



# Civil Resolution Tribunal

Date Issued: July 25, 2024

File: SC-2023-007065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Frank v. Fata*, 2024 BCCRT 719

BETWEEN:

JAYDEN GORDON FRANK

**APPLICANT**

AND:

PAUL ALFONSO FATA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. Jayden Gordon Frank says he paid Paul Alfonso Fata money for car parts. Mr. Frank says Mr. Fata did not provide the parts, and he claims a refund of \$3,830. Mr. Frank also claims \$150 as a refund of a membership fee he says he paid for Mr. Fata's "car club".

2. Mr. Fata says that he only received \$830 from Mr. Frank for the car parts, plus the \$150 membership fee. Mr. Fata does not dispute that he did not provide car parts to Mr. Frank, but he says that the membership fee is non-refundable. I infer Mr. Fata agrees that he owes Mr. Frank an \$830 refund, but disputes that he should pay more than that.
3. Both parties are self-represented.

## **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, in *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required even where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions.
6. Here, neither party requested an oral hearing. The primary relevant credibility issue is whether Mr. Frank made a \$3,000 cash payment to Mr. Fata, as he alleges. I find I am able to resolve this issue on the basis of the written submissions and documentary evidence before me, as explained below. Considering the CRT's mandate which includes proportionality and a speedy resolution of disputes, I find the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

7. 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 court.
8. Where permitted by CRTA section 118, 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**

9. The issues in this dispute are:
  - a. Must Mr. Fata refund Mr. Frank \$3,830 for car parts?
  - b. Must Mr. Fata refund Mr. Frank \$150 for a lifetime car club membership?

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Frank 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.
11. The parties agree that Mr. Fata runs a car club called Canadian Custom Ridez (CCR). I infer that Mr. Fata had, or purported to have, industry connections that allowed him to purchase discounted vehicle parts. There is no evidence before me that CCR is an incorporated company or society, and I find that Mr. Frank's dealings, as detailed below, were with Mr. Fata as an individual.
12. In May and June 2023, Mr. Frank transferred money to Mr. Fata to purchase parts for Mr. Frank's vehicle. As noted and as discussed further below, the amount Mr. Frank gave Mr. Fata is disputed.
13. While it is unclear whether Mr. Fata ultimately ordered any parts for Mr. Frank's vehicle, text messages in evidence show that in June 2023 Mr. Frank asked Mr. Fata

to cancel the parts orders, and the parties agreed that Mr. Fata would refund Mr. Frank's payments. Mr. Fata undisputedly did not refund Mr. Frank any amount, and Mr. Frank filed this CRT dispute on July 10, 2023.

### ***\$3,830 payment for car parts***

14. The parties agree that Mr. Frank sent Mr. Fata \$330 on May 30, 2023, and \$500 on June 3, 2023, by e-transfer. This is supported by e-transfer receipts in evidence. Mr. Frank says, and Mr. Fata does not dispute, that the \$330 payment was for paint sticks and BMW emblems for his vehicle, and the \$500 was for ABS sensors.
15. As noted, Mr. Fata does not dispute that Mr. Frank did not receive these parts, and that he is owed a refund. So, I order Mr. Fata to refund Mr. Frank \$830 for these transfers.
16. I turn to the remaining \$3,000 Mr. Frank claims. Mr. Frank says he paid this amount to Mr. Fata in cash on June 2, 2023, to purchase fuel injectors for his vehicle. Mr. Fata denies receiving this cash payment.
17. I find the evidence supports a finding that Mr. Frank paid Mr. Fata \$3,000 in cash for fuel injectors as he claims. I say this for several reasons. First, undated text messages in evidence show that Mr. Fata sent Mr. Frank a part number and said "\$2,940 my price". Mr. Frank provided a screenshot of Google search results for the part number, which shows that it is for BMW fuel injectors.
18. Second, Mr. Frank provided a copy of a transfer form showing that he sold another vehicle for \$4,000 on May 30, 2023. Mr. Frank says this is where he got the cash to pay Mr. Fata the \$3,000 for the fuel injectors. On June 2, 2023, Mr. Frank texted Mr. Fata saying "I'm here a bit early" and Mr. Fata responded "I'm on my way". The following day, Mr. Fata texted Mr. Frank and said, in part, "I've ordered the parts". Mr. Frank says this June 2 meeting is when he gave the \$3,000 in cash to Mr. Fata. Mr. Fata does not dispute that the parties met on this date, and does not explain why they did so if it was not to exchange the cash payment.

