



Civil Resolution Tribunal

Date Issued: July 24, 2023

File: SC-2022-008018

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Vulmont Enterprises Holdings Ltd. (dba Automind Collision Repair (Richmond))*, 2023 BCCRT 615

B E T W E E N :

BONAN LIU

APPLICANT

A N D :

VULMONT ENTERPRISES HOLDINGS LTD. (DBA AUTOMIND
COLLISION REPAIR (RICHMOND))

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Bonan Liu, paid the respondent, Vulmont Enterprises Holdings Ltd. (dba Automind Collision Repair (Richmond)) (Vulmont), \$963.20 to order a new bumper for their red Tesla model S (car). The car's bumper had been damaged in a

July 2022 collision. Ms. Liu says that after they paid Vulmont the \$963.20 to order the new bumper, Vulmont changed its repair estimate from \$1,400 to \$2,300. Ms. Liu says Vulmont was wrong to do so and claims a refund of the \$963.20 they paid since they did not proceed with the repairs.

2. Vulmont says that it never quoted Ms. Liu \$1,400 and that its estimate for the bumper repairs was always \$2,369.50. It further says that the \$963.20 deposit Ms. Liu paid was non-refundable. So, Vulmont says Ms. Liu is not entitled to any refund.
3. Ms. Liu is self-represented. Vulmont is represented by its employee, HB.

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. Some of the evidence in this dispute amounts to a "he said, they 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.

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.

ISSUE

8. The issue in this dispute is whether Ms. Liu is entitled to a full refund for the \$963.20 they paid to Vulmont.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Liu as the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note Ms. Liu did not provide any final reply argument, despite having the opportunity to do so.
10. Ms. Liu undisputedly called Vulmont on July 12, 2022 to obtain a quote to repair their car that was damaged in a collision earlier that month. Ms. Liu says that when they called Vulmont, they spoke with V who said that it would cost \$1,400 to replace the bumper. Ms. Liu says V also quoted \$4,000 if Ms. Liu wanted to fix a headlight as well, but Ms. Liu decided to fix only the bumper. Ms. Liu says they then attended Vulmont's shop on July 25 at which time V inspected the car and asked Ms. Liu to pay a \$963.20 deposit so that Vulmont could order the bumper. Ms. Liu undisputedly

paid the \$963.20 and Vulmont ordered the bumper. Ms. Liu says V did not give them a copy of any written estimate on this day.

11. When Ms. Liu later returned to Vulmont's shop to see if Vulmont was ready to fix the car, Ms. Liu says V was not there. Instead, Ms. Liu says they dealt with HS, whom they had not met before. Ms. Liu says HS told them that it would cost \$2,300 for Vulmont to replace the bumper. Ms. Liu says that they were "really surprised" and told HS that this was not the price V had quoted them. Ms. Liu says they asked HS to refund the \$963.20 or complete the repairs for \$1,400 but HS refused.
12. Vulmont's version of events differs significantly from Ms. Liu's. I note that most of Vulmont's Dispute Response is written in the first person. While HS is Vulmont's representative in this dispute, it is not clear whether Vulmont's version of events as set out in the Dispute Response is HS's account, V's account, or someone else's. In any event, Vulmont says it only ever quoted Ms. Liu \$2,369.50 for the bumper repairs and that the estimate was explained to Ms. Liu in detail when they attended Vulmont's shop on July 25. Vulmont says the \$1,400 estimate Ms. Liu alleges is "unheard of in this industry". Vulmont says that Ms. Liu agreed to the \$2,369.50 estimate and agreed to pay the \$963.20 part deposit so that Vulmont could order the bumper. It says that someone at Vulmont told Ms. Liu that once Vulmont ordered the bumper, they would have to paint it and once painted Vulmont would not be able to return it. Vulmont says Ms. Liu agreed to this, so the \$963.20 they paid is non-refundable.
13. I find I do not need to decide whether the estimate Ms. Liu agreed to was for the \$1,400 Ms. Liu alleges, or the \$2,369.50 Vulmont alleges since Ms. Liu ultimately did not proceed with the repairs. Rather, the question that I must answer is whether, having decided not to proceed with the repairs, Ms. Liu is entitled to the \$963.20 deposit's return.
14. Deposits are not "non-refundable" by default. Vulmont is the party alleging the deposit is non-refundable. So, I find the burden is on Vulmont to show the parties agreed the \$963.20 payment would be a non-refundable deposit.

