



Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-009951

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paynter v. Tesla Motors Canada ULC*, 2021 BCCRT 550

B E T W E E N :

NIGEL PAYNTER

APPLICANT

A N D :

TESLA MOTORS CANADA ULC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an agreement for the sale of a car. The applicant, Nigel Paynter, says the respondent, Tesla Motors Canada ULC (Tesla), agreed to sell a

Tesla Model 3 vehicle to Penticton Toyota (Toyota), so that Mr. Paynter could buy the new car from Toyota and obtain a higher trade-in value for his existing car. Mr. Paynter says Tesla had done this in 2019 with another vehicle, but in 2020 reneged on the agreement. Mr. Paynter claims \$5,000, as the lost trade-in value or tax credit.

2. Tesla says under the Motor Vehicle Order Agreement (Agreement) the vehicle must be sold to the end user and that Tesla reserved the right to cancel the order. Tesla says it was therefore entitled to cancel Mr. Paynter's order.
3. Mr. Paynter is self-represented. Tesla is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. 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 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 *Yas v. Pope*, 2018 BCSC 282, 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 find I can fairly hear this dispute through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. I note the Agreement has an arbitration clause. However, neither party sought to rely on it so I find the CRT has jurisdiction to decide this dispute under section 118 of the CRTA.

ISSUE

9. The issue in this dispute is whether Tesla was entitled to cancel Mr. Paynter's order for a Tesla vehicle, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mr. Paynter bears the burden of proving his claims, on a balance of probabilities. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.
11. Mr. Paynter contacted Tesla on June 1, 2020 about buying a new Tesla vehicle, and asked to make the purchase through Toyota as he had done the year before. Mr. Paynter paid Tesla a deposit on June 22, 2020 and Tesla's agent initially agreed to sell the Tesla to Toyota knowing it was ultimately going to be Mr. Paynter's vehicle. Mr. Paynter wanted the car sale to go through Toyota first, so he could get a higher trade-in value for his existing vehicle. However, on June 23, 2020, Tesla emailed Mr. Paynter that Tesla was no longer making exceptions to its "end user policy" in the Agreement, as it had done in previous years, meaning Tesla would not sell the vehicle to Toyota to be sold to Mr. Paynter. Tesla refunded Mr.

Paynter's paid deposit and explained the policy to Mr. Paynter. None of this is disputed.

12. I have reviewed the Agreement in evidence. It clearly provides that Tesla sells cars directly to "end-consumers" and that it "may unilaterally cancel any order" that has been made with a view toward resale. I find that is what happened here: the order was for Tesla to sell the car to Toyota for resale to Mr. Paynter. Given the Agreement's clear provision, I find Tesla was entitled to cancel the order under the Agreement.
13. I acknowledge Mr. Paynter had in June 2020 already sold his existing car to Toyota which had in turn re-sold it, and so Mr. Paynter was without a vehicle when Tesla cancelled the order. However, this situation does not change the Agreement's clear terms that Mr. Paynter agreed to. In other words, Mr. Paynter chose to sell his current car when he knew or ought to have known there was a risk Tesla would cancel the order for the new car. I further note that Tesla cancelled the order only a day after Mr. Paynter paid a deposit.
14. Given my conclusion above that Tesla did not breach the Agreement that was the parties' binding contract, I do not need to discuss Mr. Paynter's claimed damages in any detail. I dismiss his claim.
15. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. I see no reason to deviate from that practice here. Mr. Paynter was unsuccessful and so I dismiss his claim for reimbursement of CRT fees. Tesla did not pay fees or claim dispute-related expenses.

ORDER

16. I order Mr. Paynter's claim and this dispute dismissed.

Shelley Lopez, Vice Chair