



# Civil Resolution Tribunal

Date Issued: April 9, 2019

File: SC-2018-007732  
SC-2018-009141

Type: Small Claims

## Civil Resolution Tribunal

Indexed as: *Veldman v. Morey*, 2019 BCCRT 440

B E T W E E N :

Cory Veldman

**APPLICANT**

A N D :

Ken Morey

**RESPONDENT**

A N D :

Cory Veldman

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about a deposit paid for a 1991 VW Syncro Westfalia (camper).
2. The applicant Corey Veldman says he paid the respondent Ken Morey a \$1,000 deposit on the camper. About a month later, Mr. Veldman requested that Mr. Morey refund his deposit. Mr. Morey failed to return the money. Mr. Veldman claims the \$1,000 refund.
3. Mr. Morey says the deposit was refundable until October 17. Although he agrees that Mr. Veldman asked for the deposit back in September, Mr. Morey says he asked for a formal letter requesting to withdraw from the deal. Mr. Morey agrees that he received a formal cancellation letter on October 17, 2018.
4. The day before the formal letter arrived, Mr. Morey says Mr. Veldman began damaging his reputation by sending emails and posting negative remarks to websites and Facebook groups. Mr. Morey says Mr. Veldman's actions have damaged his ability to make a future sale of the camper. Mr. Morey asks that the claim against him be dismissed.
5. In his counterclaim, Mr. Morey seeks \$5,000 in damages for the impact of Mr. Veldman's alleged "untrue damaging and slanderous campaign" of postings and communications in online forums where the camper might be advertised. Although the claim appears to be framed in defamation, Mr. Morey later described it as a claim for damages for frustration of contract and interference with contractual relations.
6. Mr. Veldman says he contacted Samba and Kijiji to inform them of the dispute and the fact that Mr. Morey was holding his deposit. Mr. Veldman then posted on local vehicle messaging boards via Facebook, a "buyer beware" warning to the community, citing the vehicle listing, Mr. Morey's name, and the facts regarding the ongoing hold of a refundable deposit. Mr. Veldman says he did not post anything untrue. He asks that the counterclaim be dismissed.

7. The parties are each self-represented.

## JURISDICTION AND PROCEDURE

8. 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*. 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.
9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
10. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
11. 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.

12. The tribunal does not have jurisdiction in small claims over defamation, under the Act.
13. 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**

14. The main issue in this dispute is whether Mr. Veldman is entitled to a refund of the \$1,000 deposit he paid to Mr. Morey.
15. On the counterclaim, the issue is whether Mr. Morey has a valid claim against Mr. Veldman for \$5,000 in damages for interference with contractual relations or frustration of contract.

## **EVIDENCE AND ANALYSIS**

16. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
17. On August 7, 2018, Mr. Veldman and Mr. Morey entered a “Refundable Deposit Agreement To Purchaser by Supplier” (Agreement), providing that Mr. Veldman would have the first option to buy the camper if it was not sold in Europe prior to late October 2018, for an agreed price of \$44,000. I find that there was no October 17, 2018 limit on refundability of the deposit, despite that suggestion by Mr. Morey.

18. Mr. Veldman paid Mr. Morey \$1,000 to secure this priority purchase position.
19. The Agreement provides that the deposit shall be “fully refundable at all times and for any reason.” If the deposit was refunded, there would be no remaining agreement between the parties.
20. On September 4, 2018, Mr. Veldman emailed Mr. Morey that he had decided to look elsewhere for a vehicle and asked that the \$1,000 deposit be refunded.
21. Mr. Veldman sent further email inquiries on September 12 and 15, 2018, asking that Mr. Morey return the funds via e-transfer.
22. Mr. Morey emailed back on September 7 and 12, 2018, but said he was in Spain and would refund the deposit upon his return.
23. On September 24th Mr. Morey requested a formal letter from Mr. Veldman documenting the refund request. In the request email Mr. Morey wrote “I’ll be glad to refund you.”
24. The same day, Mr. Veldman emailed Mr. Morey attaching a Word document letter formally requesting a refund of the deposit.
25. On October 16, 2018, Mr. Veldman emailed Mr. Morey again requesting the refund. Mr. Veldman writes that he will consider small claims court if the refund is not provided.
26. Mr. Morey has not refunded the \$1,000 to Mr. Veldman.
27. I find that the parties agreed that the \$1,000 would be refundable. Mr. Veldman made several valid requests for the refund, and Mr. Morey failed to repay it.
28. I allow Mr. Veldman’s claim and order Mr. Morey to refund the \$1,000 to him. I will calculate prejudgment interest under the *Court Order Interest Act*, from September 5, 2018 to the date of this decision.

29. Turning to the counterclaim, to the extent that it appears to involve allegations of defamation, the tribunal does not have jurisdiction over defamation and I refuse to resolve it. I will decide only Mr. Morey's claims of interference with contractual relations and frustration of contract.
30. For the reasons below, I find that Mr. Morey did not prove interference with contractual relations or frustration of contract.
31. To succeed in proving the tort of contractual interference, Mr. Morey must prove:
- a. the existence of a validly enforceable contract,
  - b. the respondent's awareness of the contract's existence,
  - c. wrongful interference, and
  - d. damages suffered by Mr. Morey. (See *Hayes Heli-Log Services Ltd. v. Siller Bros Inc.*, 1999 BCCA 451).
32. On October 19, 2017, Mr. Veldman posted a buyer beware notice on TheSamba.com. I have reviewed it, Mr. Veldman's other communications, and find them to be factual.
33. Mr. Morey says he lost potential buyers for the camper, because of Mr. Veldman's posts. He filed some email exchanges with potential buyers in evidence. None of these email chains show that the potential buyer was dissuaded from buying the camper because of Mr. Veldman's posts.
34. Mr. Morey has not proven any validly enforceable contract was in existence, nor that the Mr. Veldman did anything to wrongly interfere with it. Further, Mr. Morey did not prove damages. Similarly, Mr. Morey did not show that Mr. Veldman frustrated any contract for purchase of the camper.
35. Because Mr. Morey has not met the burden of proof in his counterclaim, I dismiss the counterclaim.

36. 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. I find Mr. Veldman is entitled to reimbursement of \$125 in tribunal fees, and \$35 in dispute-related expenses to serve the Dispute Notice, which I find to be reasonable.
37. I dismiss Mr. Morey's counterclaim and his related claim for tribunal fees and dispute-related expenses.

## **ORDERS**

38. Within 10 days of the date of this decision, I order Mr. Morey to pay Mr. Veldman a total of \$1,169.88, broken down as follows:
  - a. \$1,000 for the refund owing,
  - b. \$9.88 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$160 for \$125 in tribunal fees and \$35 in dispute-related expenses.
39. The applicant is entitled to post-judgment interest, as applicable.
40. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

41. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Julie K. Gibson, Tribunal Member