



# Civil Resolution Tribunal

Date Issued: June 29, 2018

File: SC-2017-006996

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Christmas v. Volkswagen Group Canada Inc.*, 2018 BCCRT 295

**B E T W E E N :**

Leslie Christmas

**APPLICANT**

**A N D :**

Volkswagen Group Canada Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This is a preliminary decision about whether the Civil Resolution Tribunal (tribunal) should refuse to resolve this dispute under section 11 of the *Civil Resolution Tribunal Act* (Act).
2. For the reasons given below, I have decided to refuse to resolve this dispute.
3. Only the evidence and submissions relevant to this decision are referenced below. This is not a final decision as to the substance or merits of the dispute.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.
5. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

## **ISSUE**

6. The issue is whether I should refuse to resolve this dispute under section 11 of the Act. The question is whether the applicant is pursuing a claim against the respondent that has already been resolved through a class action settlement.

## BACKGROUND

7. The question of whether the tribunal should refuse to resolve this dispute under section 11 of the Act arose during facilitation and was referred to me by the case manager for a decision.
8. In a January 29, 2018 Dispute Notice, the applicant Leslie Christmas says the respondent Volkswagen Group Canada Inc. offered to buy back her 2010 Diesel Golf Wagon (car) for \$23,136.00, in June 2017. She says she accepted this offer, and made an appointment to return her car on Saturday September 9, 2017.
9. The respondent says this dispute is about the same Volkswagen buy back class action agreement made in Supreme Court File SC-2018-001244, in which the applicant accepted a settlement and signed a Release.
10. When the applicant attended the September 9, 2017 appointment to return the car, the respondent was only willing to pay her \$22,218.00. The applicant says she had agreed to the \$23,136.00 buy back, that there was no good reason for the reduced price, but that she accepted the lower amount. The \$918.00 difference is the relief sought in this dispute.
11. The applicant says the value of her vehicle was based on a mileage of 65,000 kilometres. She says that when she returned the car, the mileage on it was 64,316 kilometres, and that there were no other material changes in the car's condition from the date on which she accepted the \$23,136.00 offer.
12. The applicant says she contacted RicePoint, who administered the settlement. On one call they told her the difference in value had to do with mileage. When she pointed out the car was still below the 65,000 km mileage cap for the valuation, they told her it was because the Canada Black Book value had changed. She pointed out the car was supposed to be valued at a "pre-scandal" date of September 18, 2015, not current market value. On another call, a RicePoint

representative told her the offer letter she received was “wrong”. She says RicePoint refused to document the answers to her questions.

13. The applicant sent the respondent a demand letter on October 23, 2017, requesting payment of the \$918.00, but received no response.
14. In its April 23, 2018 Dispute Response the respondent says this claim is barred by the terms of the settlement agreement and release signed by the applicant.
15. I turn to the underlying chronology. On June 1, 2017, the applicant received an offer letter from the respondent to resolve the “2.0-Litre TDI Emissions” issue regarding her car for a total payment of \$23,136.00. The applicant signed the offer and a release on June 9, 2017. The letter specified that the release “becomes effective and binding only when you receive your settlement benefits.”
16. Paragraph 13 of the Release provides that any disagreement or action to enforce the release is to be commenced or maintained only by the Ontario Superior Court of Justice, for members of the National Settlement Class.
17. The applicant elected not to complete her buyback until September 2017, after signing the offer letter in June 2017. The offer letter specifies that the car’s value might change “depending on” mileage by the time of the buyback appointment.
18. The respondent says the car’s value changed because, by September 2017, the Canadian Black Book values for a given car at a given mileage had changed, relative to the June 2017 values. Based on the evidence, I agree with the applicant that the lower offer was not really a change “depending on mileage” as contemplated on the offer letter. Had she not accepted the lower offer, she may have had grounds to challenge the agreement as incomplete because, up until she accepted the money, price had not been determined.
19. The June 1 letter specifies that if an offeree wishes to appeal the offer, they should not sign and return the offer, as to do so will forfeit their right to appeal. As well, the letter specifies that to initiate an appeal, an offeror must “...notify the Claims

Administrator in writing within 10 day of receipt of this Offer...” If the resulting review is not satisfactory, the offeror could appeal to an Arbitrator along with a \$150.00 fee.

20. The Release specifies that if the applicant accepts the benefits for the buyback, then she agrees to release any claim they may have against the respondent arising out of issue with the car, except claims for personal injury or wrongful death.
21. The respondent says that the applicant was informed of the change to the amount of her buy back before September 9, 2017. The applicant did not complete her buyback at the September 9 appointment, but instead emailed a complaint dated September 10, 2017 about the change in value. She says she received no reply.
22. The respondent says the issues raised in the applicant’s complaint were addressed in a phone call to the applicant’s car dealer on September 12, 2017. The applicant then completed the buyback at the updated amount on September 12, 2017, receiving \$22,218 (\$17,118 updated buyback value and \$5,100 damages payment.)
23. The applicant agrees that on September 12, 2017 she completed the settlement. She says she needed the money to purchase another car and so accepted the cheque.
24. Because she completed the buyback on September 12, 2017, I find that the applicant’s concerns raised in her September 10 email complaint had been resolved to her satisfaction or that she had decided to compromise on the amount of her claim in order to complete the buyback and obtain the money.

## **LAW AND ANALYSIS**

25. Section 11(1) of the Act provides that the tribunal may refuse to resolve a claim within its jurisdiction if the claim has been resolved through a legally binding process or is an abuse of process.

26. I find that, on her own evidence, the applicant accepted the payment of \$22,218. Because she did so, the terms of the Release became effective. The Release provides that, upon accepting the benefits, the applicant can bring no further claims regarding the buyback. I therefore find that the buyback claim has been fully and finally resolved between these parties, pursuant to the June 2017 letter agreement.
27. Further, even if I had not found the dispute was fully resolved, the agreed appeal mechanism was through arbitration, rather than through this tribunal.
28. For these reasons, I refuse to resolve this dispute pursuant to section 11(1)(a) and (b) of the Act. There is no remaining claim because the Release precludes it, and the claim was resolved through a legally binding settlement agreement.
29. In making this decision, I have placed substantial weight on the fact that the applicant had read and agreed to the terms of the settlement agreement and Release, knew that she could decline to accept the payment as she initially did on September 9, 2017, and then decided to complete the buyback at the reduced figure.
30. The tribunal will refund to the parties all fees paid to the tribunal in this dispute.

## **ORDERS**

31. I order that the tribunal refuses to resolve the applicant's claims in this dispute, under s. 11(1)(a) and (b) of the Act.

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Julie K. Gibson, Tribunal Member