Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bruno v. 639475 Alberta Ltd. dba Eddie's Auto Sales,* 2019 BCCRT 453

B E T W E E N :

Shawn Bruno

APPLICANT

A N D :

639475 Alberta Ltd. doing business as Eddie's Auto Sales

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the sale of a used car. The applicant, Shawn Bruno, bought a 2016 Mitsubishi Lancer from the respondent, 639475 Alberta Ltd. doing business as Eddie's Auto Sales. The respondent does business in Alberta and that is where the applicant bought the car.

2. The applicant makes 4 distinct claims related to the car: 1) it had been smoked in when he had been promised otherwise, and he sustained an anaphylactic reaction to ashes in the car that led to his panicking, falling, and breaking his nose, 2) the car's tires were worn and required replacement, 3) the respondent improperly added a warranty to his invoice, which has affected his ability to obtain credit, and 4) the respondent improperly charged the applicant PST that he says he now has to pay interest on. The applicant claims a total of $4,254.69. In his submissions, the applicant abandoned his original claim for $420 for having to pay someone to clean his car.

3. The respondent denies liability, as detailed below. The applicant is self-represented and the respondent is represented by its general manager, Brian Radmacher.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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. 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.

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: 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.

8. I note the respondent is located in Alberta and the transaction in question happened in Alberta. As the applicant resides in British Columbia and the respondent did not raise an issue about whether this was the appropriate forum, I accept that the tribunal may decide this dispute.

ISSUES

9. The issues in this dispute are whether the respondent breached its contract with the applicant about the used car it sold him, and if so, what are the appropriate remedies.

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 referenced the evidence and submissions as necessary to give context to my decision.

11. The applicant bought the car from the respondent, through a financed purchase, on August 9, 2018. The purchase price was $20,586.31.

Claim for car having been smoked in

12. The applicant stated in the Dispute Notice that started this proceeding that after delivery of the car was completed and on using the air conditioner (AC), the applicant was "fumegated in smoke smell" (quote reproduced as written). The applicant says this caused him to go into anaphylactic shock, and then panic and slip and fall, and then break his nose. The applicant claims $2,500 in damages for this injury.

13. Later, when the respondent inquired about how the applicant could slip and fall if he was seated in the car, the applicant said he stumbled out of the car in panic, and then fell.

14. The text messages in evidence show that before the applicant bought the car the respondent's salesperson promised that the car had never been smoked in. Specifically, the applicant texted on August 10, 2018 "Make sure the car hasn't been smoked in!! I'm extremely allergic to nicotine!!!" and the salesperson responded, "I guarantee you it hasn't been smoked in!!! Promise you that. You have my word". I find the car being smoke-free was a material term of the parties' contract.

15. Another text message in evidence shows an undated close-up photo of what appears to be carpet flooring in a car, with small specks of grey on the carpet. The applicant's message to the salesperson stated, "Cigarette ashes. Ran the AC – went into anaphylaxis and now in hospital. Ashes of cigarette everywhere." The salesperson responded, "What??! I'm so sorry I swear I double checked and made sure of that." The applicant replied that the respondent would have to take the vehicle back, as he could not be in a car that has been smoked in.

16. On balance, I accept the applicant discovered cigarette ashes in the car shortly after it was delivered to him, which was contrary to the parties' agreement. That is not determinative of the applicant's damages claims however, as discussed below.

17. The applicant provided an undated screenshot of a 2 e-transfers totaling $5,500 to SpaMedica, for a “reduction rhinoplasty”. The total surgery price was almost $8,000. The applicant’s claim in this dispute is for $2,500 and he says because of the injuries “I have lost money due to a nose fixing surgery”. It is unclear why the applicant claims only a portion of this expense. The evidence says the payments were made December 1, 2018. There are no medical chart notes in evidence to link the need for rhinoplasty to the applicant’s alleged fall. For this reason, I place no weight on the SpaMedica evidence.

18. The respondent submits it repeatedly asked the applicant for records in support of his injury claim, and hospital records in particular. I accept this evidence, which is undisputed and is also evident from the documentation before me. The applicant submits in his reply submission that “there is a lot of speculation about this matter. A severe allergic reaction can simply be countered with an EPI-PEN”, suggesting he did not go to hospital. Yet, in his text to the respondent he said he did go to hospital.

19. The applicant has not provided any explanation for the discrepancy, despite the respondent expressly challenging the applicant’s veracity about the extent to which he sought medical attention. I find the applicant’s inconsistencies in his statements causes me to conclude the applicant’s evidence is not credible in terms of the injury he says he suffered as a result of the alleged smoke in the car.

