



Civil Resolution Tribunal

Date Issued: February 9, 2023

Files: SC-2022-005012
and SC-2022-005837

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. M & S Truck Repair Ltd.*, 2023 BCCRT 120

BETWEEN:

IQBAL GILL

APPLICANT

AND:

M & S TRUCK REPAIR LTD.

RESPONDENT

AND:

IQBAL GILL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about vehicle repairs. In the first dispute, SC-2022-005012, the applicant, Iqbal Gill, says the respondent, M & S Truck Repair Ltd. (MSTR), negligently repaired his vehicle such that the work had to be redone. Mr. Gill seeks \$5,000 for being “charged unfairly”, having to redo the service, and for Mr. Gill missing time from work. MSTR denies charging Mr. Gill unfairly and says its repairs and repair costs were proper and fair.
2. In the counterclaim, SC-2022-005837, MSTR says Mr. Gill failed to pay its invoice and seeks \$3,566.73. Mr. Gill says MSTR “broke the breach of trust” and improperly repaired his vehicle.
3. Mr. Gill is self-represented. MSTR is represented by its owner, Malkit Badyal.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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 the credibility, or truthfulness, of the other. 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 in the interests of justice.

6. Section 42 of the CRTA says that 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.

ISSUES

8. The issues in these disputes are:
 - a. Whether MSTR improperly repaired Mr. Gill's vehicle and, if so, whether Mr. Gill is entitled to \$5,000 in compensation, and
 - b. Whether Mr. Gill must pay MSTR's \$3,566.73 invoice.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Gill must prove his claims on a balance of probabilities (meaning "more likely than not"). In its counterclaim, MSTR has this same burden. While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note I have relied on the evidence submitted in both disputes in making this decision.
10. I will deal first with MSTR's counterclaim.
11. Mr. Gill brought his commercial Freightliner truck to MSTR to have a motor vehicle inspection completed. MSTR noted several items that needed to be repaired or replaced before the vehicle would pass inspection, including issues with the brakes, axles, and fifth wheel. None of this is disputed.

12. MSTR performed the identified repair work and on July 2, 2022 billed Mr. Gill a total of \$3,566.73 for the repairs and the inspection. Mr. Gill undisputedly has not paid MSTR for its work. There is no dispute MSTR performed the work billed, but Mr. Gill argues that the work on the fifth wheel was not up to a professional standard. Mr. Gill does not allege any issues with MSTR's other billed work.
13. On its face, there is nothing unreasonable about MSTR's invoice. So, I find Mr. Gill must pay MSTR the \$3,566.73 for the work completed, subject to any proven deficiencies. As the party alleging deficient work, Mr. Gill must prove it (see: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61).
14. Specifically, Mr. Gill says MSTR improperly replaced the fifth wheel when it should have been repaired instead. He further says MSTR improperly welded a part when it should have been bolted. In response, MSTR says it suggested Mr. Gill replace the fifth wheel with original parts, and Mr. Gill agreed. It says that Mr. Gill then asked MSTR to find a lower cost alternative. It says Mr. Gill found a similar fifth wheel but with different attachments, so Mr. Gill asked MSTR to use the existing fifth wheel's attachments on the new fifth wheel, which MSTR did. MSTR also says it painted some rusty parts to avoid further corrosion.
15. In support of his argument that MSTR's work was negligent, Mr. Gill provided a statement from Jesse Clark, a licensed red seal commercial transport mechanic. I accept Mr. Clark's opinion as expert evidence under the CRT's rules.
16. Mr. Clark provided 3 statements in these disputes. In his statements Mr. Clark explains that he was the initial mechanic to tell Mr. Gill to have his fifth wheel rebuilt. When Mr. Gill returned from having the truck serviced by MSTR, Mr. Clark says Mr. Gill asked him to review MSTR's work. In Mr. Clark's opinion, the fifth wheel assembly installed by MSTR was "not up to industry standards". Mr. Clark specifically says there was a bracket welded on the bottom of the fifth wheel's top plate, which is contrary to the manufacturer's guidelines. Mr. Clark says there were also several components of the assembly that were damaged during installation, and notes some parts were painted and "passed off" as new parts.

17. Although I accept Mr. Clark's observations of MSTR's work, it does not address MSTR's argument that Mr. Gill specifically asked for the installation of non-original fifth wheel parts. Notably, Mr. Gill did not respond to MSTR's allegations about Mr. Gill instructing it to use a non-original fifth wheel. Additionally, MSTR says the parts were painted to slow further corrosion, and that it informed Mr. Gill of all its repairs. Additionally, although Mr. Clark stated "several components" were damaged during installation, he did not provide any explanation of what parts, how they were damaged, or whether the damage impacted the new fifth wheel's function or performance. Neither party submitted any photos of the painted parts, or of the allegedly damaged parts. Given all of this, I give limited weight to Mr. Clark's statements.
18. MSTR says it performed the repairs according to Mr. Gill's instructions, including his specific request to attach old parts to the new, non-original fifth wheel. Mr. Gill says he never agreed to re-install old parts. The problem for Mr. Gill is that the burden is on him to prove MSTR's work fell below the required standard. On balance, I find Mr. Gill has failed to do so. I find Mr. Gill has not proven MSTR acted negligently in its repair of Mr. Gill's vehicle, and so is not entitled to the compensation he seeks.
19. In summary, I find Mr. Gill must pay MSTR its outstanding invoice of \$3,566.73 for repairs completed on Mr. Gill's commercial vehicle.
20. The *Court Order Interest Act* applies to the tribunal. MSTR is entitled to pre-judgment interest on the \$3,566.73, from July 17, 2022, the invoice's due date, to the date of this decision. This equals \$45.30.
21. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As MSTR was successful in its counterclaim, I find Mr. Gill must reimburse it \$125 in tribunal fees. As Mr. Gill was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order Mr. Gill to pay MSTR a total of \$3,737.03, broken down as follows:
- a. \$3,566.73 in debt,
 - b. \$45.30 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125 in tribunal fees.
23. MSTR is also entitled to post-judgment interest, as applicable.
24. Mr. Gill's claims are dismissed.
25. 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.

Andrea Ritchie, Vice Chair