



Civil Resolution Tribunal

Date Issued: April 26, 2019

File: SC-2018-003552

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pasemko v. Polzin et al*, 2019 BCCRT 506

B E T W E E N :

Raymond Pasemko

APPLICANT

A N D :

Chad Polzin and Rick Polzin

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the private sale of used a 1989 Kenworth Dumpttruck (truck) with over 880,000 km on it.

2. The applicant Raymond Pasemko says he paid the respondent Chad Polzin a \$1,000 deposit to hold the respondent Rick Polzin's truck until he could look at it. Mr. Pasemko says he bought the truck, but then discovered that its engine was defective. Mr. Pasemko says the respondents misrepresented the truck's condition. He returned the truck, but the respondents did not refund his \$1,000.
3. Mr. Pasemko claims a total of \$1,501.74, made up of the \$1,000 deposit, \$257.71 for diesel fuel he put into the truck, \$88.78 for gasoline used to travel to pick up and return the truck, and \$155.25 in hotel room costs.
4. Chad Polzin says he sold the truck as an agent for his father Rick Polzin. He says he sold the truck to Mr. Pasemko "as is, where is" with no warranties or representations about its condition, for \$20,000.
5. When Mr. Pasemko returned, unhappy with his purchase, Chad Polzin says that his father agreed to buy the truck back from Mr. Pasemko, for \$19,000. He asks that the dispute be dismissed.
6. Rick Polzin agrees that his son was his agent for the sale of the truck to Mr. Pasemko. He says the \$1,000 deposit was "non-refundable", and the sale completed. Rick Polzin says he was not obliged to take the truck back. He says he agreed to buy the truck back from Mr. Pasemko for \$19,000.
7. The applicant is self-represented. The respondent Chad Polzin represents himself. The respondent Rick Polzin is represented by his spouse, Carleen Polzin.

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. Under tribunal rule 9.3(2), 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.

ISSUE

13. The issue in this dispute is to what extent, if any, the respondents owe the applicant a refund of the original \$1,000 deposit plus expenses, relating to the parties' used truck sale agreements.

EVIDENCE AND ANALYSIS

14. The applicant bears the burden of proving his claim on a balance of probabilities. I have reviewed all of the evidence and submissions, but only comment on them here to the extent needed to explain my decision.
15. On August 5, 2017, Mr. Pasemko says that Chad Polzin told him the truck was in "good mechanical condition."
16. Later that day, Mr. Pasemko offered to buy the truck for \$20,000, including a \$1,000 refundable deposit.
17. Mr. Pasemko paid Chad Polzin \$1,000, by e-transfer. The parties agree, and I find, that the \$1,000 was a deposit to have Chad Polzin hold the vehicle so that Mr. Pasemko could travel to see the truck. I find that, at that time, the deposit was refundable pending Mr. Pasemko's decision about whether to complete the sale.
18. Mr. Pasemko says he had another phone call with Chad Polzin confirming that the deposit would be returned if he did not want the truck. Chad Polzin contests this, saying he did not tell Mr. Pasemko that his father would return the \$1,000 deposit, at any point.
19. Mr. Pasemko says that, despite several requests to test drive the truck, Chad and Rick Polzin did not furnish a test permit and would not initially allow a test drive.
20. However, Mr. Pasemko agrees that he eventually had a brief test drive of the truck. He then decided to buy it.

21. An August 9, 2017 Mr. Pasemko bought the truck from Rick Polzin for \$20,000. The bill of sale says the truck is sold on an “as is, where is” basis.
22. In general, used vehicle purchases through private sales are governed by the principle *caveat emptor*, also called “buyer beware”. This means that the buyer must assess the condition of a vehicle for themselves before buying it. Having said that, a seller must not make false statements of fact about the vehicle that would induce a reasonable person to buy it.
23. The exception to this is section 18(c) of the *Sale of Goods Act*, which states there is an implied condition that goods be “durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale...”
24. Here, I find the August 5, 2017 purchase was made on an “as is, where is” basis. In other words, there was no implied or express warranty about the truck being in saleable condition or being fit for Mr. Pasemko’s purpose.
25. I find that, even if Mr. Chad Polzin told Mr. Pasemko the car was in “good mechanical condition”, the “as is, where is” qualifier, which was made later and in writing, applied to the sale. I find that Mr. Pasemko knew that there were no warranties or representations being made as to the truck’s condition, when he signed the bill of sale. I find that Mr. Pasemko knew that Chad Polzin was selling the car for his father, Rick.
26. An ICBC Transfer/Tax Form dated August 9, 2017 confirms the purchase price of \$20,000. The form shows Mr. Pasemko’s company, Millwood Industries, bought the truck from Rick Polzin.
27. On the way home, Mr. Pasemko recognized that the truck was running poorly. He returned the truck to the Polzins.

28. An ICBC Transfer/Tax form completed later on August 9, 2017, shows Rick Polzin buying the truck back from Mr. Pasemko's company, Millwood Industries, for \$19,000.
29. There is some question about whether Mr. Pasemko has personal standing to bring this dispute, given the evidence that Millwood Industries was buying and selling the truck. Millwood Industries is not a party to this dispute. Having said that, bearing in mind the tribunal's mandate to bring finality to issues between the parties, I have addressed the applicant's substantive concerns in this decision.
30. Based on the documentary evidence, I find that the parties agreed that the truck would be re-sold by Mr. Pasemko's company to Mr. Polzin, for \$19,000. I find that the first transaction had completed at this point, and the parties reached a second agreement to a new sale.
31. While Mr. Pasemko argues that Carleen Polzin and Chad Polzin promised a refund of his \$1,000 deposit at different points, I find that Rick Polzin did not agree to refund the \$1,000 deposit after the sale completed. Neither Ms. Carleen Polzin nor Mr. Chad Polzin were parties to either of the sales agreements.
32. While I have found that the \$1,000 deposit was refundable up to the point at which the first sale completed, I find it became part of the purchase price once the parties signed the bill of sale. From that point forward, I find it was not refundable.
33. I find that Mr. Pasemko has not proven that he is entitled to a \$1,000 refund. I say this because, after paying the refund, he decided to complete the sale on August 5, without any warranties as to the truck's condition. This finding is consistent with the "as is, where is" notation on the bill of sale.
34. I find that Mr. Pasemko cannot now rely upon the truck having an engine defect, which was not proven, to obtain a refund of the purchase price. I say this particularly as he already agreed to sell the truck back to Rick Polzin for a documented price of \$19,000.

35. Given my conclusions above, I find the applicant's claims must be dismissed.

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. As the respondents Chad and Rick Polzin paid no tribunal fees, I make no order in this regard. The applicant's claim for fee reimbursement is dismissed.

ORDER

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

Julie K. Gibson, Tribunal Member