



Civil Resolution Tribunal

Date Issued: April 9, 2018

File: SC-2017-004195

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Konderski v. Three Point Motors*, 2018 BCCRT 120

BETWEEN:

Wieslaw Andrew Konderski

APPLICANT

AND:

Three Point Motors

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Wieslaw Andrew Konderski, seeks a \$5,000 refund because he says he was overcharged for a cargo van he purchased from the respondent, Three Point Motors. The respondent denies the claim. Both parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
4. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. Is the respondent required to pay the applicant any refund for the cargo van?

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. In June 2017, the applicant purchased a 2016 Mercedes-Benz Sprinter cargo van (van) from the respondent. He says he knew the van was a 2016 model with 3860 kilometers on the odometer, and it had been used as a “demonstration” vehicle. The applicant says he bought the van with the understanding that it was undamaged. However, he discovered damage after he took possession of it and cleaned it.
9. The applicant says there are scuffs on the front and rear bumper covers, and on the instrument panel inside the van. He also provided repair estimates showing potential repairs to the rear bumper step, the wood panel on the right cargo door, the inner wheel wells, the driver’s door, and the left inner door. Based on the photographs provided by the applicant, all of these repairs appear to be cosmetic rather than structural or mechanical.
10. The photographs show minor but extensive wear to the paint and finishes on the inside of the van, as well as scuffs and scratches to plastic surfaces and some of the paint on the outside of the van. The respondent says the applicant received a \$5,000 discount off the purchase price to compensate for this usage and wear, and he signed a portion of the purchase agreement agreeing that he had inspected the vehicle and was satisfied with its condition.

11. The parties' June 2, 2017 purchase agreement states as follows:

The Buyer declares that he/she has inspected the Vehicle and is satisfied with its mechanical and physical condition as of the date of this agreement.

12. The applicant does not dispute that he signed the purchase agreement, but says he could not inspect the vehicle in the time available, as it would have taken hours. He says there were rain clouds, which made the conditions unfavourable, and he was tired after having gotten up at 4:00 am to travel to the dealership. He also says the rain must have washed off whatever was covering the damage, and that he did not discover the full damage until he detailed the van later.
13. I do not accept the applicant's evidence that he could not have discovered the damage before signing the purchase agreement and paying for the van. Much of the damage shown in the photographs is clearly visible, and in a July 23, 2017 email to the respondent the applicant wrote that the rain was light on the day he picked up the van, and the van was unwashed but not dirty. The applicant also wrote that he travelled home on the ferry after picking up the van, and a truck driver parked behind him saw damage inside and outside of the van. If the truck driver was able to see this damage on the ferry, I find it would have been visible to the applicant at the dealership.
14. The applicant's June 23, 2017 email says he test drove the van, was excited about how it drove, returned to the dealership, finished the paperwork, and paid for the van. This indicates that the applicant chose not to inspect the vehicle for scratches and wear. When he then signed a written contract agreeing that he was satisfied with the van's condition at the time of purchase, I find he waived his right to pursue a remedy for damage. This is particularly true because the purchase agreement says the van was a 2016 model with 3,860 kilometers on the odometer. Knowing this, the onus was on the applicant to inspect the van given his declaration that he had inspected it. As previously noted, most of the damage would have been

noticeable upon visible inspection. Accordingly, I find the applicant is not entitled to a refund for damage he discovered after purchasing the van.

15. The applicant also says the respondent rented out the van before he purchased it, contrary to its statements on the purchase agreement and tax transfer form. The applicant relies on a Substitute Vehicle Agreement form he found in the van. The agreement was signed by a customer in February 2017, and says the van was used by the customer as a “temporary substitute motors vehicle”, in exchange for a fee of \$40 per day. The respondent says this is the standard loaner/multi-day test drive form required by their insurer, and the van was not used as a rental vehicle.
16. I find that the Substitute Vehicle Agreement form does not establish that the van was rented out, and so the applicant is not entitled to any refund on this basis. For the reasons set out above, the applicant is also not entitled to a refund for damage to the van.
17. The applicant’s claim is dismissed.
18. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful, so I dismiss his claim for reimbursement of tribunal fees and related expenses. The respondent did not pay any fees and did not claim dispute-related expenses.

ORDERS

19. I dismiss the applicant’s dispute.

Kate Campbell, Tribunal Member