20. I find the applicant has not proved he sustained an anaphylactic reaction, given the applicant’s inconsistent statements about whether a hospital trip was required, and due to the lack of evidence in that respect.

21. The applicant also submitted an undated prescription for Nasonex from a physician and an undated note that said the doctor had seen the applicant that day “regarding a medical problem”. The doctor said the applicant “has been experiencing severe ongoing allergic rhinitis, closely related to allergen/smoke inhalation in the car that he purchased”. The doctor wrote the applicant required use of cortisone nasal spray for this condition and may have to see an ENT specialist if the condition did not improve. As written, I infer the applicant told the doctor he developed an allergic

reaction after buying the car, and the clinic doctor noted it accordingly. In other words, there is nothing in this doctor's note that indicates the doctor has diagnosed rhinitis as having been a result of smoke in the car. Significantly, there is no mention in the note about the applicant having gone in to anaphylactic shock and falling, and no mention of his having a bruised and swollen eye or a broken nose.

22. If the applicant had freshly broken his nose as he says he did, I would have expected the doctor to note that condition, yet he did not. I say the same about the appearance of a bruised eye and swollen nose. I find this discrepancy also hurts the applicant's credibility. While the applicant provided a photo showing his right eye and side of his nose was bruised and swollen, this photo is undated. On balance, I find the applicant has not proved he broke his nose after falling during the alleged anaphylactic reaction.

23. I note the applicant originally claimed $420 for having the car cleaned. I have no evidence about when the cleaning was done and as noted, for reasons unknown to me the applicant withdrew this claim. The applicant does not dispute that he refused to Facetime with the respondent so that they could see his claimed injury. The applicant has provided no explanation.

24. In summary, I have found that the respondent sold the applicant a car that had been smoked in, contrary to the parties' agreement. However, on balance I find the applicant has not proved he suffered any damages as a result of that breach. I dismiss the applicant's claim for $2,500 for pain and suffering.

Tire claim

25. The applicant says the car was sold with tires at the end of their life cycle, both in terms of low treads and an inability to hold air pressure within a week of owning the car. The applicant claims $688.21, the amount he paid to replace the tires.

26. The applicant says the delivery person mentioned the option of an inspection, he said he had a plane to catch so the applicant did not have a chance to have the

vehicle inspected. I find the applicant was not required to accept delivery of the vehicle if he wanted an inspection. The applicant says that if the respondent had told him the BC report showed the tires were "low", he would not have taken the vehicle. The applicant says he was only given the June 13, 2018 Alberta inspection report that indicated the tires were fine. There is no BC inspection report before me in evidence.

27. The applicant cites the BC *Motor Vehicle Act Regulations* as to the required tread depth. I note the car was sold in Alberta, so the applicant has not proved the respondent was required to comply with the BC legislation. In any event, section 7.162 of those regulations stipulate minimum tread depth of 3.5 mm on "winter tires". The applicant says the car's treads were 2 ,2, 4, and 4 mm, and provided an August 25, 2018 receipt for $688.21 for replacement tires. There is no evidence before me however that the car was sold with "winter tires", and I note the car's sale appears to have been in the summer, in August.

28. The applicant provided a September 14, 2018 letter from the Alberta Motor Vehicle Industry Council, which is not binding on me but which I find helpful. This letter states that the Council found no breaches of the legislation and the passed inspection "far exceeds" the applicable requirements.

29. The parties' one-page contract states for used car sales, like the applicant's, there is "no warranty unless stated. No guarantee". The car was sold in Alberta, so the BC *Sale of Goods Act* does not apply. However, even if it did, I find the applicant has not proved the respondent breached the parties' contract or any regulation. The car was sold without warranty, as noted on the contract, and the car passed Alberta's inspections.

30. I dismiss the applicant's $688.21 claim for tires.

Warranty claim

31. The applicant claims $300 in damages for having to pay 6 weeks of extra fees on his TD Auto Finance loan because of the extended warranty that he says was placed on the contract without his consent. In other words, while the respondent later refunded the $2,032.88 warranty price, his credit report indicates a higher loan value and he says this has negatively impacted his credit. The applicant alleges the warranty sale was dishonest and fraudulent, given the car already had a 10-year powertrain manufacturer's warranty.

