



# Civil Resolution Tribunal

Date Issued: March 11, 2019

File: SC-2018-002844

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clumpner v. Minshall*, 2019 BCCRT 290

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

David Clumpner

**APPLICANT**

**A N D :**

Jessica Minshall

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

### INTRODUCTION

1. This dispute is about a used car.
2. The applicant, David Clumpner, says that in June 2017 he bought a 2002 Volkswagen Jetta (car) from the respondent, Jessica Minshall, for \$3,500. He says

his father, R, test drove the car and paid for it on his behalf, as the applicant lives in the US. The applicant says he planned to import the car to the US, but was not able to do so. He says the respondent then agreed to store the car and try to resell it for him. The applicant says the respondent later sold the car for \$500 without his permission. The applicant seeks a refund of the \$3,500 purchase price.

3. The respondent says she initially agreed to try to resell the car for the applicant, but after a few attempts she told him she could not store or sell the car. The respondent said she had no contact from the applicant and needed to clear space on her property, so after 120 days she contacted the Insurance Corporation of BC (ICBC) and learned that she was still the registered owner of the car, as the applicant had not submitted the ownership transfer documents. The respondent says the car's condition had deteriorated and it no longer ran, and she considered it abandoned, so she had it removed at her expense.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

7. 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.
8. 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**

9. The issue in this dispute is whether the applicant is entitled to a \$3,500 refund for the car.

## **EVIDENCE AND ANALYSIS**

10. 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.
11. The parties agree that around June 21, 2017, R paid the respondent \$3,500 for the car. The applicant says he then investigated the process to import the car to the US, but Volkswagen US would not issue the letter he required for importation, so he could not import the car.
12. The respondent says that about a week after the sale, the applicant informed her that he was unable to import the car, and asked her to sell the car for him. The respondent says she initially agreed, but after a few attempts she told the applicant she could not help him because her contacts were no longer interested in the car.

The respondent says she told the applicant she was not taking responsibility to sell or store the car because she had 3 children and a husband with medical issues.

13. The applicant's version of these events is somewhat different. He says the respondent felt bad for him so in a text exchange on August 16, 2017 she offered to store the car behind her house and to try to resell it for him, but her husband faced some health issues so she could not spend any time advertising or showing the car.
14. The parties agree that when the applicant visited the respondent's property in January 2018, the car was gone. The respondent says she had it removed at her expense, because it had deteriorated and no longer ran, and she needed to clear her yard. The applicant disputes this. He says that when he visited the property in January 2018, the respondent's husband told him and R that he had sold the car for \$500 for parts.
15. The respondent says she received no money for the car. The parties agree that the respondent was not present during the conversation between the applicant and the respondent's husband. Thus, the respondent has no direct knowledge of that conversation, and there is no statement in evidence from her husband. Also, while the respondent says she had the car removed at her expense, she provided no corroborating evidence such as a towing receipt. For these reasons, I accept the applicant's assertion that the respondent or her husband sold the car for \$500.
16. However, the applicant bears the burden of proving his claims, and I find he has not proved that the respondent agreed to store his car after August 2017, or to attempt to sell it on his behalf after that time. Specifically, while the applicant refers to an August 16, 2017 text message, he did not provide a copy of this message in evidence. There is no written agreement about storage or resale, and I note that while the applicant says he considered paying the respondent a resale fee, no such fee was negotiated. Also, it would have been unreasonable in the circumstances for the applicant to agree to store the car indefinitely for free.

17. The applicant says there was no contact between the parties between the August 16, 2017 text exchange and the time he visited the property in January 2018. The respondent says she lost the applicant's contact information, so she contacted ICBC to see about a title search and learned that she was still the registered owner of the car. The applicant says he had not submitted the transfer paperwork because he hoped the respondent would resell the car. He says the respondent ought to have contacted him before selling the car, as she had his email address as well as his father's contact information. However, the applicant did not explain why he did not contact the respondent and did nothing about the car from August 2017 to January 2018.
18. Because the respondent was not being paid to store the car, she was what is known in law as a "gratuitous bailee" (as opposed to a bailee for reward). A gratuitous bailee is only liable for damage to goods if gross negligence is proved: see *Bentham v. Bourdon*, 2019 BCCRT 167 and *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273. Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable harm.
19. 17. So, what were the respondent's obligations as a gratuitous bailee? The issue arises because the respondent admittedly disposed of the car. I find the inquiry turns on the apparent value of the car, the months that elapsed after the last text exchange in August 2017, and the steps the parties took to deal with the car.
20. The applicant says he hoped the respondent would sell the car. There is no evidence before me indicating that the parties negotiated the terms of any reselling agreement, such as an agreement that the applicant had to pre-approve the selling price.
21. The respondent says the car's condition deteriorated while it sat after June 21, 2017, and it had flat tires, algae, and would not start. I accept that the car would have deteriorated in this manner while stored for several months outdoors without being started, and the applicant has not proved otherwise. The parties had no

agreement that the respondent would maintain the car, such as by periodically starting it.

22. The applicant did not contact the respondent between August 16, 2017 and January 2018. Given these circumstances, and the fact that there was no agreement about the range of acceptable sale prices, I find it was reasonable for the respondent to sell the car for \$500, as I have found she did. I find the applicant is not entitled to any refund for the car. Rather, I find it was reasonable for the respondent to retain the entire sale price, in exchange for her selling efforts and storage.
23. I also find the applicant is not entitled to a refund of the car's \$3,500 sale price in any event, as the car lost value while it sat. In particular, if the car did not run it would have had little resale value, and it would be unreasonable to expect the respondent to arrange and pay for repairs in these circumstances.
24. For these reasons, I dismiss the applicant's claim. I find the applicant is not entitled to any payment for the car.
25. 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 and dispute-related expenses.

## **ORDER**

26. I dismiss the applicant's claim and this dispute.

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Kate Campbell, Tribunal Member