



Civil Resolution Tribunal

Date Issued: July 21, 2020

File: SC-2019-009406

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nicholls v. La Flamme*, 2020 BCCRT 803

BETWEEN:

JOYCE ALMA NICHOLLS

APPLICANT

AND:

MICHELLE LA FLAMME

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about the private sale of a used vehicle. The applicant, Joyce Alma Nicholls, agreed to buy a 2009 Mercedes Benz from the respondent, Michelle La Flamme for \$4,000. She paid Ms. La Flamme an \$800 deposit but says Ms. La Flamme “cancelled” the agreement. She seeks a refund of the \$800 deposit.

2. Ms. La Flamme says Ms. Nicholls forfeited the deposit because she did not pay the balance of the purchase price by the due date. Although she did not file a counterclaim, she seeks \$5,000 for loss of opportunity, the cost of reinsuring the vehicle, the cost of a new car key, and time spent on the dispute.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are whether Ms. La Flamme must refund the \$800 deposit and if so, whether Ms. La Flamme is entitled to any set-off.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Nicholls bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that Ms. La Flamme wanted to sell her vehicle and buy another vehicle. Ms. Nicholls was interested in purchasing Ms. La Flamme's vehicle. After exchanging several text and Facebook messages the parties had still not reached an agreement. So, on September 3, 2019 Ms. La Flamme took the vehicle to a dealership to trade it in. Ms. Nicholls attended at the dealership and agreed to buy the vehicle for \$4,000 after test driving it. Ms. Nicholls gave Ms. La Flamme an \$800 cash deposit (deposit). The parties prepared and signed a 1 page handwritten "Car Sales Agreement" dated September 3, 2019. It was brief and stated that Ms. La Flamme was selling her car to Ms. Nicholls for \$4,000 cash. It also stated that \$800 was received as a deposit and payment in full was due on September 8, 2019. The parties' signatures on the agreement were witnessed by AO, Ms. La Flamme's friend. Ms. La Flamme left the vehicle in a lot and cancelled the insurance. The parties agree that Ms. Nicholls unintentionally took the vehicle key with her when she left the dealership.
11. Ms. Nicholls says she did not pay Ms. La Flamme immediately because she could only withdraw a maximum of \$800 per day from her bank. Ms. Nicholls says she was waiting until she had the full \$3,200 before paying Ms. La Flamme. Ms. Nicholls provided a copy of a statement that showed \$800 cash advances on September 3, 5, 6, 7, and 8, 2019, totaling \$4,000. I infer the September 3, 2019 cash withdrawal was for the deposit. Ms. La Flamme says Ms. Nicholls was supposed to pay her \$800 per day until the remaining balance was paid off. Ms. La Flamme did not

provide any evidence that Ms. Nicholls agreed to make daily payments and I find this was not a term of the agreement.

12. Ms. La Flamme texted Ms. Nicholls numerous times from September 3, 2019 to September 5, 2019 asking Ms. Nicholls to return the key but Ms. Nicholls did not respond. On September 5, 2019 Ms. La Flamme texted Ms. Nicholls that since Ms. Nicholls was not responding, Ms. La Flamme was revoking the agreement, and Ms. Nicholls could have her \$800 back in exchange for the keys. On September 6, 2019 Ms. La Flamme also texted that “the deal” was off and Ms. Nicholls could have her money back.
13. Ms. Nicholls texted Ms. La Flamme on September 8, 2019 that she just had her computer updated and received a new iPhone 7. I infer this was her explanation for not responding to Ms. La Flamme’s text messages. Ms. Nicholls also stated the parties had a signed agreement, that she gave Ms. La Flamme \$800, and Ms. La Flamme gave her the key. Ms. Nicholls also noted that she could only withdraw a maximum of \$800 per day from her bank. She stated that she felt she had met her obligation and was waiting to hear from Ms. La Flamme. Neither party explained whether they took any further steps after Ms. Nicholls sent the text. However, they agree that Ms. Nicholls did not pay Ms. La Flamme the remaining \$3,200 by September 8, 2019.
14. At some point after September 8, 2019, Ms. La Flamme traded in her vehicle for \$2,500, which she used towards the purchase of a different vehicle.

Is Ms. Nicholls entitled to a refund of the deposit?

15. I find Ms. La Flamme repudiated the agreement and must return the deposit to Ms. Nicholls. My reasons are as follows.
16. Termination of a contract by repudiation occurs when a party shows an intention not to be bound by the agreement and the innocent party accepts this repudiation (see *Kuo v. Kuo*, 2017 BCCA 245).

17. I find under the agreement terms that Ms. Nicholls was obligated to pay Ms. La Flamme \$3,200, the balance of the purchase price by September 8, 2019. I also find Ms. La Flamme's September 5, 2019 and September 6, 2019 texts demonstrated she no longer intended to be bound by the agreement terms. I find Ms. Nicholls, as the innocent party, accepted the repudiation.
18. Ms. Nicholls's remedy for the breach and repudiation of the contract is damages. Damages for breach of contract are intended to place an innocent party in the position they would have been in if the contract had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39). In this case, Ms. Nicholls seeks a refund of the deposit. I find this is reasonable and I award Ms. Nicholls \$800.
19. Although she did not bring a counterclaim, Ms. La Flamme seeks \$5,000.00 for loss of opportunity, the cost of reinsuring the vehicle, the cost of a new car key, and time spent on the dispute. Ms. La Flamme says that she received only \$2,500 for her vehicle. Since Ms. La Flamme repudiated the agreement, she is not entitled to damages for disposing of her vehicle for a lower amount than Ms. Nicholls was willing to pay or for reinsuring her vehicle. Likewise, she is not entitled for any compensation for her time spent on this dispute.
20. As for her vehicle key, I take Ms. La Flamme to be asking for equitable set-off. To establish a set-off, the burden shifts to Ms. La Flamme to prove her loss on a balance of probabilities. I find she has not met this burden since she did not provide any proof that she had a new key made.

INTEREST, CRT FEES, AND EXPENSES

21. Ms. Nicholls is entitled to pre-judgment interest on the deposit from September 5, 2019, the date Ms. La Flamme repudiated the agreement, to the date of this decision. This equals \$13.03.

22. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Ms. Nicholls is entitled to reimbursement of \$150 in CRT fees. She did not claim dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order the respondent, Michelle La Flamme, to pay the applicant, Joyce Alma Nicholls, a total of \$963.03, broken down as follows:

- a. \$800 for the deposit refund,
- b. \$13.03 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$150 in CRT fees.

24. Ms. Nicholls is entitled to post-judgment interest, as applicable.

25. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

26. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Rama Sood, Tribunal Member