32. The evidence is not entirely clear but it indicates the respondent sold the applicant this $2,032.88 warranty so the applicant could receive a cash-back option. The applicant says he never agreed to this.

33. The contract provided by the applicant shows he did agree to the warranty. The one-page contract titled "Bill of Sale", signed by the applicant and the respondent's representative, has a line-item for "warranty" with an associated price of $1,936.08. Beside that line, the applicant initialed his express agreement to the charge. There is no explanation in the arguments before as to the distinction between $2,032.88 and $1,936.08, but I find nothing turns on the nominal difference.

34. I find the applicant agreed to the warranty, despite his argument otherwise. There is simply no evidence whatsoever to support the applicant's allegation of fraud, an allegation which requires clear and convincing proof given the stigma attached to it. I find the applicant chose to receive cashback and the warranty that he agreed to buy facilitated this.

35. The applicant argues that he was required to hastily sign the contract with no explanation and no consent given. I find the applicant has not proved this, noting the applicant had to sign and initial in 3 spots in order to accept the warranty. Yet, the applicant's submitted text message exchange says, "no one mentioned the extra 2000$ warranty to me but I took it anyway out of respect for the driver having

to get to the airport". I find this shows the applicant did agree to it, even if he was motivated to respect the driver's timing.

36. Further, the applicant has provided no evidence to support his claimed $300 in damages, such as loan financing documentation or evidence from his credit reports.

37. I dismiss the applicant's $300 claim related to the warranty.

PST claim

38. The applicant says the respondent added PST to his vehicle purchase contract, when Alberta does not charge PST on vehicle sales and the respondent should not have charged it to him for his intended transfer of the car to BC. The applicant claims $1,080, what he says he is paying TD Auto Finance in interest on the PST charges that he says should never have been made.

39. It is undisputed that the respondent sent the applicant by e-transfer $1,106.70 for the PST, which the applicant accepted on August 27, 2018. The respondent did this so the applicant could pay ICBC directly, and it was added to the applicant's loan. The respondent says the applicant accepted the funds without objection, knowing he could not afford to pay the PST himself. The respondent says if the applicant really objected he would have asked for a refund of the PST, just like the warranty, but the applicant never did so. I agree. While the applicant says it is "purely speculative" that he was not able to pay the PST, I find his other claims related to negative impact on his credit suggest the respondent's evidence is likely. Further, the applicant states that "the REASON I purchased a car from Alberta is so that I could pay the PST on my own" and to avoid additional costs being added to his loan. I find this statement does not have the ring of truth and I do not accept the applicant bought the car in Alberta only so he could pay PST himself. He could have paid the PST in BC, without it having been added to his loan.

40. The applicant says that because PST was added to the loan he took out to buy the car, he now has to pay additional interest fees for the extra $1,386 charged for PST.

In particular, the applicant provides a calculation of "1900$ x 9.9% for the 7 year term". It is not clear to me from the evidence or the applicant's submission as to how he arrives at this formula, as the applicant's loan documentation is not before me. However, based on the applicant's arguments, I find that at least in part the applicant is claiming future charges that he has not yet incurred.

41. The applicant provided an excerpt of what he says is an email from the Consumer Taxation Branch that says the Alberta respondent dealer should not be charging PST for a car being sold to a BC driver. However, the redacted document before me is just text, and does not show any date or identify who wrote it. In any event, the text of the document says that when goods are brought into BC from out of province, the owner is responsible for self-assessing the PST due. The text further states that because ICBC will collect PST on vehicles bought outside the province, dealers should not be charging the PST on such sales. I place little weight on this email excerpt, given the undisputed arrangement was that the respondent sent the applicant the PST funds for the applicant to pay ICBC himself.

42. The primary difficulty for the applicant is that I find he agreed to the contract as presented, and signed it. The contract is clear on its face that the applicant was being charged $1,106.70 in PST. Further, the applicant provided no evidence, such as loan documentation, to support his calculation of the $1,080 claim.

43. For these reasons, I dismiss the applicant's claim for $1,080 relating to interest he says he has been or will be charged due to the PST issue.

Fees and expenses

44. Under the Act and rules, as the applicant was unsuccessful in this dispute I find he is not entitled to reimbursement of tribunal fees.

45. The respondent claims $1,305 in dispute-related expenses, but did not provide any evidence or argument in support of this amount. I dismiss this claim.

ORDER

46. The applicant's claims and this dispute are dismissed. The respondent's dispute-related expenses claim is dismissed.

Shelley Lopez, Vice Chair