



Civil Resolution Tribunal

Date Issued: January 19, 2024

Files: SC-2022-008246
and SC-CC-2023-002546

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Elke (dba K-Town Customs) v. Zoricic*, 2024 BCCRT 55

B E T W E E N :

DARRYL ELKE (Doing Business As K-TOWN CUSTOMS)

APPLICANT

A N D :

JOHN BRANKO ZORICIC

RESPONDENT

A N D :

DARRYL ELKE (Doing Business As K-TOWN CUSTOMS)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. These 2 linked disputes are about truck repairs. John Branko Zoricic hired Darryl Elke, doing business as K-Town Customs, to perform repairs on a 1984 Nissan truck.
2. Mr. Elke says they did the repairs Mr. Zoricic requested, but Mr. Zoricic refused to pay the bill. Mr. Elke claims \$2,04726 for their unpaid invoice.
3. Mr. Zoricic says Mr. Elke's repairs went beyond what the parties agreed to and were of poor quality. Mr. Zoricic says they should not have to pay Mr. Elke's invoice. Mr. Zoricic also claims Mr. Elke damaged the truck's power steering pump. Mr. Zoricic counterclaims for \$500 to repair the power steering pump.
4. The parties are each self-represented.
5. I have issued a single decision for these 2 disputes because they involve the same parties and I find they consist of a claim and counterclaim. For the reasons that follow, I allow Mr. Elke's claim, in part, and dismiss Mr. Zoricic's claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 "they 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.

8. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order of its own initiative.
9. Tribunal documents incorrectly show the name of the applicant and respondent by counterclaim as K-Town Customs. In response to my request, Mr. Elke advised CRT staff that at the time of the parties' dispute, K-Town Customs was Mr. Elke's sole proprietorship. Given Mr. Elke's statement, I have exercised my discretion under section 61 of the CRTA to direct the use of the applicant and respondent by counterclaim's correct legal name in these proceedings. I have amended the style of cause accordingly.
10. 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.
11. 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

12. The issues in this dispute are:
 - a. Did the parties have an agreement about truck repairs, and if so, does Mr. Zoricic owe Mr. Elke some or all of the truck repair invoice?
 - b. Did Mr. Elke negligently damage Mr. Zoricic's power steering pump?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, each party, as applicant, must prove their 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.
14. Despite having the opportunity to do so, neither party filed a final reply in their respective claim. As this decision is about 2 linked disputes, I have relied on the submissions and evidence in both SC-2022-008246 and SC-CC-2023-002546 in coming to my decision.
15. The parties agree Mr. Zoricic hired Mr. Elke to inspect repair a truck Mr. Zoricic had purchased.
16. On September 8, 2022, Mr. Elke says they inspected the truck and prepared a full list of what repairs were needed. Mr. Elke says they estimated \$3,000 to \$4,000 to repair everything, but Mr. Zoricic said that was too much money and only wanted "the basics". Mr. Elke says they agreed to fix the most important safety-related items and do the rest at a later date.
17. Over the following weeks, Mr. Elke performed a number of repairs on the truck. When Mr. Zoricic came to collect it on October 7, 2022, they say they were surprised at the invoice's amount. Mr. Zoricic later took back the truck from Mr. Elke, but never paid the invoice.

Contract: What repairs did the parties agree to?

- 18. So, what was the extent of the parties’ agreement about truck repairs? I start with the basic principles of contract formation. The parties must mutually intend to create a binding contract. For a contract to exist, there must be a “meeting of the minds.” In other words, the parties must agree to all the essential terms of a contract. These can include price, scope of work, timing of work, and location of work. Contracts do not need to be written or signed to be enforceable. However, it can be more difficult to prove a verbal agreement’s terms.

- 19. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties’ situation would have believed and understood, rather than on the parties’ subjective beliefs. The contract’s essential terms must be sufficiently clear, and the party seeking to rely on the contract must show there was a matching offer and acceptance of those terms. See: *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216 at paragraphs 66 to 69.

- 20. In this case, Mr. Zoricic says they initially authorized Mr. Elke to fix the power steering pump, a large oil leak, and any hoses and clamps needing to be replaced. Mr. Zoricic says they later found out the alternator needed to be repaired, so agreed to that as well. So, I find a reasonable observer would understand the parties had a contract for Mr. Elke to perform repairs to the power steering pump, the oil leak, the hoses and clamps, and the alternator.

- 21. Mr. Elke’s invoice sets out the following items relating to those repairs:

Item	Hours @ \$100/hr	Cost
Jump start vehicle, test alternator, remove alternator and power steering pump	1.7	\$170

Install rebuilt alternator and power steering pump, build new brackets to hold pump in place	3.8	\$380
Wiring for alternator and power steering pump, testing	1.7	\$170
Hoses and clamps		\$26.22
Miscellaneous nuts and bolts for bracket		\$15.32
Fan belt (alternator)		\$23.12
Total		\$784.66

22. There is no evidence the parties agreed to a specific rate for Mr. Elke's labour, but I find it was an implied term that Mr. Zoricic would pay Mr. Elke a reasonable amount. In these circumstances, Mr. Elke is entitled to payment on a contractual *quantum meruit* basis. *Quantum meruit* is a legal term meaning "value for work done". See: *Hodder Construction (1993) Ltd. v. Topolonisky*, 2021 BCSC 666.
23. Here, Mr. Elke is entitled to be paid the reasonable cost of services provided. Mr. Zoricic does not dispute Mr. Elke's hourly rate and it is not obviously unreasonable. So, I find Mr. Elke is entitled to \$100 per hour, as set out in the invoice. Mr. Elke is also entitled to be paid for the parts they used in the repairs, as set out in the invoice. So, I find Mr. Elke is entitled to \$784.66.
24. Mr. Zoricic complains that after Mr. Elke's work, the power steering pump was making noise, the oil pan hadn't been replaced, and the alternator was still not charging. I note Mr. Elke did not charge Mr. Zoricic for the oil pan and Mr. Zoricic undisputedly provided the rebuilt alternator, so I find Mr. Elke is not responsible for either of those issues.

