



# Civil Resolution Tribunal

Date Issued: August 17, 2023

File: SC-2022-007056

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. Kines*, 2023 BCCRT 697

BETWEEN:

MICHAEL EDWARD ROBERTSON

**APPLICANT**

AND:

MARTIN KINES (Doing Business As ADRENALINE BUMPER)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a custom truck bumper. The applicant, Michael Edward Robertson, purchased the bumper from the respondent, Martin Kines (Doing Business As Adrenaline Bumper). Mr. Robertson says the bumper and a second replacement bumper both arrived defective. He claims reimbursement of \$1,716.75 for the purchase price, \$345.45 for the cost of shipping the first bumper, and

\$1,104.28 for the cost of manufacturing a suitable bumper bracket. His claims total \$3,166.48. In submissions he claims an additional \$213.70 for LED lights, as he says Mr. Robertson provided the wrong ones.

2. Mr. Kines disagrees. He says that after Mr. Robertson complained about the first bumper, he sent a second free replacement bumper and shipped it at his cost. He says that in any event, he provides no refunds for custom bumpers like these. He also says the cost of the bracket is “ridiculous” and that in any event, Mr. Robertson never incurred this cost. He says a Facebook ad shows Mr. Robertson never mounted the second bumper and is selling it instead. I find Mr. Kines claims a setoff for whatever the bumper might sell for.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Robertson’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. 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.

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.

### ***The LED Lights***

9. As noted above, Mr. Robertson claims in submissions an additional \$213.70 as reimbursement for LED lights purchased from Mr. Kines. The CRT has previously declined to consider claims or remedies not raised in the Dispute Notice. This is because raising a claim late deprives a party of an adequate opportunity to respond and undermines the purpose of the CRT's facilitation process. See, for example, *Lynden-Burch v. Skeena Senior Citizens Housing Society*, 2023 BCCRT 238 at paragraphs 11 to 15. CRT decisions are not binding but I find the same reasoning applies here. I find it would be procedurally unfair to consider Mr. Robertson's claim about the LED lights.
10. Consistent with my conclusion, CRT rule 1.19 allows applicants to ask the CRT to amend the Dispute Notice. Under CRT rule 1.19(3), the CRT will not issue an amended Dispute Notice after the dispute has entered the CRT decision process, except where exceptional circumstances apply. Mr. Robertson did not ask the CRT to amend the Dispute Notice or identify any exceptional circumstances. So, I will not consider the LED lights claim.

### **ISSUE**

11. The issue in this dispute is whether Mr. Kines breached the parties' contract, and if so, what remedies are appropriate.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, Mr. Robertson as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. As noted earlier, Mr. Robertson purchased a custom bumper for his 2002 Chevy 2500 truck. Mr. Robertson provided a copy of an invoice dated March 16, 2022 that documented the parties' agreement. The invoice essentially had no terms on it, aside from a price of \$1,716.75. Mr. Robertson says, and I accept, that it was for the bumper and 2 LED lights. Mr. Robertson also says that Mr. Kines completed the bumper in May 2022 and charged \$345.45 to ship it. This is shown in a May 20, 2022 shipping invoice.
14. There are 2 versions of the March 16, 2022 invoice in evidence. The second version is from Mr. Kines. It had the same date and price, but was marked paid. In addition to that, it contained a host of additional terms and said, "NO REFUNDS". The parties did not explain why the second invoice, marked paid, had additional terms.
15. I find it likely that Mr. Kines provided the invoice after Mr. Robertson paid for the bumper and added additional terms. I find these terms do not apply because Mr. Kines likely added them unilaterally without Mr. Robertson's agreement. However, ultimately nothing turns on this.
16. Mr. Robertson booked an appointment with Backwoods Offroad Ltd. (Backwoods) to install the bumper. As shown in an invoice, he dropped off his truck and the bumper on June 15, 2022. Backwoods called him and said it could not proceed because there was no mounting system for the bumper and the LED lights were the wrong ones and could not fit.
17. Mr. Robertson says that after trying to contact Mr. Kines for 5 days, he decided to instruct Backwoods to fabricate bumper mounts to have the bumper mounted.

However, I find Mr. Robertson only waited 2 days. This is because Backwoods' invoice is dated June 17, 2022, as is the receipt for payment.

