



Civil Resolution Tribunal

Date Issued: January 16, 2019

File: SC-2017-005183

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chaudhry v. August Exotic Car Tours & Rentals Ltd. doing business as Helia Enterprises, 2019 BCCRT 62*

B E T W E E N :

Ali Chaudhry

APPLICANT

A N D :

August Exotic Car Tours & Rentals Ltd. doing business as Helia Enterprises

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. In May 2017, the applicant rented a 2005 Ferrari F430 from the respondent, August Exotic Car Tours & Rentals Ltd. doing business as Helia Enterprises. The

respondent says the applicant was involved in an at-fault collision and damaged the car. The applicant says there was no collision, and the car broke down due to mechanical problems.

2. The applicant seeks an order that the respondent refund the \$2,477.50 rental fee and the \$2,500 damage deposit he paid when he rented the car. The applicant also seeks an order that the claim against his insurance coverage history with the Insurance Corporation of British Columbia (ICBC) be removed. ICBC is not a party to this dispute.
3. The applicant is self-represented. The respondent is represented by Tyler Checkley, a principal or 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 118 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue. 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.

6. 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.

Jurisdiction - ICBC Insurance History

7. The applicant requests an order that the claim against his insurance coverage history with ICBC be removed. Because ICBC is not named as a party to this dispute, I have no jurisdiction to order ICBC to do (or not do) anything, including changing its records. For that reason, I have not addressed that issue in this decision.

ISSUES

8. The issues in this dispute are:
 - a. Must the respondent refund the \$2,477.50 car rental fee?
 - b. Must the respondent refund the \$2,500 damage deposit?

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. The parties agree that the applicant rented the car on May 20, 2017. He signed a written rental agreement.
11. The applicant says the car broke down after a few hours of use. He says the car was not in roadworthy condition when he picked it up, as it had been in the shop shortly before the rental date. The applicant admits the car was damaged, but says the damage was not in his control. He says the car broke down on the side of the road due to a mechanical problem, and he did not hit anything.
12. The respondent says the applicant damaged the car through contact with a pothole in a construction zone. The respondent says the car was in acceptable mechanical order when the applicant picked it up, and it had been in the shop for regularly scheduled maintenance just before the rental. The respondent says that under the terms of the rental agreement, the applicant is liable for all damages and is also not entitled to a refund of the damage deposit.
13. I find the evidence provided by the applicant does not establish that the car broke down due to a mechanical problem. He provided a photo of the car parked in a parking lot. He says the photo was taken after “the incident”, but I find the photo shows no damage or abnormality. The applicant says the car broke down, but he did not explain exactly what happened. For example, he did not explain whether the car lost power or stopped suddenly, whether there was any unusual sound or smell, whether he saw broken pieces on the car, or whether there was anything on the road such as parts or debris. He did not specify whether the breakdown related to the engine, the wheels, the steering, or some other mechanical system.
14. The applicant provided a statement from his brother, IC. IC wrote that he was following the applicant in another car. IC says they were driving through a construction zone at the speed limit of 30 kilometers per hour. IC says he heard the applicant’s car make a very loud sound, and he saw the front end hit the ground. He says the applicant quickly pulled over into a parking lot. IC wrote that there was “definitely a malfunction in the suspension or the undercarriage of the car.”

15. The applicant also provided a statement from his wife, AA. AA wrote that she was riding in the car with the applicant, and as they were driving the car “made a loud noise and the front broke down.” AA said they pulled over into a parking lot, and had to get another ride because the car was broken down.
16. I find that these statements from IC and AA do not establish that the car had a spontaneous mechanical failure. There is no evidence indicating that either has expertise in car mechanics, and neither described the road conditions at the time of the breakdown. Also, neither witness specifically refuted the respondent’s assertion that the car was damaged when the car hit a pothole. In any event, I find that IC’s and AA’s observations are not inconsistent with the applicant driving over a pothole.
17. I am more persuaded by the ICBC information provided by the respondent. The ICBC report confirms that the car’s damage was caused by colliding with a pothole. The ICBC report states that there was damage to the right front suspension, some belly pans, and the lower front bumper. The applicant has not explained how a mechanical failure could damage the car’s bumper. Rather, I find that this evidence supports the conclusion that the applicant hit a pothole.
18. Other ICBC documents provided by the respondent also support the conclusion that the applicant hit a pothole or other road obstacle, rather than the conclusion that there was a spontaneous mechanical failure. Photos taken by ICBC show that the metal panels on the underside of the car had scrape marks across their length. The applicant has not explained how this could occur due to a mechanical problem. Moreover, an ICBC claims adjuster inspected the car and completed documents describing the car’s damage as a “collision”, with primary impact to the right front side of the car and secondary impact to the undercarriage.
19. I place significant weight on these ICBC documents because they are based on the assessment of an adjuster who inspected the car, and who is not associated with the parties in this dispute. Also, I find the applicant did not provide sufficient evidence to prove his assertion that the car had spontaneous mechanical damage unrelated to a collision.

20. The rental agreement signed by the parties says the applicant was entitled to keep the car for 24 hours, for a fee of \$2,477.50. The applicant says he is entitled to a refund of the rental fee, as he only had the car for a few hours. I find the applicant is not entitled to a refund. While he was unable to drive the car, for the reasons set out above I find that was not due to any action of the respondent, or due to a flaw with the car. Rather, I find the applicant hit a pothole or other obstacle. Because of that, the respondent was unable to use or rent the car during the rental period. There is no provision in the rental agreement allowing for a refund, and clause 11 of the agreement allows the respondent to payment for lost revenue resulting from the applicant's use. For these reasons, I find the applicant is not entitled to any refund of the \$2,477.50 rental fee. I dismiss this claim.
21. I also find the applicant is not entitled to a refund of the \$2,500 damage deposit. The agreement says the applicant is responsible for all damage and loss, and clause 9 says the car must be returned in the same condition as it was received. Clause 3 says the respondent may use the \$2,500 to cover any amounts due under the agreement. The respondent did not make specific claims for damage, insurance deductibles, or lost revenue. However, based on the ICBC documents in evidence, I find the applicant paid a \$1,000 insurance deductible, and that the car was not repaired for several weeks. Based on the wording of the rental agreement, I find the respondent was entitled to keep the damage deposit and apply it to the insurance deductible and lost rental income. I therefore conclude that the applicant is not entitled to any refund of the damage deposit.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

23. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member