Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *North Shore Yacht Works Corp. v. Couchman*, 2023 BCCRT 855

B E T W E E N :

NORTH SHORE YACHT WORKS CORP.

APPLICANT

A N D :

CHRISTOPHER COUCHMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about boat maintenance services.

2. The respondent, Christopher Couchman, took his boat to the applicant, North Shore Yacht Works Corp. (Yacht Works), for maintenance work. The applicant says that the respondent failed to pay its invoice for the repair services. It claims $4,825.08.

3. The respondent says that the applicant confirmed in advance that much of the repair work would be covered by an applicable warranty. The respondent says that after the applicant completed the repairs, it advised that the warranty was not valid because the boat's previous owner had not transferred the warranty into the respondent's name. The respondent says they should not have to pay for repairs that the applicant told them would be covered by a warranty.

4. The applicant is represented by an employee. The respondent is self-represented.

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.

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.

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.

ISSUE

9. The issue in this dispute is whether the respondent owes the applicant $4,825.08, or some other amount, for boat repair services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities (meaning "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. I note that the applicant did not provide any final reply submissions, despite having the opportunity to do so.

11. The applicant provided little evidence about its contract with the respondent to perform boat maintenance services. It relies primarily on its invoice and later correspondence relating to its attempts to obtain payment from the respondent.

12. Importantly, the applicant did not respond to the respondent's evidence about the applicability of a warranty or the applicant's alleged representations about what the warranty would cover. As the applicant did not provide any reply submissions, I find the respondent's evidence is essentially undisputed.

13. Therefore, I accept the following facts, as set out by the respondent:

    a. The respondent purchased a used boat from a marine sales company in about 2021. The boat had been advertised as having a platinum Mercury extended warranty. The respondent decided to sell the boat in 2022, using the same sales agent, DO, who had sold them the boat the previous year. DO recommended that the respondent take the boat to the applicant to change the pulley on the port engine before listing the boat for sale.

    b. On June 28, 2022, the applicant advised the respondent that it recommended replacing the pulley on both engines, as well as rebuilding or replacing the water pump and alternator.

c. DO advised the applicant about the Mercury warranty, and that it was valid until June 2023. The applicant advised DO and the respondent of the estimated repair costs and said it would contact Mercury about the warranty to see what would be covered.

14. The respondent provided a June 28, 2022 email from the applicant that stated it had confirmed with Mercury that the idler pulleys, alternator, and raw water pump would be covered, but belts would not be covered because they were a maintenance item. The respondent replied: "great thanks". The applicant undisputedly completed this agreed maintenance work.

15. In an August 24, 2022 email, the applicant provided the respondent with 2 invoices, totalling $5,926.97. The first invoice was for $2,585.25 and related to the work that the applicant had previously advised would not be covered by the Mercury warranty. The second invoice was for $3,341.72, for the rest of the work. The applicant explained in the email that the Mercury warranty was not valid because the boat's previous owner had not transferred the warranty to the respondent when the respondent bought the boat. So, the applicant advised that the respondent was responsible for both invoices.

16. In an October 12, 2022 email, the applicant provided the respondent with a revised invoice, advising that Mercury had now covered $1,223.43, and that the outstanding amount owing was the claimed $4,825.08.

17. The applicant did not explain why Mercury ultimately covered some of the work, even though it initially told the respondent that the Mercury warranty was invalid because it was not in their name. As noted, the applicant did not mention the warranty issue at all in its submissions. However, it did provide 2 Mercury invoices for "transfer fees" and an October 25, 2022 email to DO in which the applicant advised that Mercury had billed to transfer the applicable warranty first from the boat's original owner to the respondent, and then from the respondent to a new owner.

18. So, based on this evidence and the respondent's submissions, I find that the respondent mistakenly believed that the Mercury warranty had been transferred into their name when they purchased the boat. I also find that the applicant likely did not discover that the warranty was not in the respondent's name until after the maintenance work was completed and the respondent had sold the boat to a new owner. Mercury then charged to transfer the warranty into the respondent's name (after the respondent no longer owned the boat), so that the warranty could then be transferred into the new owner's name. It is unclear whether the Mercury transfer fees are included in the applicant's claim.

19. In any event, it is undisputed that the respondent has not paid the applicant anything for its work. The respondent says they are willing to pay the original $2,585.25 invoice for the maintenance work they were advised and agreed in advance would not be covered by the Mercury warranty. However, they say they should not be responsible for the work the applicant mistakenly said would be covered under warranty.