18. Backwoods charged a total of \$2,198.54. Mr. Robertson says the faulty bumper and wrong LED lights resulted in the following additional charges: 7 hours of labour for the fabrication costing \$973, additional ¼ inch steel costing \$131.28, and \$213.70 for another set of bumper lights. These are shown as line items in Backwoods' invoice.
19. Mr. Robertson says that he was dissatisfied with the end product. I find this was likely the case as photos show that the bumper, when mounted, left a visible gap between the bumper and front grill area.
20. Mr. Robertson says the following. Mr. Kines responded to Mr. Robertson's concerns about the bumper on June 20, 2022. Mr. Robertson told Mr. Kines he was dissatisfied with the bumper's fit, and Mr. Kines admitted he made a fabrication mistake. I find this is likely accurate because Mr. Kines agrees that he built and shipped another bumper to Mr. Robertson at Mr. Kines' expense. Mr. Kines also texted photos in July 2022 to Mr. Robertson to show what the new bumper would look like when installed. The photos showed the new bumper on a truck similar to Mr. Robertson's. The visible gap between the bumper and grill was gone in these photos.
21. Mr. Robertson's undisputed submission is that the second bumper arrived on August 15, 2022. He tried mounting the bumper on his own. He says he found that there were 3 issues: 1) the bumper coating was severely damaged in shipping, and 2) the lower bumper mounting brackets had been fabricated and mounted on the inside in such a way that no winch system could be mounted in this bumper, and 3) the frame mounting brackets had been spot welded. Mr. Robertson says that the spot welds were unsafe, and the brackets needed to be rewelded. He says that the end result is that the truck winch is unusable. I will discuss whether these alleged flaws are proven below.

**Issue #1. Did Mr. Kines breach the parties' contract?**

22. Section 18 of the *Sale of Goods Act* (SGA) sets out several implied warranties that apply to the commercial sale of goods, including that the good was reasonably fit for its purpose, was of saleable quality, and would be reasonably durable considering the use to which it would normally be put and all the sale's surrounding circumstances.
23. I find these implied warranties apply to the bumper. I find the bumper Mr. Kines originally provided was not fit for its purpose. This is because I find part of the purpose of a custom bumper is its appearance, and the photos show mounting it left a gap. I find a reasonable person would find this unacceptable and unreasonably fit.
24. I consider next the appropriate remedy. Damages for breach of contract are intended to place the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319.
25. I find the main difficulty with Mr. Robertson's claims is proving damages. As noted above, Mr. Kines provided a replacement bumper. I find that to prove entitlement to a refund for the bumper, Mr. Robertson must show the replacement was flawed and he sustained a loss. Mr. Robertson bears the burden to prove this is the case. See *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16, and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287.
26. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard. However, expert evidence may not be necessary when the work is obviously substandard, or the deficiency relates to something non-technical. See *Absolute Industries* and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196.
27. Mr. Robertson says the bumper coating was "severely damaged", but I did not find this apparent in the photos. He also says that the bumper mounting brackets and spot welding rendered the bumper unusable and unsafe. I also find that this is not obvious

from the photos, and it is a deficiency that relates to the technical matter of fabricating bumpers. So, I find that Mr. Robertson requires expert evidence to show the second replacement bumper was deficient.

28. Mr. Robertson says that Backwoods advised that Mr. Kines fabricated the second bumper incorrectly. However, there is no opinion evidence, statement, or correspondence from Backwoods to support this submission. Parties are told during the CRT's process to submit all relevant evidence, and I find a statement from Backwoods about the replacement bumper's fabrication clearly relevant.

29. I note that under CRTA section 42 I am allowed to consider hearsay evidence. However, I decline to do so here because this is about a central issue in this dispute. So, I find Mr. Robertson's submission about what Backwoods said is unpersuasive without more. Given this, I dismiss Mr. Robertson's claim for a refund of \$1,716.75 for the purchase price and \$345.45 for shipping.

30. Mr. Robertson also claimed \$1,104.28 for additional bumper bracket costs to fit the first bumper. I find the doctrine of remoteness is relevant. It excludes losses that were caused by the breach of contract, but which were not reasonably foreseeable when the contract was made. The reason for this is fairness. A respondent might have declined the risk or made other arrangements if they were aware that such losses could reasonably occur. Knowledge of special circumstances may be relied upon to enhance damages recoverable. However, the respondent must be informed of the special circumstances at the time of the contract and in such circumstances that the respondent impliedly undertook to bear any special loss flowing from a breach in those special circumstances. See *Al Boom Wooden Pallets Factory v. Jazz Forest Products (2004) Ltd.*, 2016 BCCA 268 at paragraphs 62 to 63 and 77 to 78.

31. Here, I find that the claimed \$1,104.28 was not reasonably foreseeable. This is because Mr. Robertson decided to proceed with installing the first bumper, despite being warned by Backwoods that it would require additional fabrication work. The invoice shows that he dropped the truck off on June 15, and instructed Backwoods to proceed 2 days later on June 17, 2022. I find that, in these circumstances, Mr.

Robertson had not yet provided Mr. Kines a reasonable opportunity to respond to complaints about the bumper. Subsequent events show that if he had, Mr. Kines would have likely replaced it. As noted above, I find it unproven that the replacement is defective.

32. Given the above, I need not consider whether Backwoods overcharged for the bracket or whether a setoff is appropriate.

33. In summary, I dismiss Mr. Robertson's claims. 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. Because he was unsuccessful, I dismiss Mr. Robertson's claims for reimbursement of CRT fees and registered mail fees of \$24.54 as a dispute-related expense.

## **ORDER**

34. I dismiss Mr. Robertson's claims and this dispute.

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David Jiang, Tribunal Member