



Civil Resolution Tribunal

Date Issued: March 30, 2021

File: SC-2020-007851

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Campbell v. Di Fruscia*, 2021 BCCRT 345

B E T W E E N :

KARLA CAMPBELL

APPLICANT

A N D :

JOHNNY DI FRUSCIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the purchase of a used vehicle.

2. The applicant, Karla Campbell, says that she sold her 2008 Dodge Ram 3500 truck to the respondent, Johnny Di Fruscia, for \$15,500, but that Mr. Di Fruscia has paid only \$12,000 so far. Ms. Campbell seeks \$3,500 for the outstanding balance of the truck's purchase price.
3. Mr. Di Fruscia agrees that he has paid only \$12,000 of the agreed \$15,500, but he says Ms. Campbell's husband amended the purchase agreement after Mr. Di Fruscia discovered the truck needed repairs. Mr. Di Frusica says he does not owe Ms. Campbell anything.
4. Each of the parties is self-represented.

JURISDICTION AND PROCEDURE

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. Section 42 of the CRTA says 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.
8. 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.
9. I note that Mr. Di Fruscia submitted 3 items of late evidence, including a text message chain and 2 emails from Mr. Di Fruscia to Mr. Campbell. One of the emails appeared to have an attachment, but the attachment was not provided. Through the CRT's staff, I asked Mr. Di Fruscia to provide a copy of the attached document, which he did. The document in question was a duplicate of a document already in evidence, so I find it was unnecessary to request Ms. Campbell's submissions about it.
10. I find that Ms. Campbell had the opportunity to review and respond to Mr. Di Fruscia's late evidence in her reply submissions. I find Ms. Campbell will suffer no prejudice by the admission of the late evidence, so I admit it and have considered it in my reasons.

ISSUES

11. The issues in this dispute are:
 - a. Whether Mr. Di Fruscia owes Ms. Campbell \$3,500 for the outstanding balance of the truck's purchase price.
 - b. If so, whether Mr. Di Fruscia is entitled to any set-off of the purchase price because Ms. Campbell or her husband misrepresented the truck.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Ms. Campbell must prove her claims 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.

13. The following background facts are not disputed:
 - a. On September 3, 2020, Mr. Di Fruscia saw Ms. Campbell's parked truck with a sale sign on it, and called the number indicated on the sign. Mr. Di Fruscia spoke with Ms. Campbell's husband, RC, and arranged to meet him the next day.
 - b. Mr. Di Fruscia test drove the truck on September 4, 2020. The truck had about 320,000 kilometres on the odometer and obvious rust on its body. The parties agreed on a \$15,500 purchase price. Mr. Di Fruscia signed a September 4 contract, which stated that Mr. Di Fruscia would pay \$15,500 for the truck within 7 days, by September 11, 2020. Ms. Campbell also signed the contract.
 - c. Mr. Di Fruscia left with the truck. He made 3 payments to Ms. Campbell towards the purchase price on September 5, 7, and 9, 2020, each for \$3,000 (for a total of \$9,000).
 - d. Mr. Di Fruscia met with RC on September 10, 2020, and RC provided Mr. Di Fruscia with the truck's Transfer Tax Form.
 - e. On September 11, 2020, Ms. Campbell requested by text message that Mr. Di Fruscia send another payment, and Mr. Di Fruscia responded that he had to wait because his bank only allowed him to transfer \$10,000 within a 7-day period. Mr. Di Fruscia sent Ms. Campbell a further \$3,000 on September 14, 2020 (for a total of \$12,000).
 - f. Mr. Di Fruscia made no further payments towards the truck's purchase, and the truck remains in his possession.

14. The parties agree that RC told Mr. Di Fruscia on September 3 that Ms. Campbell was asking \$18,000 for the truck. Ms. Campbell says she agreed to reduce the price to \$15,500 because Mr. Di Fruscia noted the 'perform service' light was lit up on the dashboard, the 4x4 light did not come on, and there was some rust on the truck's body. Mr. Di Fruscia agrees that he was aware of these issues when he purchased the truck.
15. Mr. Di Fruscia says he wanted to get the truck inspected before "going ahead with the sale", so Ms. Campbell agreed to let him leave with the truck after signing the contract on September 4. However, I find the contract does not say there were any conditions attached to Mr. Di Fruscia's agreement to buy the truck. Further, the evidence shows Mr. Di Fruscia had already made 2 payments toward the purchase price before he called a dealership to schedule an inspection (set for September 15). Therefore, I find the contract was not conditional upon Mr. Di Fruscia obtaining an inspection. I find the September 4 contract was a final and binding agreement that Mr. Di Fruscia would pay \$15,500 for the truck.
16. As noted above, Mr. Di Fruscia also claims RC verbally amended the contract during their September 10 meeting, when Mr. Di Fruscia raised several issues he had discovered about the truck's condition. He says RC offered to "call it even at \$12,000", which Mr. Di Fruscia says he accepted. However, for the following reasons, I find the evidence does not support Mr. Di Fruscia's claim that RC agreed to reduce the truck's purchase price.
17. First, I note that while Ms. Campbell owned the truck, the parties agree RC did all the negotiations for the truck's sale. On this basis, I find RC had apparent authority (also called ostensible authority) to act on Ms. Campbell's behalf in negotiating with Mr. Di Fruscia. While Ms. Campbell denies that RC agreed to an amended \$12,00 purchase price, she did not provide a statement from RC about the negotiations or his September 10 meeting with Mr. Di Fruscia.

