



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-008456

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carpenter v. Jett Auction LLP*, 2019 BCCRT 587

BETWEEN:

William Carpenter

APPLICANT

AND:

JETT AUCTION LLP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, William Carpenter, bought a 2004 Chevrolet Tahoe (truck) from the respondent, Jett Auction LLP. The applicant discovered that the truck's speedometer cluster gauges were not working, and returned the truck seeking a

refund, which the respondent denied. The applicant seeks \$4,256, the total purchase price of the truck.

2. The respondent denies liability. It says it made no representations as to the truck's condition, and that the applicant should have inspected the truck before buying it.
3. The applicant is self-represented. The respondent is represented by its owner, Stuart Kuiken.

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. The 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
8. 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

9. The issue in this dispute is whether the applicant is entitled to a refund for the purchase price of the truck?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The respondent is an auctioneer that sells vehicles. On November 10, 2018, the applicant attended an auction hosted by the respondent and purchased the truck.

Although no bill of sale was provided in evidence, it is not disputed that the applicant paid \$4,256 for the truck, including taxes and fees.

12. After leaving the auction, the applicant noticed the speedometer cluster gauges did not work. He returned to the auction the same day and notified the respondent about the issue.
13. The respondent advised the applicant that it offered a same day refund only on “major” engine or transmission issues, pursuant to its Auction Policy, and that malfunctioning cluster gauges did not qualify for a refund. Mr. Kuiken suggested to the applicant that the cluster gauges could be repaired inexpensively on his own. The applicant was unhappy with the proposed solution and the parties agreed to leave the truck on site and speak again the following Tuesday, November 13, 2018.
14. The respondent submits that on November 13, 2018, Mr. Kuiken again notified the applicant he was not entitled to a refund under the same day refund policy and asked him to remove the vehicle from the respondent’s lot. The applicant denies he was told to pick up the truck and states the parties agreed the truck would remain on site. Two weeks later the applicant submits he was contacted by a tow truck company advising him to pick up the truck or that it would be towed. The applicant moved the truck but was subsequently sent a bill from the respondent for \$189, for storage fees from November 13 to 30, 2018.
15. The applicant says that the respondent misrepresented the truck because the auctioneer before sale stated the speedometer worked but was “jumpy,” but that in reality none of the cluster gauges worked.
16. The respondent says it made no representations as to the condition of the truck. It says the applicant agreed to its Terms of Sale contained in the bidder card. The bidder card states that the sale items are displayed and that each purchaser shall be held to have satisfied themselves as to the condition of the items and cannot make any objection after the sale. This same language was printed on several large signs at the auction site. The Terms of Sale, also on the bidder card, state that all

items are sold “as is, where is” and that the auctioneer assumes no liability for any guarantee made by the seller.

17. The respondent also provided a disclosure statement it says is posted on the website for each vehicle, which states it makes no warranties or representations of any kind and that it is the purchaser’s sole responsibility to inspect an item as necessary prior to bidding. However, it is unclear to me whether the applicant was aware of or directed to the disclosure statement on the respondent’s website. Therefore, I place no weight on the disclosure statement.
18. The applicant submits that the auctioneer’s statement on the day of the auction that the speedometer worked overrides the posted signs and Terms of Sale. The truck’s auction advertisement is not in evidence. Therefore, there is no evidence before me which indicates the auctioneer’s statement about the speedometer was any different than the information previously provided about the truck, prior to the sale.
19. Section 18 of the *Sale of Goods Act* (SGA) sets out a number of implied conditions and warranties that apply to the sale of goods. Section 20 of the SGA allows a seller to exclude the implied warranties if it is selling used goods. I find that the disclosure statement and the Terms of Sale exclude the implied warranties in section 18 of the SGA.
20. Therefore, the language on the bidder card and posted signs and the Terms of Sale gave the applicant the choice to either inspect the truck or to accept the risk of not doing an inspection. The applicant decided to take that risk. There is nothing in the parties’ agreement that requires the respondent to refund the applicant for the truck due to the gauge problem.
21. For these reasons, I dismiss the applicant’s claim for a refund of the purchase price of the truck.

Invoice for Storage Fees

22. As noted above, the respondent sent the applicant an invoice for \$189 for storage fees from November 13 to 30, 2018. Although not part of his initial claim, the applicant submits he would like the tribunal to declare that he does not owe the respondent for the storage fees. There was no counterclaim filed by the respondent for the \$189.
23. Under section 118 of the Act, for small claims matters the tribunal has jurisdiction over claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property. The tribunal does not have jurisdiction over declaratory relief (see: *Evans v. Campbell*, 1993 CanLII 2600 (BCCA) at paragraph 5).
24. There is no indication the applicant paid the respondent any amount of the November 30, 2018 invoice. I find the nature of the applicant's claim is strictly for declaratory relief, and therefore I find the tribunal does not have jurisdiction to resolve the claim.
25. As a result, I refuse to resolve the claim for storage fees under section 10(1) of the Act. Nothing in this decision prevents the respondent from pursuing collection of the \$189. I have not considered the merits of such a claim.
26. 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 to not follow that general rule in this case. As the applicant was not successful, I find that he is not entitled to reimbursement of his tribunal fees or dispute-related expenses. The respondent did not pay tribunal fees or claim expenses.

ORDERS

27. I dismiss the applicant's claims for a refund of the purchase price of a truck, and for reimbursement of tribunal fees.
28. Under section 10(1) of the Act, I refuse to resolve the applicant's claim for a declaration that he does not owe the respondent \$189 in storage fees.

Andrea Ritchie, Vice Chair