



Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2017-002613

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nasab v. Kerdar*, 2018 BCCRT 692

B E T W E E N :

Ashkan Kaveh Nasab

APPLICANT

A N D :

Mohammad Reza Hamid Kerdar

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a \$3,000 deposit paid for a vehicle in a private sale. The applicant, Ashkan Kaveh Nasab, ultimately did not buy the vehicle because he did not get approved for a loan. The applicant seeks the return of deposit, which the respondent, Mohammad Reza Hamid Kerdar, has refused on the basis the parties

agreed the deposit was non-refundable. The applicant is self-represented and the respondent is represented by Rouzbeh Golsheh, a family member.

JURISDICTION AND PROCEDURE

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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.

ISSUE

6. The issue in this dispute is whether the applicant's \$3,000 deposit for the vehicle should be refunded.

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 referenced the evidence and submissions as necessary to give context to my decision.
8. In March 2017, the respondent advertised his 2008 Hino 185 "cab and chassis" truck on Craigslist. In his submissions for this decision, the applicant says he understood the truck would be sold with a "box" with it, but that was not the case. I accept that while the respondent advertised the truck as a "box" body style, the box itself was not advertised as included. I say this because the advertised photos clearly show no box on the truck. Further, I find the advertisement "cab and chassis" as being clear that a truck box, or storage container, was not included.
9. It is undisputed that the parties spoke the same native language together. Until the submissions for this decision, the applicant acknowledged that he wanted the respondent's truck and that the only reason he did not get it was because he was not approved for a loan and therefore he could not afford the truck's purchase price, which was either \$33,000 as the applicant described in his credit application or \$25,000 as set out in the transfer/tax form.
10. I find the applicant has not proved that the box's inclusion was part of the deal. I find the fact that the box issue was not mentioned in the applicant's application for dispute resolution is support for this conclusion. In other words, I find that the

applicant would have raised the issue of the box not being included as he says it was promised to be, but the applicant did not. Instead, in the Dispute Notice the applicant's claim is limited to a refund of the deposit because he did not get the loan. I dismiss the applicant's claim with respect to the box allegedly being included with the truck's purchase price.

11. I also find there is also nothing on the transfer/tax form to indicate the applicant's purchase of the truck was contingent on his obtaining the loan. I find this particular claim is unproven.
12. Further, given the above inconsistencies in the applicant's description of what happened, I find the applicant's evidence is less reliable and I prefer the respondent's evidence where the parties' evidence conflicts.
13. I turn then to the crux of this dispute, which is whether the applicant's \$3,000 cash deposit was non-refundable. The transfer/tax form has a handwritten notation, which I infer was completed by the respondent seller: "This truck sold as is and \$3000 deposit is not refinedabowl if the costomer change their mind!" The words refundable and customer in this quote were misspelled, as set out above, but I find it is clear the deposit was described as non-refundable. The applicant signed the transfer/tax form immediately below this notation.
14. I also do not accept the applicant's submission for this decision that the respondent agreed to cancel the contract. As noted above, I prefer the respondent's evidence. Again, this allegation was not mentioned in the applicant's application for dispute resolution, in which he said he had help writing it. I make the same finding about the applicant's new submission that the applicant had friends that could have loaned him money for the truck's purchase. While it may be true that his friends would have loaned it to him, I find the applicant was not pursuing that option at the time he told the respondent he would not purchase the truck. This conclusion is supported by the applicant's text message to the respondent on April 7, 2017, which simply said that he did not get his loan approved, and "therefor, I can not close the deal. I do apologize" (reproduced as written). I also note the applicant's ability in this text

message to write reasonably clearly in English, which I find supports a conclusion that he understood the deposit was non-refundable, as written on the tax-transfer form. In exchange for that deposit, the respondent did not continue to try and sell the truck to others, which I accept he could have done. I find the applicant understood and accepted this, and that the deposit was non-refundable. I therefore find the applicant's claim for the return of the deposit must be dismissed.

15. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful in this dispute I find he is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair