



Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-000725

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Willetts v. Mphande*, 2024 BCCRT 233

BETWEEN:

NATALIE WILLETTS

APPLICANT

AND:

CHIMANGO CHRISTOPHER MPHANDE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about vehicle damage.
2. The applicant, Natalie Willetts, says that the respondent, Chimango Christopher Mphande, promised to repair and sell her vehicle. She says that her vehicle was

damaged while in Mr. Mphande's possession. She claims \$2,616.39 for the cost of repairing her vehicle.

3. Mr. Mphande says that he fixed the damage to the vehicle. He also says that Mrs. Willetts' repair bill is not reasonable.
4. Both parties are 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.
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. Mr. Mphande uploaded three evidence items that I could not open. CRT staff provided Mr. Mphande with the opportunity to re-submit this evidence, but he did not do so. Mrs. Willetts uploaded evidence with the same file names and the evidence matches Mr. Mphande's descriptions of the evidence. So, I find that I was able to review all the evidence and there is no prejudice to Mr. Mphande in proceeding to decide this dispute.

ISSUES

9. The issues in this dispute are:
 - a. Is Mr. Mphande responsible for Mrs. Willetts' vehicle damage?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mrs. Willetts must prove her claims on a balance of probabilities. 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.
11. The parties are former friends. On January 22, 2021, Mr. Mphande sent an Instagram message to Mrs. Willetts asking if she would be willing to sell her 1998 BMW. He said that he had been selling cars recently and could put Mrs. Willetts' BMW on the market. Mrs. Willetts responded that she was interested, however her BMW would not start and its driver-side window was smashed. Mr. Mphande arranged for a tow truck to take the BMW to a mechanic.
12. It is undisputed that the bottom of the BMW's bumper scraped the ground when the tow truck pulled it out of Mrs. Willetts' underground parking garage. Mr. Mphande says that Mrs. Willetts knew this would happen and agreed to it. Mrs. Willetts says she never agreed to this. I prefer Mrs. Willetts' evidence on this point. She provided proof of her BCAA membership and says she could have used BCAA to safely tow the BMW out of her parking garage.
13. The mechanic repaired the BMW and Mr. Mphande drove it back to Mrs. Willetts. Mrs. Willetts sent Mr. Mphande \$1,900 for the cost of the tow truck and the mechanic's bill. Mrs. Willetts says she inspected the BMW after Mr. Mphande returned it and found it damaged. She provided photos of the BMW before the pickup which show no damage and photos after Mr. Mphande returned it showing scuffs on the bumper, chips in the paint of the driver-side door and mirror, and scratches on

the driver-side door and trunk. She also says that the lining on the driver-side window was not installed correctly, the driver-side window rolled up very slowly, and there was broken glass on the driver-side seat.

14. Mrs. Willetts texted these photos to Mr. Mphande. Mr. Mphande apologized and said he would get the BMW fixed. After some delay, Mr. Mphande said that he knew an autobody shop and would make an appointment.
15. Mrs. Willetts and a friend drove the BMW to Mr. Mphande's chosen autobody shop. The BMW broke down during the drive and the parties and two friends had to push the BMW to the autobody shop. Mr. Mphande says he paid \$400 to tow the BMW to his mechanic and have it fixed and \$300 to cover the repairs for the damage to the BMW. I note that Mr. Mphande did not provide any proof of these payments.
16. Mr. Mphande's business partner texted Mrs. Willetts saying that the BMW was fixed. Mrs. Willetts says she went to pick up the BMW, however the damage was not fixed, there were now drip marks on the BMW hood from the clear coat being applied incorrectly, and the BMW would not start.
17. Mrs. Willetts finally decided to have her BMW towed to her own mechanic. She paid \$2,616.39 to have the BMW repaired. Mrs. Willetts sent the bill to Mr. Mphande and asked him to pay. Mr. Mphande refused.
18. I turn to the applicable law.
19. The law of bailment applies to this claim. Bailment is about the obligations on one party to safeguard another party's possessions. The bailor is a person who gives the goods or possessions and the bailee is the one who holds or stores them. A voluntary bailee for reward is someone who agrees to receive the goods as part of a transaction where the bailee gets paid. In caring for a bailor's property, the voluntary bailee must exercise reasonable care in all the circumstances (see: *Pearson v. North River Towing (2004) Ltd.*, 2018 BCPC 229).

20. Here, Mr. Mphande agreed to take possession of the BMW. He says he was just trying to help Mrs. Willetts as a friend, but admits in his submissions that he wanted to get his “foot in the door of the automotive industry.” Though he did not receive payment, I find that Mr. Mphande was seeking a personal benefit by establishing himself in the automotive industry. So, I find that Mr. Mphande was a voluntary bailee for reward and that he was required to exercise reasonable care over Mrs. Willetts’ BMW.
21. Normally in civil cases, an applicant bears the burden of proving a respondent’s liability. However, where property is damaged while in a bailee’s possession, there is a presumption that the bailee was negligent. The bailee must then rebut the presumption to avoid liability. This is because the bailee is in the best position to explain what actually happened to the goods (see: *Cahoon v. Isfeld Ford*, 2009 BCPC 334 at paragraph 12).
22. The photos and video Mrs. Willetts provided show that the BMW was damaged while in Mr. Mphande’s possession. Mr. Mphande suggests that the BMW was damaged by rock chips on the road or by a third party, however there is no evidence of this. Moreover, the paint chips along the driver-side door’s edge are not consistent with rock chips or vandalism. I find that Mr. Mphande has not met his burden of proving that he was not negligent in dealing with the BMW. So, I find that Mr. Mphande is responsible for the BMW’s damage.
23. I turn to damages. Mrs. Willetts paid \$2,616.39 to fix the BMW. Mr. Mphande says the repair bill has extras not related to the damage which occurred when he had the BMW. I agree. I find that the repairs related to the BMW’s headlamps, rear lamps, quarter panel, and nameplate as well as refinishing the entire vehicle were not related to Mr. Mphande’s negligence. The labour units in the mechanic’s bill for these extras is approximately one-third of the total time spent on the repair. On a judgment basis, I will deduct one-third from the mechanic’s bill to account for these extras. I order Mr. Mphande to pay Mrs. Willetts the remaining amount, which is \$1,744.26.

INTEREST, FEES, AND EXPENSES

24. The *Court Order Interest Act* applies to the CRT. Mrs. Willetts is entitled to pre-judgment interest on the \$1,744.26 from July 21, 2021, the date of the invoice, to the date of this decision. This equals \$121.03.
25. 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 find that Mrs. Willetts is entitled to reimbursement of \$125 in CRT fees.
26. Mrs. Willetts claims \$782.25 for using a skip tracer and \$178.50 for using a process server. I find that it was reasonable for Mrs. Willetts to use a skip tracer because she could not locate Mr. Mphande. However, the skip tracer's invoice shows an extra \$350 plus tax charge for a "super rush" job. I find there was no urgency to locate Mr. Mphande and this extra charge was not reasonable. So, I award Mrs. Willetts \$414.75 for the cost of the skip tracer. I do not order reimbursement for the cost of the process server. The CRT ordinarily serves a respondent by mail and there is no evidence that this would not have worked in this case. Mr. Mphande did not claim any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order Mr. Mphande to pay Mrs. Willetts a total of \$2,405.04, broken down as follows:
- a. \$1,744.26 as damages,
 - b. \$121.03 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$539.75, for \$125 in CRT fees and \$414.75 for dispute-related expenses.
28. Mrs. Willetts is entitled to post-judgment interest, as applicable.

29. This is a validated decision and order. 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.

Peter Mennie, Tribunal Member