



Civil Resolution Tribunal

Date Issued: February 29, 2024

File: SC-2023-004589

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zarkov v. Berk's Intertruck Ltd.*, 2024 BCCRT 204

B E T W E E N :

TODOR ZARKOV

APPLICANT

A N D :

BERK'S INTERTRUCK LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about vehicle repairs. Todor Zarkov says Berk's Intertruck Ltd. (BIL) did not adequately repair his vehicle. Mr. Zarkov claims \$3,370.93 for repair costs, parts, and inconvenience. Mr. Zarkov represents himself.

2. BIL denies Mr. Zarkov's claims. It says it completed the requested work properly, and that Mr. Zarkov dismantled its work before it could inspect his complaints. BIL is represented by an employee.
3. For the following reasons, I dismiss Mr. Zarkov's claims.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. However, an oral hearing is not necessarily required where credibility is in issue.¹ Neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. CRTA section 42 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.

ISSUE

7. The issue in this dispute is whether BIL's work on Mr. Zarkov's vehicle was substandard, and if so, whether BIL must pay Mr. Zarkov the claimed \$3,370.93.

¹ *Yas v. Pope*, 2018 BCSC 282.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mr. Zarkov must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. I note that BIL did not provide evidence, despite having the opportunity to do so.
9. The background facts are undisputed. In May 2022, Mr. Zarkov brought his vehicle to BIL for repairs. The parties agreed that BIL would replace the vehicle's kingpins and sway bar links. Mr. Zarkov supplied the parts for the repair.
10. BIL initially presented Mr. Zarkov with a \$2,770.70 invoice for the repairs. After Mr. Zarkov complained about the total, BIL reduced its invoice to \$2,266.93. Mr. Zarkov paid this amount, but claims a full refund of it as he says he was overcharged and BIL's repairs were not completed correctly. He also claims \$104 for parts, and \$1,000 for inconvenience.
11. Mr. Zarkov makes several arguments about BIL's invoice and conduct. First, he argues that BIL charged more than it quoted him. Mr. Zarkov says that he first visited BIL in 2020 to discuss the repairs, and that BIL's manager told him at that time that the repairs would cost a maximum of \$1,000. I place little weight on this submission, as Mr. Zarkov provided no evidence in support of it. In any event, I find it unlikely that BIL would give a quote for an indefinite time period. In a recorded interaction with BIL's manager in evidence, Mr. Zarkov admits that he did not ask for a written quote when he returned in 2022 to have BIL complete the repairs. I find Mr. Zarkov has not proven that BIL provided a binding quote for the repairs.
12. Next, Mr. Zarkov alleges that BIL intentionally blocked his vehicle from leaving its yard. Mr. Zarkov says this was an attempt to extort payment from him, as he could not move the vehicle until he paid the bill. Mr. Zarkov provided one photograph showing his unobstructed vehicle in BIL's yard, and another, later photograph showing his vehicle parked with two other vehicles positioned in front of and behind

it. Mr. Zarkov says that this was “humiliating” and was a “message” that he would have to pay the bill before leaving with the truck. I find this argument speculative. It is common understanding that repair shops may need to move vehicles around to make space for the vehicles they are working on, and that it is typical to require payment before the vehicle is removed. There is no evidence that BIL intentionally blocked Mr. Zarkov’s vehicle to intimidate him into paying its invoice.

13. Finally, Mr. Zarkov argues that BIL’s repairs were not done correctly. Specifically, he says that BIL did not grease the front right kingpin, damaged the brake line, excessively tightened the studs, over reamed the kingpin, and damaged the threads on the kingpin lock. Mr. Zarkov says that he has temporarily repaired these issues, but that the vehicle now needs new bushings and a new kingpin set.
14. Although he does not use this wording, I find Mr. Zarkov argues either that BIL breached its repair contract with him, or was negligent in performing the repairs. In all contracts for professional or trade services there is an implied term that the professional will perform the work to a reasonably competent standard.² In a negligence claim, the applicant must show that the respondent owed them a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent’s breach.³
15. As the party alleging deficient work, Mr. Zarkov bears the burden of proving that BIL failed to perform the repairs in a reasonably competent manner.⁴ Typically, expert evidence is required to show the applicable professional standard of care. This is because the standards of a particular industry are often outside an ordinary person’s knowledge and experience. However, expert evidence is not required if the work is obviously substandard, or if the alleged deficiencies relate to something non-technical.⁵

² *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 18.

