Civil Resolution Tribunal

Date Issued: February 28, 2024

File: SC-2023-005691

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rockwood Electric Ltd. v. Journey Veedub Sales Ltd.*, 2024 BCCRT 195

B E T W E E N :

ROCKWOOD ELECTRIC LTD.

APPLICANT

A N D :

JOURNEY VEEDUB SALES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about auto repairs. The applicant, Rockwood Electric Ltd. (Rockwood), says the respondent, Journey Veedub Sales Ltd. (Journey), breached the parties' contract by failing to fix Rockwood's car. It seeks reimbursement of $1,439.23.

2. Journey disagrees. It says Rockwood hired it only to conduct servicing and maintenance and it did so. Journey also says it advised that its work would not necessarily resolve a noise issue Rockwood complained about.

3. A Rockwood director and owner, WA, represents it. Journey's general manager and managing partner represents it.

4. For the reasons that follow, I dismiss Rockwood's claim.

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.

Settlement Discussions

9. Rockwood provided copies of the parties' correspondence. Some of it included settlement discussions before the CRT process started on May 29, 2023. Journey did not claim that settlement privilege applied or object to the emails, so I considered them. However, I find they were largely irrelevant. My decision does not turn on the emails in any event.

ISSUE

10. The issue in this dispute is whether Journey must refund Rockwood $1,439.23.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Rockwood as the applicant must prove its 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.

12. DV, another owner and director of Rockwood, outlined the history of this dispute in a June 5, 2023 affidavit. It says the following.

13. On April 12, 2023, DV took the company vehicle to Journey's dealership and service centre. DV wanted Journey to diagnose and fix a squeaking noise affecting the vehicle's front end. Journey's service technician and DV drove the vehicle around the block to listen for the squeaking noise. DV says that the service technician advised that squeak meant the vehicle needed servicing.

14. Journey's evidence and submissions provide a somewhat different version of events. The service technician, DR, and a service advisor, EM, outlined their recollection in 2 internal emails both dated April 26, 2023. Their evidence is consistent with each other and says the following.

15. DV attended the dealership and asked EM the price for transmission servicing. DV said they heard a noise, presumably from the transmission. EM offered to diagnose the noise issue. DR took the vehicle for a road test with DV. DR said he only heard normal engine and driveline noises and said so to DV during the road test.

16. When they returned, EM and DV found that the vehicle was overdue for service under its factory specifications. They did not make any promise that this would fix the noise issue, but said servicing was required in any event. Journey's other employees performed both servicing and another road test. No one noticed any noise.

17. Overall, I prefer the evidence of DR and EM over DV for several reasons. First, both individuals provided consistent accounts of what occurred. Second, their evidence is consistent with Journey's work order and separate invoice for servicing the vehicle. The work order resembled a preliminary estimate, and the invoice largely reiterated the work order and included a final cost. Both documents show that Journey charged for front and rear differential service, brake fluid flush, automatic transmission fluid replacement, and transfer case service. The invoice shows the total was $1,439.23. Neither document mentioned fixing or diagnosing the noise issue.

18. Further, both DR and EM said they did not hear the noise DV complained of. I find DV's evidence and Rockwood's submissions are vague on whether the noise issue was audible during the road test. In contrast, DR's evidence clearly states that they did not hear the noise, so I accept this was the case. Since I find Journey's employees and representatives did not hear the noise, I also find it unlikely that Journey would provide any guarantees or promises that its work would fix the noise.

19. Some of the submissions focused on whether DR heard DV refer to the vehicle as their "baby". Rockwood says DV said no such thing, and this affects DR's credibility. Journey says it shows that DV wanted to take care of the vehicle. I find it to be a relatively minor comment, and nothing ultimately turns on whether anyone said it.

20. Rockwood says that there was no "meeting of the minds" or binding contract between the parties, and that the service work was unauthorized. I agree that a contract

requires a consensus ad idem, or meeting of the minds, to be binding. I find that the parties did have a meeting of the minds, but it was limited to servicing only.

21. I say this in part because it is undisputed that Rockwood's vehicle was overdue for servicing. I find this provides, from an objective perspective, a likely explanation for why DV decided to proceed with the work. I find that the parties were, at most, optimistic that this would address the noise issue, but there were no promises made about it. I find this demonstrated in DR and EM's emails and the work order and invoice, mentioned above. These documents did not mention any promises or guarantees about the noise.

22. It is undisputed that Journey completed the work and there is no indication it was deficient. I note that the work order estimate was much lower than the final invoice, but this was not the basis for Rockwood's claim. I would also likely need expert evidence to determine whether the final price was unreasonable. So, I find it unproven that Journey breached the contract.

23. DV's evidence is that they heard the squeaking noise again as they drove away from Journey. They contacted Journey but received no reply. They took the vehicle to Ian's Auto & Repairs Ltd. (Ian's) on April 24, 2023. Ian's determined a wheel bearing caused the noise and fixed it for $922.02. DV says that Ian's service technician said the cause of the squeak noise was "obvious" and "serious" and that it required immediate repairs.

24. Rockwood also alleges that Journey was professionally negligent. It says Ian's above-mentioned statements support its position. Journey denies any wrongdoing.

25. 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 if the deficiency relates to something non-technical. See *Balfor (Canada) Inc.* at paragraph 19 and *Absolute Industries and Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.

26. As this dispute is about car repairs, I find that identifying the cause of the squeaking noise was a technical matter and one beyond ordinary experience. I find that expert evidence is necessary. Rockwood did not provide any expert evidence from Ian's or any other source. So, I find it unproven that Journey breached the applicable standard by failing to identify the wheel bearing issue.

27. Rockwood says that DV's affidavit shows why Ian's refused to provide expert evidence. DV says that Ian's representative said they feared damaging Ian's business relationship with Journey. While that may be the case, I am still unable to assess what Ian's service technician based their opinion upon. There is also no expert evidence from any other source to make up the evidentiary gap.

28. I also note that comments from Ian's service technician are hearsay. DV says that they wrote Ian's representative and asked them to "correct [DV] if he had misunderstood or misconstrued what Ian's said" and Ian's did not respond. I find a lack of reply falls well short of expert evidence. It may simply indicate that Ian's ignored or forgot to respond to DV's request.

29. I acknowledge that DR and EM's emails are also hearsay, but I find them more reliable in these circumstances. This is because DR and EM directly authored their emails and other evidence is consistent with their account, such as the invoice. Rockwood says Journey fabricated the emails, but I find this allegation unsupported by evidence. Under CRTA section 42 I may accept such evidence and I choose to rely on it here.

30. Rockwood also relies on the law of unjust enrichment. This requires Rockwood to prove that 1) Journey was enriched, 2) Rockwood suffered a corresponding deprivation, and 3) there is no juristic reason for the enrichment of one at the expense of the other. See *Nouhi v. Pourtaghi*, 2022 BCSC 807.

31. Here, I find that Journey was enriched at Rockwood's expense since Rockwood paid it $1,439.23. However, I find the parties' contract was a juristic reason for the enrichment. So, I find a claim for unjust enrichment unproven here.

32. For all those reasons, I dismiss Rockwood's claim.

33. 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 dismiss Rockwood's claims for reimbursement of CRT fees and dispute-related expenses totaling $224.26. Rockwood did not claim any dispute-related expenses.

ORDER

34. I dismiss Rockwood's claims and this dispute.

David Jiang, Tribunal Member