



# Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Countryside Holdings Ltd. v. RITCHIE BROS. AUCTIONEERS (CANADA) LTD./LES ENCANS RITCHIE BROS. (CANADA) LTEE*, 2018 BCCRT 841

B E T W E E N :

Countryside Holdings Ltd.

**APPLICANT**

A N D :

RITCHIE BROS. AUCTIONEERS (CANADA) LTD./LES ENCANS  
RITCHIE BROS. (CANADA) LTEE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicant, Countryside Holdings Ltd., bought a 2011 T700 Kenworth truck from the respondent, Ritchie Bros. Auctioneers (Canada) Ltd./Les Encans Ritchie Bros. (Canada) Ltee. The applicant discovered that the truck was illegally modified to

bypass its pollution control system. When the applicant told the respondent about the issue, the respondent took the truck back and gave the applicant a refund. The applicant claims \$1,440.29 for out-of-pocket expenses it incurred after purchasing the truck.

2. The respondent has refused to continue to do business with the applicant. The applicant seeks an order that the respondent reactivate the applicant's account.
3. Each party is represented by an employee.

## **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.
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 make one or more of the following orders:
  - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

- 8. The issues in this dispute are:
  - a. Is the applicant entitled to be reimbursed for its out-of-pocket expenses that they spent while it owned the truck?
  - b. Does the respondent have to reactivate the applicant's account?

## **EVIDENCE AND ANALYSIS**

- 9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 10. The respondent is an auctioneer that sells heavy equipment, including commercial trucks.
- 11. On March 14, 2018, the applicant purchased the truck from the respondent's Chilliwack location. After leaving the respondent's yard, the applicant's driver immediately noticed that the truck shook at highway speed. The applicant began investigating the problem. First, the applicant had the tires rebalanced, but that did not help the shaking. The applicant had a mechanic look at the suspension, steering and drivetrain, but the mechanic did not find anything. The applicant took the truck to another mechanic who performed a more thorough inspection and determined that the truck had an illegal modification to the pollution control system.
- 12. The applicant contacted the respondent's general manager, who consulted with the respondent's head office. The respondent decided to take the truck back and issue

a full refund. The respondent also invited the applicant to submit expenses that the applicant spent on the truck, which the respondent would consider reimbursing.

13. The respondent submitted an invoice for \$1,440.29, which included the cost of the 3 mechanics, labour for the applicant's drivers, and insurance for the truck. The respondent told the applicant that it would pay for the 3 mechanics, which cost a total of \$667.11, but would not pay for the labour or insurance. The applicant rejected the offer.
14. The respondent repeated its offer to pay for the 3 mechanics in its Dispute Response. However, in the respondent's submissions before me, the respondent submits that accepting the truck back and giving a full refund was not an admission of guilt. The respondent says that the applicant agreed to the respondent's Bidder Terms and Conditions, which are a full defence to the applicant's claim. The respondent says that the refund of the initial purchase was a good faith gesture to a long-standing customer.
15. I find that the none of the respondent's offers to pay for the mechanics were admissions that it was liable to pay that amount. They were offers to settle the dispute, which the applicant did not accept.
16. The Bidder Terms and Conditions say that the respondent has not inspected the equipment for sale. They say that the respondent does not make any representations or warranties about the equipment or about the compliance of the equipment with any regulations. They strongly recommend that purchasers perform their own inspections. The respondent makes equipment available to customers for inspection prior to purchase.
17. The applicant submits that the bidding rules do not apply to an "illegal sale". I infer that the applicant believes that the sale was illegal because the truck did not comply with pollution control regulations because of an illegal alteration. However, there is no suggestion that the respondent knew about the modification. Indeed, it took the applicant's mechanics several hours to find the modification. I find that the Bidder

Terms and Conditions are broad enough that they exclude any representations or warranties about whether a previous owner made any illegal modifications to the truck.

18. Section 18 of the *Sale of Goods Act* (SGA) sets out a number of implied conditions and warranties that apply to the sale of goods. Section 20 of the SGA allows a seller to exclude the implied warranties as long as it is selling used goods. I find that the Bidder Terms and Conditions excludes the implied warranties in section 18 of the SGA.
19. Therefore, the Bidder Terms and Conditions gave the applicant the choice to either inspect the truck or accept the risk of not doing an inspection. The applicant decided to take the risk. I agree with the respondent that it could have relied on the Bidder Terms and Conditions to refuse to take the truck back and give a refund. For the same reasons, the applicant is not entitled to the costs it incurred in the brief time it owned the truck.
20. I dismiss the applicant's claim for compensation.
21. As a result of this dispute, the respondent terminated the applicant's account and refuses to do further business with the applicant.
22. The applicant seeks an order that the respondent reinstate its customer account. The applicant says that because the respondent has a near monopoly on industrial auctions, it is unjust that the applicant cannot keep doing business with the respondent.
23. I find that the applicant does not have the right to do business with the respondent. The respondent is a private business. There is no legal basis to force the respondent to reinstate the applicant's account. I dismiss this claim.
24. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. The applicant claimed \$125 in tribunal fees and \$367.50 in dispute-related expenses but was unsuccessful. I decline to order the respondent to reimburse the applicant for tribunal fees or dispute-related expenses.

25. The respondent did not claim any dispute-related expenses.

## **ORDER**

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

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Eric Regehr, Tribunal Member