³ *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

⁴ *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61.

⁵ *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, affirmed 2020 BCCA 22, at paragraph 112.

16. Mr. Zarkov provided extensive evidence and submissions about alleged problems with BIL's repair work. In submissions, Mr. Zarkov explains the problems that he says he found with BIL's work, and the steps that he took to repair those alleged problems. He provided many photographs and videos showing specific vehicle parts. I find the quality of BIL's vehicle repairs is not obviously substandard, and is a technical matter which requires expert evidence.
17. Mr. Zarkov provided a translated copy of his 1979 diploma in Mechanization of Agriculture. I infer that he is relying on his own opinion about the vehicle repairs as expert evidence. However, CRT Rule 8.3(7) says that a party generally cannot act as their own expert because the party is not neutral about the dispute's outcome. So, while I accept that Mr. Zarkov has experience with vehicle repairs, I place no weight on his own opinion about whether BIL's repairs were substandard. Independent expert evidence is required.
18. Mr. Zarkov also provided a November 27, 2023 work order from Rick Denis Automotive. It notes that the technician "cannot align" the vehicle's front end, that the vehicle needs a right king pin, and that there is "play" in the left wheel bearing, the drag link joint, and the outer tie rods.
19. The work order does not outline the technician's qualifications as required by CRT Rule 8.3(2). So, I do not accept it as expert evidence. Even if I accepted that the technician is qualified, the work order does not explain whether the noted issues are due to BIL performing substandard work or some other reason. The work order was issued 18 months after BIL's work, and it does not identify whether or how BIL's work fell below the industry standard.
20. Mr. Zarkov provided no other independent expert evidence about the truck's problems. In the absence of expert evidence, I find he has not proven that BIL's work fell below a reasonably competent standard.
21. I also considered whether BIL admitted liability for Mr. Zarkov's claim. Mr. Zarkov relies on recordings of in-person and telephone interactions with BIL's manager. In

the in-person recording, BIL's manager offers to reduce the invoice, as described above. However, they do not say that they are doing so because the work was substandard. Based on the recorded interaction, I find BIL offered to reduce the invoice to improve customer satisfaction, as Mr. Zarkov complained about the invoice amount.

22. Also in the in-person recording, Mr. Zarkov says that BIL did not properly grease the kingpin. BIL's manager says that the vehicle needs to be driven for the grease to move out to the bearing. They asked Mr. Zarkov to drive the vehicle a bit, and invited him to come back the following week if it still needed to be greased. Mr. Zarkov undisputedly did not bring the vehicle back. Again, I find this interaction is not an admission that BIL's work was not done correctly.
23. Lastly, Mr. Zarkov says that BIL offered to refund half of the invoice. While settlement discussions made during the CRT process generally cannot be disclosed to the tribunal member, I find BIL made this offer before Mr. Zarkov filed his CRT dispute, as Mr. Zarkov references it in his Dispute Notice. BIL did not object to Mr. Zarkov referencing the offer, so I find it waives any applicable settlement privilege. In any event, the offer as described by Mr. Zarko does not contain any admission of liability, so I place no weight on it. As Mr. Zarkov undisputedly did not accept BIL's offer, and instead filed this dispute, I find BIL is not bound by its former offer.
24. Given the above, I find Mr. Zarkov has not proven that BIL breached its contract or acted negligently. I dismiss his claims.

CRT FEES AND EXPENSES

25. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Zarkov was unsuccessful, so I dismiss his claim for CRT fees. BIL did not pay CRT fees, and neither party claimed dispute-related expenses, so I make no order for them.

ORDER

26. I dismiss Mr. Zarkov's claims and this dispute.

Alison Wake, Tribunal Member