20. I turn to the applicable law.

21. In contract law, there is a principle known as the "law of mistake". There are 3 types of mistake: common, mutual, and unilateral. Common mistake is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their mistakes are different. In a mutual mistake, the parties misunderstand each other and are "not on the same page". Unilateral mistake is where only one of the parties is operating under a mistake. In other words, if the other party is not aware of the one party's erroneous belief, then the case is a mutual mistake. If the other party knows of it, then it is a unilateral mistake. See *Hannigan v. Hannigan*, 2007 BCCA 365, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co*. (2003), 2003 ABCA 221.

22. The law of mistake says that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistake, remained silent, and "snapped" at the offer. See *256593 BC Ltd. v. 456795 BC Ltd. et al*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd*., 1971 CanLII 594 (ONSC).

23. The respondent submits that the applicant should have known how the Mercury warranty worked and what was required to get its work covered under the warranty. However, I find there is no evidence that the applicant knew the warranty had not been transferred into the respondent's name when the parties initially agreed to proceed with the maintenance work. I accept that the applicant only learned of the error when it submitted the claim after the work was completed.

24. I find that the parties both mistakenly believed that the respondent was named on the Mercury warranty when they formed their contract. So, I find the error was a common mistake.

25. With common mistake, the agreement is acknowledged and what must be determined is whether the mistake was so fundamental as to render the agreement void or unenforceable on some basis. Whether or not the mistake goes to the root of the contract is often important. A "fundamental" mistake is one that involves a fact which, "constitutes the underlying assumption on which the entire contract was based". See *Munro v. Munro Estate* (1995), 1995 CanLII 1393 (BCCA), as cited in *Berthin v. Berthin*, 2015 BCSC 78.

26. I find the parties' belief that much of the agreed maintenance work would be covered under the warranty was a fundamental mistake. I say this because the price difference for the respondent is significant. I find that had the respondent known the claimed work would not be covered under the Mercury warranty, the respondent likely would not have agreed to the applicant completing the work without making some inquiries about the lack of coverage. Given that I find this was a fundamental mistake, I find the applicant cannot enforce any agreement for the respondent to pay for work they understood they would not have to pay for.

27. I note that the respondent also alleges that the applicant was negligent in failing to confirm with Mercury that the work it was doing would be covered. Essentially, I find the respondent argues that the applicant made a negligent misrepresentation that certain work would be covered under warranty. For the following reasons, I agree with the respondent.

28. A negligent misrepresentation occurs when someone makes a representation that is untrue, inaccurate, or misleading, they breach the applicable standard of care in making the representation, and the recipient reasonably relies on the misrepresentation to their detriment. See *Queen v. Cognos Inc.*, [1993] 1 SCR 87.

29. Here, I find that the applicant made an inaccurate or untrue statement that it had confirmed Mercury would cover much of the recommended maintenance work. Generally, the applicable standard of care requires a person making representations to take such reasonable care as the circumstances require to ensure their representations are accurate and not misleading.

30. Again, the applicant did not provide any evidence about the warranty or the steps it took to confirm what work Mercury would cover. When a party fails to provide relevant evidence without sufficient explanation, an adverse inference may be drawn. An adverse inference is where an adjudicator assumes that a party failed to provide relevant evidence because the missing evidence would not support their case. I find that an adverse inference is appropriate here. So, I find that the applicant likely did not take reasonable care to ensure that Mercury would cover its maintenance work under a valid warranty in the respondent's name.

31. I also find that the respondent reasonably relied on the applicant's misrepresentation that the work would be covered, as the applicant advised it had confirmed the coverage with Mercury. I find there is no evidence the respondent should have known the warranty had not previously been transferred into their name. I find that had the respondent been made aware that the warranty was not in their name, the respondent likely could have taken steps to fix the situation and have the warranty transferred before the applicant completed the work.

32. So, under both the law of mistake and negligent misrepresentation, I find that the applicant is not entitled to payment for the work that it initially told the respondent would be covered under warranty.

33. As the respondent expressly agrees to pay the applicant $2,585.25 for the work they knew in advance would not be covered under warranty, I order the respondent to pay the applicant that amount.

34. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the $2,585.25 from October 12, 2022, the date the applicant delivered its invoice, to the date of this decision. This equals $102.56.

35. 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 find the applicant was partially successful, and so it is entitled to reimbursement of half its CRT fees, which is $87.50.

ORDERS

36. Within 21 days of the date of this decision, I order the respondent to pay the applicant a total of $2,775.31, broken down as follows:

    a. $2,585.25 in debt,

    b. $102.56 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 in CRT fees.

37. The applicant is entitled to post-judgment interest, as applicable.

38. 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.

Kristin Gardner, Tribunal Member