25. To the extent that Mr. Zoricic alleges Mr. Elke's work on the power steering pump was responsible for the noise it was making, I find he is making a claim of deficient work.
26. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, a part must provide expert evidence to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence. See: *Bergen v. Guliker*, 2015 BCCA 283.
27. I find the cause of the power steering pump's noise is outside of ordinary knowledge. It is undisputed that Mr. Zoricic was responsible for having the power steering pump rebuilt and Mr. Elke's responsibility was to install it.
28. Mr. Zoricic submitted a May 9, 2023 invoice from a 3rd party repair shop that shows the power steering pump and bracket needed to be realigned, remounted, and fitted with new belts to allow it to run more true.
29. While I accept the invoice shows Mr. Zoricic paid for modifications to the power steering pump, I find it does not prove Mr. Elke did not properly install or align the power steering pump. I note more than 7 months passed from Mr. Elke's work to the time of the 3rd party repair. There is no statement from the individual who did the 3rd party repair to explain the likely cause of the misalignment. It is not obvious from the invoice alone that Mr. Elke performed deficient work.

Other Repairs

30. The balance of Mr. Elke's invoice is for other issues, including washing and inspecting the engine, straightening and fixing the bumpers, repositioning the driver's seat, mounting tires, installing license plates, installing a washer fluid bottle pump set, changing the oil, topping up fluids and replacing a windshield wiper blade. I note that Mr. Elke's invoice does not address any oil leak repair.

31. Mr. Elke acknowledges in submissions that the parties agreed repairs would be limited given Mr. Zoricic's concerns over cost. Other than a bare assertion that Mr. Zoricic told them to repair the bumper, which Mr. Zoricic implicitly denies, Mr. Elke does not say Mr. Zoricic instructed Mr. Elke to proceed. Mr. Elke also does not explain how they sought or confirmed Mr. Zoricic's authorization for any work they did. So, bearing in mind the burden is on Mr. Elke as applicant, I find they have not proved the parties had a contract for the remaining repairs. So, Mr. Elke is not entitled to payment for the balance of their invoice.

Negligence: Alleged Damage to the Power Steering Pump

32. In their counterclaim, Mr. Zoricic alleges Mr. Elke negligently damaged the power steering pump by over filling the reservoir.

33. Mr. Elke did not comment on the power steering pump's realignment, but says given the reservoir's design, it was impossible to overfill it, so the power steering pump could not have been damaged that way. Mr. Zoricic does not clearly explain how they believe the alleged overfilling damaged the pump.

34. To prove negligence, Mr. Zoricic must show that (a) Mr. Elke owed Mr. Zoricic a duty of care, (b) Mr. Elke breached the standard of care, (c) that Mr. Zoricic suffered damage, and (d) the damage was caused by Mr. Elke's breach.

35. I accept that Mr. Elke owed Mr. Zoricic a duty of care. However, Mr. Zoricic has not proven the power steering pump was damaged or that any alleged damage was caused by Mr. Elke's breach.

36. While Mr. Zoricic provided a variety of photos of parts of the truck, none of them show clear and obvious damage to the power steering pump. Mr. Zoricic also did not provide any expert evidence to explain how the power steering pump was damaged or how it would have been Mr. Elke who damaged it. While I accept Mr. Zoricic had further repairs performed on the power steering pump, I note that was months after Mr. Elke's work, and there is no clear evidence Mr. Elke's work was the cause of the further repairs.

37. Without evidence that the power steering pump is damaged, and that Mr. Elke was responsible, Mr. Zoricic's counterclaim cannot succeed, so I dismiss it.

Conclusion

38. The *Court Order Interest Act* applies to the CRT. Mr. Elke is entitled to pre-judgment interest on \$784.66, the portion of the invoice for authorized repairs, from October 7, 2022, the date Mr. Elke gave Mr. Zoricic the invoice, to the date of this decision. This equals \$42.16.

39. 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. In this case, Mr. Elke had divided success on their claim, so I find they are entitled to \$62.50, being half of the \$125 it paid in tribunal fees. I find Mr. Zoricic was unsuccessful in their claim, though I note they did not pay any tribunal fees

40. Mr. Elke claimed an additional 3 hours at \$110 as a dispute-related expense. To the extent that this is a claim for additional time to be added to their invoice, I note that is not a dispute-related expense, and I have addressed their entitlement to their invoice above.

41. To the extent it is a claim for their own time working on this dispute, I decline to make that order. I note the CRT does not typically award a party expenses for their own time in dealing with a dispute, consistent with the its practice of not generally awarding legal fees, except in extraordinary circumstances. So, in the circumstances and consistent with the CRT's practice, I do not order reimbursement for Mr. Elke's own time, and dismiss their claim for dispute-related expenses.

ORDERS

42. Within 14 days of the date of this order, I order Mr. Zoricic to pay Mr. Elke a total of \$889.32, broken down as follows:

- a. \$784.66 in debt,
- b. \$42.16 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT.

43. Mr. Elke is entitled to post-judgment interest, as applicable.

44. I dismiss the parties' remaining claims.

45. 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.

Christopher C. Rivers, Tribunal Member