



# Civil Resolution Tribunal

Date Issued: May 18, 2021

File: SC-2020-008823

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JKL Autohaus Ltd. v. Han*, 2021 BCCRT 538

B E T W E E N :

JKL AUTOHAUS LTD.

**APPLICANT**

A N D :

DANIEL MINHYUK HAN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about a car purchase deposit. The applicant, JKL Autohaus Ltd. (JKL), sent the respondent, Daniel Minhyuk Han, a \$5,000 deposit to buy a car. Mr. Han had ordered the car elsewhere and he did not yet own it. Mr. Han agreed to sell the car to

JKL when he received it. Mr. Han did not sell the car to JKL and he returned \$2,500 of the deposit. JKL claims the return of the remaining \$2,500 deposit.

2. Mr. Han denies JKL's claim and says that it is not entitled to a refund. He also says that he is entitled to compensation for working on the transaction. Mr. Han did not file a counterclaim.
3. JKL is represented by an employee. Mr. Han is 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). 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

### ***Late evidence***

7. I note that JKL submitted evidence late. I find that Mr. Han was not prejudiced by the late evidence because he had an opportunity to respond. So, I have allowed JKL's late evidence and I have considered that evidence in my decision.
8. The issues in this dispute are:
  - a. Is JKL entitled to a refund of the remaining \$2,500 deposit?
  - b. Is Mr. Han entitled to a set-off from the deposit for his work? If so, how much?

### **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant, JKL must prove its claim on a balance of probabilities. However, Mr. Han has the burden of proving any set-offs. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Han did not provide any evidence, though he had the opportunity to do so.
10. The following facts are not disputed. Mr. Han says that he had an arrangement with a friend to order an imported car from a car dealership. Mr. Han says his friend paid the car dealership a \$5,000 deposit but his friend was unable to complete the purchase. JKL agreed to buy the car from Mr. Han and JKL paid Mr. Han a \$5,000 deposit, in two payments on May 3 and 4, 2020. There was no written agreement between the parties. Mr. Han was not able to purchase the car from the dealership and the car was not sold to JKL. JKL asked Mr. Han to return the deposit on October 8, 2020. Mr. Han returned \$2,500 and he still holds the remaining \$2,500 balance of the deposit.
11. Based on the above undisputed facts, I find that Mr. Han agreed to sell the car to JKL with a \$5,000 deposit towards the purchase price. As noted, the sale did not complete through no fault of JKL.

### ***Deposit refund***

12. Mr. Han says that JKL is not entitled to a refund. In the CRT decision in *Smythies v. Sprung*, 2021 BCCRT 158, a tribunal member held that a deposit is only non-refundable if the parties so agree when the contract is formed. While non-binding, I find the reasoning in *Smythies* persuasive and apply it here. So, this deposit was only non-refundable if JKL and Mr. Han agreed that it was when the contract was formed.
13. As stated above, there is no written agreement saying the deposit is non-refundable. However, Mr. Han says the parties verbally agreed that he would return JKL's deposit if he sold the car to another car export agent. Since JKL does not dispute this, I accept this as accurate. Mr. Han says that, since he did not sell the car, that JKL is not entitled to a refund. However, I do not find this argument persuasive because there is no evidence before me showing that Mr. Han's sale to another person was the only agreed basis for a refund.
14. Further, in his submissions Mr. Han says that he agreed to return JKL's deposit when the dealership returned his deposit, which Mr. Han says he has received in his Dispute Response. Mr. Han does not explain why he promised to return JKL's deposit if the parties had agreed that the deposit was non-refundable. In the absence of an explanation, I find it more likely that the parties did not agree that the deposit was non-refundable. So, I find that the deposit is refundable and Mr. Han must return the remaining \$2,500 balance of the deposit, subject to any set-off discussed below.

### ***Set-off***

15. Mr. Han argues that he is entitled to keep the deposit because he performed work arranging the transaction. Generally, when someone performs agreed work without an agreed price, it is entitled to reasonable payment for the work. This is known in law as '*quantum meruit*', or value for work done. So, Mr. Han may be entitled to a set-off from the deposit refund for his service's value if he proves this was performed with JKL's agreement.

16. Mr. Han says, and JKL does not dispute, that JKL agreed to pay him for his efforts ordering the car. Since JKL does not dispute this, I accept it as accurate. However, Mr. Han has not described the work he allegedly performed or the amount of time he spent. Further, Mr. Han has not provided any evidence showing the value of his work. I find that Mr. Han has not proved that he has performed any substantial work related to the transaction. So, I find that Mr. Han is not entitled to a set-off and he must refund the entire remaining \$2,500 deposit to JKL.
17. The *Court Order Interest Act* (COIA) applies to the CRT. JKL is entitled to pre-judgment interest on the \$2,500 deposit refund from May 4, the date JKL sent the last deposit instalment, to the date of this decision. This equals \$17.62.
18. 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. Since JKL was successful, I find that it is entitled to reimbursement of \$125 in CRT fees. JKL did not request reimbursement of dispute-related expenses.

## **ORDERS**

19. Within 30 days of the date of this order, I order Mr. Han to pay JKL a total of \$2,642.62, broken down as follows:
  - a. \$2,500 in debt as a deposit refund,
  - b. \$17.62 in pre-judgment COIA interest, and
  - c. \$125 in CRT fees.
20. JKL is entitled to post-judgment interest as applicable.
21. 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.

22. 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.

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Richard McAndrew, Tribunal Member