Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-006285

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vigna v. Vigna*, 2018 BCCRT 393

B E T W E E N :

Frank Vigna

APPLICANT

A N D :

Vanessa Vigna

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a car loan. The applicant, Frank Vigna, says he co-signed the car loan with his adult daughter, the respondent Vanessa Vigna. The respondent

made monthly payments through January 2017, around which time she left the 2011 Chevrolet Equinox (SUV) at the applicant's home.

2. After selling the SUV, the respondent says there was a $3,000 shortfall after paying off the car loan, and so he is claiming against the respondent for half, $1,500, because he says she is on title as a half-owner of the car.

3. The respondent says the applicant demanded the car's return to him, after which she made another monthly car loan payment in January 2017. The applicant says she then gave the applicant a month's notice to "change the payments over to him". The applicant also says the applicant was the car's sole owner. The respondent says during the time she had the car, she paid for the loan and any required maintenance, totaling $4,139.88 and wants that offset from anything found owing to the applicant. There is no counterclaim before me. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (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.

5. 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.

6. 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.

7. 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

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant for a car loan the applicant co-signed with the respondent.

EVIDENCE AND ANALYSIS

9. 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.

10. On April 8, 2016, the parties signed a "Motor Vehicle Purchase Agreement" with Gardner Chevrolet Buick GMC Ltd. (Gardner). The financing amount was $15,538.85 for the SUV. Both parties were listed as "buyer" on the agreement, and both parties signed. The financing term was 60 months, at 4.99% annual interest, with monthly payments of $293.15. One of the agreement's terms was that if the buyer defaults on payments, Gardner as seller could repossess the vehicle. A related "TD Auto Finance Conditional Sale Contract", signed by the respondent, confirms the payment terms, again setting out each of the parties as a "co-buyer".

11. On January 14, 2017, the applicant (or his spouse) texted the respondent that as they had not heard from the respondent that she was taking their 'name off the car" and had a co-signer in place, despite having 2 weeks, they were "coming next week to pick up the car". In her submission, the respondent says when the applicant demanded that his SUV be returned, she promptly returned it at the beginning of January 2017 and paid her final loan payment on January 9, 2017 to cover January (even though she had just returned the SUV). I accept the

respondent's evidence as I find it the most likely scenario, given the totality of the evidence before me.

12. The applicant provided banking records that show on February 10, 2017 he withdrew $13,506.06 from his account. I accept his evidence that this was to pay off the SUV loan, which is not disputed.

13. The applicant says the respondent was the SUV's co-owner. I disagree. The respondent's evidence that the applicant was the car's sole owner is supported by the Insurance Corporation of British Columbia Owner's Certificate of Insurance and Vehicle Licence. This Certificate was effective April 9, 2016 and expired April 8, 2017. The respondent was listed as the principal operator, but the applicant signed that he was the registered owner. In other words, while the parties were co-buyers in terms of the SUV's purchase and financing agreement, the applicant was registered as the SUV's sole owner.

14. On June 5, 2017, the applicant made an agreement with Gardner to buy back the SUV for $11,000. It is undisputed that this was as a "trade-in".

15. The applicant also provided a copy of a June 8, 2017 cheque for $498.75 he paid to "Buds Bins", which he says was for storage fees for the SUV. I infer the applicant's calculation of a $3,000 loss (of which he claims half against the respondent) is based on the difference between the $13,506.06 plus $498.75 he spent paying off and storing the SUV, and the $11,000 he received when he sold it.

16. The respondent submits that the applicant chose to trade in the SUV for another vehicle, when there was nothing wrong with the SUV. The respondent says she paid more than $4,000 for maintenance and insurance for the SUV that the applicant always owned, although she did co-sign the financing agreement.

17. The applicant asks that the tribunal deduct the claimed $1,500 "on an exgratia basis" from the $4,139.88 that she had invested in the SUV. I do not agree, given

the respondent was a co-buyer under the financing agreement and there is no dispute that she had the sole benefit of using the SUV at all material times.

18. However, I find the applicant's claim cannot succeed. As noted, it is true the parties both signed the financing agreement. However, on balance I find the applicant demanded that the SUV be returned to him in January 2017. The SUV was registered solely in the applicant's name and the applicant alone chose to trade it in for $11,000 in June 2017, having already paid off the car loan in February 2017 for $13,506.06. There is no indication in the evidence before me that the applicant gave the respondent any specific notice of his intention to trade in the SUV and that he intended to hold the respondent for half of any shortfall. There is no indication that the applicant tried to get a better price for the SUV to avoid any shortfall.

19. I find in all of the circumstances the respondent cannot fairly be held responsible for the $1,500 claimed. There was no agreement between the parties about such a debt. The respondent signed the financing agreement with Gardner, and if she was ever considered to have defaulted, Gardner would have the right to claim against her. The applicant did not give the respondent a reasonable opportunity to address any liability she potentially had, and instead unilaterally acted, which he was free to do at the time as he was the SUV's only registered owner.

20. In summary, I find the respondent's liability for the applicant's claim does not reasonably flow from the financing agreement, given the applicant's demand for the SUV's return and his unilateral decision to sell the SUV for $11,000. The applicant has also not provided any evidence to support his claim for storage fees between January and June, 2017, when he decided to sell the SUV.

21. Given my conclusions above, I dismiss the applicant's claim for $1,500. In accordance with the tribunal's rules, as the applicant was not successful I find he is not entitled to reimbursement of the $125 he paid in tribunal fees.

ORDER

22. I order that the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair