few more hours”. Mr. Klein does not specifically deny this, but says that it was a verbal estimate only, not a quote. I agree that TK’s language clearly indicates a general time estimate, not a fixed-price quote.
12. Mr. Klein says that after inspecting the engine, he saw that it was not seized as Mrs. Sampson had said. He believed that it would be cheaper to repair it than replace it. On January 24, 2022, either Mr. Klein or TK (it is not clear who) told Mrs. Sampson that it may be possible (and cheaper) to repair the original engine with a new water pump and timing belt. Mrs. Sampson agreed to this. Mrs. Sampson bought a new timing belt and pump for \$245.07 plus tax and gave it to Mr. Klein. Mr. Klein installed these parts in the old engine.
13. The next day, Mr. Klein told Mrs. Sampson that it would take additional work to repair the old engine. The parties dispute exactly what he said. Mrs. Sampson says that Mr. Klein told her the entire engine would need to be rebuilt. Mr. Klein does not specifically dispute this, but says he told her that it would still be cheaper to repair the old engine. Either way, Mrs. Sampson asked Mr. Klein to install the replacement engine as originally planned. She says that other mechanics told her rebuilding the engine was not possible. I return to this allegation below.
14. The car was ready on January 30, 2022. When Mrs. Sampson picked it up Mr. Klein gave her a \$2,200 invoice for 36.5 hours of work. Mrs. Sampson says that Mr. Klein verbally told her he had also applied a “10% shop time fee”. Mr. Klein says that he charged a \$10 fee for shop supplies, not 10%. I find that Mr. Klein’s evidence is

correct on this point. I say this because 36.5 hours at \$60 an hour is \$2,190. So, a \$10 surcharge explains the \$2,200 total. Mrs. Sampson paid the invoice.

15. There is no issue with the quality of Mr. Klein's work. Mrs. Sampson essentially makes 3 claims. First, she argues that Mr. Klein should never have suggested repairing the old engine. Second, she argues that Mr. Klein spent an unreasonable amount of time on the job. Third, she argues that Mr. Klein was not entitled to charge for his shop supplies.

Did Mr. Klein breach the parties' contract by attempting to repair the old engine?

16. There is an implied term in contracts for professional services that the work will be done to a reasonably competent standard. In general, expert evidence is required to prove whether a professional's conduct fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when conduct is obviously substandard, or the conduct relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112. I find that the question of whether the engine could be rebuilt is technical and requires expert evidence.
17. Mrs. Sampson says that she "reached out to other mechanics", who confirmed that the engine could not be rebuilt. There is no direct evidence from these mechanics. I find that it would be inappropriate to rely on hearsay expert evidence on such a central issue in this dispute.
18. The only evidence about the old engine is the statement from the mechanic who initially inspected it. As mentioned above, that mechanic said that the engine was "no good". That mechanic's statement does not comply with the CRT's rules about expert evidence, but even if I accepted it as expert evidence, I find that it falls short of proving that it would be impossible to repair or rebuild the engine.

19. Without persuasive expert evidence, I find that Mrs. Sampson has not proven that it was incompetent for Mr. Klein to suggest rebuilding the engine. I dismiss this aspect of her claim.

Did Mr. Klein breach the parties' contract by spending too much time replacing the engine?

20. I find that there was an implied term that Mr. Klein would spend a reasonable amount of time completing the work. This is a common implied term in open-ended hourly contracts. See, for example, *Simple Moves North Shore Movers Inc. v. Kenney*, 2022 BCCRT 452. Mr. Klein does not argue otherwise.

21. Mr. Klein provided a breakdown of the 36.5 hours he charged for. He says that he spent 4 hours on the attempt to repair the old engine. Most of the rest of the time was spent on removing the old engine and installing the new one. The exceptions to this are that he had to remove a large carbon deposit, realign a cam, and take the block heater off the old engine and put it on the replacement engine. This work is included in a 5.5-hour time entry. It is unclear how much of that time block was for this extra work. Based on the other entries, I find that it was likely around 4 hours.

22. I note that Mrs. Sampson argues that Mr. Klein should not have performed this extra work without her express permission. I disagree. I find that Mr. Klein was entitled to perform the work he considered necessary to prepare the replacement engine for installation. In other words, I find that ensuring the engine would work properly once installed was part of the work Mrs. Sampson hired him to do.

23. This leaves roughly 28.5 hours for the main task of replacing the engine. Mrs. Sampson says this is excessive. She relies on estimates from 3 other mechanics for replacing an engine. Two are for 16.5 hours and the third is for 13.9 hours.

24. Mr. Klein says that his initial estimate was low because Mrs. Sampson told him that the car in question was a 2005 Kia Tucson when it was a 2007 Kia Sportage. He says that this is a “completely different job” because the Tucson is front-wheel drive

and the Sportage is all-wheel drive. However, the 3 estimates Mrs. Sampson relies on were all for 2007 Sportages.

25. Mr. Klein also relies on an autobody estimate for 7.1 hours to remove and reinstall the front end of a Sportage. It is unclear how this estimate assists Mr. Klein since his time breakdown says he spent 13 hours on these tasks. In any event, I find that the 3 estimates about replacing the engine are a better objective measure of how long the job should have taken because these estimates account for the entire job, not just a component of it.
26. Finally, Mr. Klein argues that his overall price was reasonable. He points out that because his hourly rate is considerably lower than the other mechanics, the total price in each of the 3 estimates is only a few hundred dollars less than his final price. I agree with Mr. Klein that after accounting for the extra work Mr. Klein did, his price was roughly the same as other mechanics. However, I find that the parties' contract required Mr. Klein to spend a reasonable amount of time on the work regardless of the hourly rate he chose to charge. In other words, Mr. Klein's low hourly rate did not entitle him to spend an excessive amount of time.
27. Based on the 3 estimates, I find that the roughly 28 hours Mr. Klein spent replacing the engine was unreasonable. That said, none of the estimates are fixed-price quotes, and I find that work often takes longer than professionals initially expect. Bearing in mind that Mr. Klein did more than just replace the engine, I find that a total of 28 hours is reasonable: 20 hours for the engine replacement, 4 hours for the attempted engine repair, and 4 hours for the extra work. At \$60 per hour, this equals \$1,680. I find that Mrs. Sampson is therefore entitled to a \$520 refund.

Did the contract allow Mr. Klein to charge a shop fee?

28. Mr. Klein does not dispute that he never told Mrs. Sampson about the \$10 shop charge. The estimates show that some mechanics charge for shop supplies and some do not. Because Mrs. Sampson never agreed to pay it, I find he is not entitled to it. I find that Mrs. Sampson is entitled to be reimbursed \$10 for this charge.

29. I therefore order Mr. Klein to pay Mrs. Sampson \$530. I dismiss her remaining claims.
30. The *Court Order Interest Act* (COIA) applies to the CRT. However, Mrs. Sampson waived her interest claim, so I award none.
31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful aparty to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mrs. Sampson was partially successful, so I find she is entitled to reimbursement of half of her \$150 in CRT fees, which is \$75. She did not claim any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Klein to pay Mrs. Sampson a total of \$605, broken down as follows:
 - a. \$530 in damages, and
 - b. \$75 in CRT fees.
33. Mrs. Sampson is entitled to post-judgment interest, as applicable.
34. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member