18. I considered whether I should draw an adverse inference against Ms. Campbell for failing to provide this relevant evidence contradicting Mr. Di Fruscia's price reduction claims. The courts have said that an adverse inference may be drawn against a party where they fail to produce evidence or call a witness expected to provide supporting evidence, without sufficient explanation. Still, I find the weight of the other documentary evidence created around the relevant time, discussed below, is inconsistent with Mr. Di Fruscia's allegation that there was an agreed price reduction. So, I decline to draw an adverse inference against Ms. Campbell for failing to provide a statement from RC.
19. Mr. Di Fruscia communicated with Ms. Campbell and RC by writing several times after September 10, but he did not confirm or refer to any new price agreement. For example, on September 14, when Mr. Di Fruscia told Ms. Campbell by text that he had sent her another \$3,000 payment, he did not confirm it was his final payment. Then, Mr. Di Fruscia sent RC a lengthy September 16 email setting out the repair issues the dealership had discovered the day before. Yet, Mr. Di Fruscia's email did not mention the alleged agreement to amend the purchase price the week before or confirm that the truck's purchase was complete.
20. The evidence shows RC sent Mr. Di Fruscia an October 1, 2020 email asking when they could expect the remainder of the truck's purchase price. Mr. Di Fruscia responded that he did not understand and requested that RC call him, which RC declined, stating there was nothing to understand or discuss given Mr. Fruscia's agreement to pay them \$15,500.
21. Mr. Di Fruscia then sent RC an October 4, 2020 email, in which he reiterated all the repair work the truck needed and alleged RC was not transparent about his knowledge of the truck's condition. However, again, Mr. Di Fruscia did not confirm in his email that RC agreed to "call it even at \$12,000" or indicate that they had any new agreement about the truck's price to contradict RC's request for further payment.
22. I find Mr. Di Fruscia's emails to RC show he likely raised only that the driver's seat cushion needed replacement and the door locking mechanism was not working

during their September 10 meeting. I also find Mr. Di Fruscia was not aware of the cost to fix these issues until the September 15 inspection. I find it is unlikely RC would have verbally agreed to reduce the contractual purchase price by \$3,500 on account of a seat cushion and door lock issue, particularly in the absence of any evidence about the cost to fix them.

23. In my review of all RC's written communications to Mr. Di Fruscia that are before me, I find he did not acknowledge any agreement to reduce the truck's purchase price to \$12,000. Instead, I find RC repeatedly confirmed that Mr. Di Fruscia owes what was agreed to in the September 4 contract. I find that Mr. Di Fruscia has not shown there was any agreement to reduce the truck's price to \$12,000. Therefore, I find Mr. Di Fruscia owes Ms. Campbell the claimed \$3,500 purchase price balance, subject to any applicable set-off, discussed below.

Set-off for misrepresentation

24. Mr. Di Fruscia did not file a counterclaim in this dispute. The only basis he argued for not owing Ms. Campbell the outstanding \$3,500, was RC's alleged verbal agreement to amend the contract. However, given Mr. Di Fruscia's submissions about alleged representations RC made during the negotiation process, I have also considered whether Mr. Di Fruscia is entitled to a set-off of the agreed purchase price due to misrepresentation. The burden of proving a set-off is on the party alleging it (Mr. Di Fruscia).
25. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue: see *Black's Law Dictionary*, revised 4th edition, at paragraph 1538. When the desired set-off is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off, equitable set-off may be applied: see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34. I find that equitable set-off applies here because the mutual alleged debts both involve the parties' obligations surrounding the truck's purchase.