15. While Vulmont says that Ms. Liu paid the \$963.20 deposit after agreeing that it was non-refundable, it has provided little evidence to support this position. As Vulmont does not dispute it, I find that Ms. Liu's initial July 12 phone call and subsequent July 25 in-person conversation at Vulmont's shop was with V. Ms. Liu suggests that V no longer works for Vulmont. Vulmont, on the other hand, says that V is still its employee and "has disagreed with all claims" Ms. Liu makes. Notably, however, Vulmont did not provide a witness statement from V setting out the details of V's conversations with Ms. Liu. Parties are told during the CRT's process to submit all relevant evidence, including witness statements. As the person who dealt directly with Ms. Liu initially and on July 25 when Ms. Liu paid the \$963.20, I find V to be a key witness and their witness statement would clearly be relevant in this dispute. Vulmont has not provided any reason as to why it neglected to provide a witness statement from V. In the circumstances, I find it appropriate to draw an adverse inference against Vulmont for failing to provide a statement from V. With no witness statement from V, I find it unproven that V told Ms. Liu that the \$963.20 part deposit to order the bumper would be non-refundable.
16. Further, neither Vulmont's estimate nor its invoice in evidence say that any deposit paid is non-refundable. A July 31, 2022 invoice in evidence shows that Vulmont ordered the bumper from Tesla. Vulmont also provided a copy of Tesla's return policy which says that Tesla will only accept returns for parts that are in "new condition". As noted above, Vulmont says that it informed Ms. Liu that once it painted the bumper, it would not be able to return it. However, without a witness statement from V, or someone else who may have informed Ms. Liu about this, I find it unproven that Vulmont communicated to Ms. Liu that the \$963.20 payment would be non-refundable after it painted the bumper as it could not then return it back to Tesla. Based on all of the above, I find it unproven that the parties agreed the \$963.20 was non-refundable.
17. However, this does not end the matter. Even if the parties did not agree the \$963.20 deposit was non-refundable, it is possible for Ms. Liu to have forfeited the deposit if it was a "true deposit". In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract (refuses to pay for

what they previously agreed to purchase) generally forfeits a true deposit. In contrast, a partial payment is made with the intention of completing a transaction, such as with a down payment to cover work to be done or materials to be purchased under the contract. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received (see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30 and *Drozd v. Evans et al*, 2006 BCSC 1650 at paragraph 34).

18. Here, the \$963.20 payment was undisputedly to cover the cost of the bumper that Vulmont was going to order for Ms. Liu. Vulmont's estimate and invoice in evidence also list a \$860 (plus tax) charge for the new bumper which equals the paid \$963.20. So, based on the above, I find the \$963.20 deposit was a partial payment towards the total repairs to cover the bumper's cost and not a true deposit.
19. Accordingly, in order for Vulmont to keep the \$963.20 payment, it must prove actual loss. The evidence shows that Tesla invoiced Vulmont \$677.25 for the bumper and since the bumper was undisputedly delivered to Vulmont, I find Vulmont likely paid this invoice. As noted above, Tesla's return policy in evidence states that it will only accept returns for parts in new condition. The trouble for Vulmont is that it provided no evidence, nor does it suggest that it had actually painted the bumper before Ms. Liu decided not to proceed with the repairs.
20. Text messages in evidence show that on August 15, V informed Ms. Liu that the bumper had arrived and asked Ms. Liu whether Vulmont should proceed with painting it. Ms. Liu agreed and asked if they should bring their car in. V said that Vulmont would need to paint the bumper first and give time for the bumper to rest and would let Ms. Liu know when to bring their car in. There are no further text messages in evidence between V and Ms. Liu that suggest that Vulmont had painted the bumper and asked Ms. Liu to come in. In the Dispute Notice, Ms. Liu says that after they returned from a trip, they attended Vulmont's shop to see if Vulmont was ready to do the repairs. Notably, Ms. Liu does not say that someone at Vulmont had called them to come in because the bumper was ready to be installed.

21. Given the lack of any evidence suggesting otherwise, I find it likely that Vulmont did not paint the bumper before Ms. Liu decided not to proceed with the repairs. Vulmont does not say that it has been unable to return the bumper to Tesla or otherwise use it for a different repair job. So, based on all of the above, I find Vulmont has not proven any loss associated with ordering the bumper for Ms. Liu. As a result, I find Ms. Liu is entitled to a full refund of \$963.20.
22. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Liu is entitled to pre-judgment interest on the \$963.20 from August 31, 2022 (a date I find reasonable in the circumstances) to the date of this decision. This equals \$29.91.
23. 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 find Ms. Liu is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses, so I award none.

ORDERS

24. Within 14 days of the date of this decision, I order Vulmont to pay Ms. Liu a total of \$1,118.11, broken down as follows:
 - a. \$963.20 as a deposit refund,
 - b. \$29.91 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
25. Ms. Liu is entitled to post-judgment interest, as applicable.

26. 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.

Nav Shukla, Tribunal Member