Civil Resolution Tribunal

Date Issued: March 12, 2020

File: SC-2019-009108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Park Shore Motors Ltd.*, 2020 BCCRT 286

B E T W E E N :

LEI CHEN and LULU BAN

APPLICANTS

A N D :

PARK SHORE MOTORS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Butch Bagabuyo

INTRODUCTION

1. This dispute is about a failed car lease transaction.

2. The applicants, Lei Chen and Lulu Ban, say that the respondent refused to return money they paid and also refused to pay their incurred expenses from their failed lease transaction.

3. The respondent says the applicants were not entitled to a refund of their payments including lease, security deposit, and down payments. The respondent also says the applicants were responsible for payments of their trade-in vehicle while the trade-in was being processed. In addition, the respondent says that the applicants drove their newly leased vehicle excessively and were less than candid about their trade-in vehicle, which was the reason the lease was not funded and therefore cancelled.

4. The respondent is represented by its principal. The applicants 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* (CRTA). 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. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent must pay the applicants $3,788.36 for their lease payments and their expenses for their traded vehicle?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants must prove their claim, on a balance of probabilities.

11. While I have read and considered all of the parties' evidence and submissions, I have only referenced the evidence and submissions to the extent necessary to explain and give context to my decision. In addition, I note that some of the evidence supplied was in a foreign language. I have only considered those evidence that were provided in English as required by the tribunal's rule 1.7(5).

12. It is undisputed that the applicants entered a lease agreement with the respondent on September 26, 2018 for a 2018 BMW 330i. The lease agreement was signed by the applicant, Lulu Ban. It is also undisputed that the applicants returned the leased BMW to the respondent on November 10, 2018 when the lease was not funded because the details and amount of their trade-in 2016 Mercedes C300 vehicle were considered unacceptable by the respondent.

13. The parties' September 26, 2018 lease agreement provides for a monthly payment of $765.58 for 48 months. The applicants say they entered into the lease agreement

because the respondent had agreed to take over the lease of their trade-in vehicle. As a result, the applicants say they handed over their Mercedes C300 to the respondent when they drove away with their newly leased BMW. The applicants say they were later informed that the respondent was not going to take over the lease of their trade-in vehicle. The respondent denies agreeing to take over the Mercedes lease. The respondent says the applicants tried to trade-in their Mercedes C300 when they did not own the vehicle because it was only a leased vehicle. Second, the respondent says the applicants said there were 7 remaining payments left on their trade-in vehicle when it actually had 17 payments left. As a result, the applicants' trade-in value differential was too high, and they needed to pay more. The applicants paid the respondent another $5,000, but that was still insufficient. When the applicants were told they needed to pay another $3,000, they refused to pay and decided to return the leased BMW. The applicants returned the BMW to the respondents on November 10, 2018, which is 6 weeks and 3 days after they took the vehicle.

14. The applicants say they incurred expenses on their Mercedes' C300 while it was with the respondent. In particular, the applicants say they were charged $228 for insurance, $953 for lease payment, and $103.88 for late charges, which comes to a total of $1,284.88. According to the applicants, these expenses were incurred by them because the respondent reneged on their agreement to take over the lease. As such, the applicants seek $1,284.88 from the respondent. Other than the applicants' bare assertion that the respondent agreed to take over the lease of their 2016 Mercedes C300, the applicants did not provide any other evidence. Also, the applicants did not provide any explanation about the respondent's argument that the applicants misled them about the amount owing on the Mercedes, which resulted in the failed trade-in of their Mercedes. The applicants bear the burden of proof and I find that they did not meet their burden of proof on this part of their dispute. As such, this part of the applicants' claim is dismissed.

15. When the applicants returned the BMW to the respondent, the respondent refunded the applicants' $5,000 that they added towards their trade-in vehicle, but not the

remaining $2,503.48 that the applicants' paid as part of security deposit, down payment, monthly lease payment and applicable taxes of their leased BMW. The respondent says the applicants were not entitled to a refund because the applicants drove the BMW vehicle excessively for 2317 kilometers in 6 weeks. The respondent says that the average annual mileage was 20,000 kilometers. Also, the respondent says that all remaining amounts were agreed upon charges when the applicants signed the lease and were non-refundable.

16. I disagree with the respondent that excessive mileage gives the respondent a right to withhold the applicants' payments in this dispute. Section 23 of the parties' lease agreement provides that excessive use means use over what is reasonably expected, and it includes a list of items that I find corresponds only to vehicle damage like cracks, dents, scratches, severe scuffs, broken lights, missing parts, burnt holes, chipped glass, cuts, tears and the like. The vehicle's travel distance or mileage was not included or mentioned as within the defined term of excessive wear or use. I do note that section 12 of the parties' lease agreement allow charges for excess kilometers, which was set at 15 cents per kilometer if driven more than 80,000 kilometers for the life of the 4-year lease. Since the applicants drove the vehicle for 2317 kilometers for 6 weeks and 3 days, I find this section is not applicable because it is still under 80,000 kilometers. As such, I find there is no basis for the respondent to withhold refunds solely based on excessive mileage in this dispute.

17. The applicants seek a refund of $2,503.48 for monies they paid to the respondent when they entered into the lease agreement. On the evidence, the applicants paid the following when they leased the vehicle: $795 for down payment, $800 for security deposit, $42.41 for security registration fee, $41.87 for GST, $58.62 for PST, and $765.58 for first scheduled lease payment for a total of $2,503.48. The respondent says the applicants were not entitled to a refund because the amounts were due upon the signing of the lease. Except for the $800 security deposit, I agree with the respondent and find that these amounts were due upon the signing

of the lease and there is no provision under the parties' lease agreement for their refund. In other words, they are non-refundable.

18. As to the applicants' $800 security deposit, section 19 of their lease agreement provides that if the applicants do not exercise the option to buy the leased vehicle and they have paid all amounts due, the security deposit will be refunded without any interest within 30 days. On the evidence, I find the applicants have paid all amounts that were due. Also, I find that when the applicants returned the vehicle, they were exercising their option not to buy. As such, I find that the applicants are entitled to a refund of their $800 security deposit within 30 days at the end of the agreement. Given that the applicants returned the vehicle on November 10, 2018 to end their agreement, 30 days is December 10, 2018. By their leased agreement, the applicants are not entitled to any interest from September 26, 2018 to December 10, 2018. It is not clear on the evidence if one or both of applicants paid the $800 security deposit that I find is refundable. Since the respondent does not dispute both applicants' involvement, I find that the respondent is liable to the applicants jointly.

19. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgment interest on the $800 calculated from December 11, 2018, which is 31 days after the applicants returned the vehicle, to the date of this decision. This equal to $19.34. The total pre-judgement interest is $19.34.

20. Under section 49 of the CRTA 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. Since the applicants were partly successful, I find they are entitled to reimbursement for half of their tribunal fees which is $87.50. They did not claim any dispute-related expenses.

ORDERS

21. Within 30 days of this decision, I order the respondent to pay the applicants a total of $906.84, broken down as follows:

    a. $800.00 in debt,

    b. $19.34 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 for in tribunal fees.

22. The applicants are entitled to post-judgment interest, as applicable. The applicants' remaining claims are dismissed.

23. Under section 48 of the CRTA, 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.

24. Under section 58.1 of the CRTA, 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.

Butch Bagabuyo, Tribunal Member