26. While the principle of 'buyer beware' largely applies to a private used vehicle sale, a seller may not misrepresent a vehicle's condition. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract. The seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance "must have been detrimental in the sense that damages resulted": see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110.
27. Mr. Di Fruscia alleges that RC made the following verbal misrepresentations:
- a. That the truck's brakes were new, but they were over 2 years old.
 - b. That the service light on the dashboard was a reminder for an oil change, but it was for an expensive two-part maintenance service.
 - c. That the truck's front suspension had been rebuilt, but it had not.
28. Mr. Di Fruscia also says RC failed to mention the issues noted above about the driver's seat foam needing replacement and that the door locks not working and were expensive to fix. However, I find Mr. Di Fruscia has not alleged that RC made any specific representations about these issues, and I find RC's failure to volunteer information about these issues does not constitute a misrepresentation.
29. I will address each of the other above alleged misrepresentations in turn.

Brakes

30. While Ms. Campbell does not deny that her husband stated the brakes were new, she argues that the dealership did not identify any issues with the truck's brakes. However, just because the brakes were not completely worn, does not mean RC's representations about them were true. I find that 2-year-old brakes are not "new".
31. Even though RC's statement about the brakes was false, I find it is unlikely RC was trying to hide the brake's age. I say this because RC told Mr. Di Fruscia during

negotiations that he had the receipt for the brake replacement, and Mr. Di Fruscia likely could have requested it before finalizing the purchase. I find there is insufficient evidence to show RC fraudulently misrepresented the brakes, and it is likely that RC was simply careless in his estimate of how long it had been since they replaced the brakes.

32. Where I find Mr. Di Fruscia has failed to prove negligent misrepresentation is that there is no evidence before me suggesting that RC's representation about the brakes' age induced Mr. Di Fruscia to enter the contract. This was an older truck with high mileage, and I find brakes are a regular maintenance issue. There is no evidence the brakes were defective or needed immediate replacement. I find Mr. Di Fruscia has failed to show he relied on RC's brake representation and would have decided not to buy the truck if he had known the brakes were more than 2 years old before finalizing the purchase. I find Mr. Fruscia has not proven damages based on negligent misrepresentation of the brakes.

Service light

33. As there is no dispute that Mr. Di Fruscia was aware that the 'perform service' light was on when he purchased the truck, I infer that his complaint is that the required service was more expensive than he anticipated it would be. Mr. Di Fruscia says the dealership later advised him that the service light was for a necessary two-part regular maintenance that included replacing the crank case filter and cleaning the EGR system. He provided an estimate showing this service will cost over \$1,000.
34. Again, there is no statement from RC about what he said the 'perform service' light was for. However, Mr. Di Fruscia's own evidence is that RC said the service light was for an oil change "or something like that". I find this was not a false statement. RC confirmed that regular maintenance of some kind was required, which was true. While the required service may cost more than an oil change, there is no evidence before me that RC made any representations about the likely cost of the service. Therefore, I find Mr. Di Fruscia has not proven RC misrepresented the nature of the 'perform service' light.

Front suspension

35. Mr. Di Fruscia says that he asked RC more than once whether the truck's front suspension had been rebuilt because he says this truck model has known issues with the front end due to the heavy engine. Mr. Di Fruscia says that before the sale, RC confirmed the front suspension had been rebuilt and he would provide him with a receipt, but later RC said he could not locate the receipt.
36. While Mr. Di Fruscia says someone at the dealership told him he did not believe the suspension had been redone, Mr. Di Fruscia provided no evidence of this opinion. There is nothing on the dealership estimate suggesting this suspension work is required, and there is no statement from anyone at the dealership confirming the front suspension work had not been done. On balance, I find Mr. Di Fruscia has not proven that RC's alleged statement about the front suspension was false. So, I find he has not proven RC misrepresented the truck's front suspension.
37. In summary, I find Mr. Di Fruscia has not shown RC negligently or fraudulently misrepresented the truck during negotiations. Therefore, I find Mr. Di Fruscia is not entitled to any set-off of the truck's sale price. I order Mr. Di Fruscia to pay Ms. Campbell \$3,500 for the outstanding balance of the parties' agreed purchase price.

INTEREST AND CRT FEES

38. The *Court Order Interest Act* applies to the CRT. Ms. Campbell is entitled to pre-judgment interest on the \$3,500 from October 1, 2020, the date RC first demanded payment of the outstanding balance, to the date of this decision. This equals \$7.79.
39. 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. Campbell is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

40. Within 14 days of the date of this decision, I order Mr. Di Fruscia to pay Ms. Campbell a total of \$3,682.79, broken down as follows:
- a. \$3,500 in debt,
 - b. \$7.79 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
41. Ms. Campbell is entitled to post-judgment interest, as applicable.
42. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

43. 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.

Kristin Gardner, Tribunal Member