19. Third, in several text messages and Instagram messages between the parties, Mr. Frank refers to Mr. Fata owing him almost \$4,000. Similarly, in messages between Mr. Frank's friend E and Mr. Fata, E refers to Mr. Fata owing Mr. Frank "four grand". There is no response in evidence from Mr. Fata to any of these messages disputing the stated amount, and Mr. Fata does not explain in his submissions why he would not have corrected the amount in these messages if it was inaccurate.
20. Fourth, in some text messages, Mr. Fata tells Mr. Frank that he is unable to provide a refund right away because a family member stole the money out of his wallet. I agree with Mr. Frank that this supports his argument that he made the cash payment to Mr. Fata, because he undisputedly made the remaining payments to Mr. Fata by e-transfer as described above. So, I find it is likely that the money Mr. Fata refers to in these messages is the \$3,000 cash payment.
21. Finally, in a series of June 17, 2023 text messages, Mr. Fata says that he is hoping to send Mr. Frank \$500 the next day and will ask BMW for a refund for the rest. He says, in part, that BMW is "not gonna have that kind of cash in a till" and that it will likely need approval from BMW's head office because it is "not a small amount". I find it unlikely that Mr. Fata would say these things if he were referring only to the remaining \$330 payment.
22. Considering this evidence, I find it is more likely than not that Mr. Frank paid Mr. Fata \$3,000 in cash for fuel injectors. As Mr. Frank undisputedly did not receive the fuel injectors, I find Mr. Fata must reimburse Mr. Frank for the \$3,000 payment.

### ***\$150 membership fee***

23. Mr. Frank says that he paid Mr. Fata \$150 by e-transfer on May 21, 2023 for a lifetime membership in CCR. Mr. Fata does not dispute this, and it is supported by an e-transfer receipt in evidence.
24. Mr. Frank says he did not receive any of the discounts or items he was promised for his membership fee. However, it is unclear what discounts or items he was supposed to receive. Mr. Frank argues that he was supposed to receive a paint correction and

detail from his vehicle's "sponsor" for an upcoming car show, but I find the evidence before me does not establish that Mr. Fata promised Mr. Frank these items as part of his lifetime membership.

25. As noted, Mr. Frank bears the burden of proving his claims. On balance, I find that Mr. Frank has not proven that he did not receive the benefits of his CCR membership. So, I dismiss his claim for a refund of the membership fee.

## **CRT FEES, EXPENSES, AND INTEREST**

26. The *Court Order Interest Act* applies to the CRT. Mr. Frank is entitled to pre-judgment interest on the \$3,830 refund. While the precise date that Mr. Frank requested a refund is not before me, I find based on the text messages in evidence that he had requested it by June 17, 2023. So, I find Mr. Frank is entitled to pre-judgment interest from that date to the date of this decision. This equals \$214.40.

27. 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. As Mr. Frank was mostly successful, I find he is entitled to reimbursement of \$175 in CRT fees.

28. In his Dispute Notice, Mr. Frank said that an additional fee on top of the amounts claimed would be "ideal" to compensate him for the time and effort he has spent dealing with Mr. Fata. Mr. Frank did not claim a specific amount for this "additional fee", and provided no evidence in support of his claim that he had to take time off work to deal with this dispute. In any event, CRT Rule 9.5(5) says that the CRT will not order compensation for time spent on a tribunal proceeding except in extraordinary circumstances, which I find are not present here. So, I dismiss Mr. Frank's claim for dispute-related expenses.

## ORDERS

29. Within 21 days of this decision, I order Mr. Fata to pay Mr. Frank a total of \$4,219.40, broken down as follows:
- a. \$3,830 in debt,
  - b. \$214.40 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
30. Mr. Frank is entitled to post-judgment interest, as applicable.
31. I dismiss Mr. Frank's remaining claims.
32. This is a validated decision and order. Under CRTA section 58.1, 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.

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Alison Wake, Tribunal Member