



Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2021-000769

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Varga v. Shaw*, 2021 BCCRT 692

BETWEEN:

VILMOS VARGA

APPLICANT

AND:

JACQUELINE ALYSE SHAW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about loan repayment and vehicle payment.
2. The applicant, Vilmos Varga, says he sold his 2005 Cadillac Escalade to the respondent, Jacqueline Alyse Shaw, and loaned her money to pay rent in 2020. Mr.

Varga says Ms. Shaw has failed to pay \$2,500 which remains owing on the balance of the vehicle's purchase price or repay the \$350 he says he loaned her. Mr. Varga says Ms. Shaw signed a promissory note agreeing to pay him a total of \$2,850 by December 31, 2020, or Ms. Shaw would forfeit the vehicle. Mr. Varga asks that Ms. Shaw be ordered to return the vehicle to him.

3. Ms. Shaw denies she owes Mr. Varga any money for the vehicle, although admits that Mr. Varga helped her with her rent payment. Ms. Shaw says she was forced to sign the promissory note under duress.
4. Mr. Varga is represented by a neighbour. Ms. Shaw 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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. The CRT's monetary limit for small claims disputes is \$5,000. I find that Mr. Varga's requested remedy, that is the return of the vehicle, falls within that \$5,000 monetary limit. This is because Mr. Varga says Ms. Shaw agreed to pay him a total of \$5,000 for the vehicle, which was later reduced to \$4,000. Although Ms. Shaw denies agreeing to pay that amount, she does not claim the vehicle is worth more than \$5,000. So, I find the vehicle's value falls within the CRT's small claims monetary limit.

ISSUES

10. The issue in this dispute is whether Ms. Shaw must return the vehicle to Mr. Varga or pay him any further money.

EVIDENCE AND ANALYSIS

11. As the applicant in this dispute Mr. Varga must prove his claims on a balance of probabilities. I have reviewed all submissions and weighed the evidence provided but only refer to that necessary to explain and give context to my decision. I note that Ms. Shaw did not submit any evidence, although was provided with the opportunity to do so.
12. The parties agree that Ms. Shaw purchased a 2005 Cadillac Escalade from Mr. Varga in the summer of 2020. Although they disagree on the overall purchase price, they agree that Ms. Shaw had paid Mr. Varga \$1,500 by the end of June 2020.
13. Mr. Varga says the parties agreed on a purchase price of \$5,000 in June 2020 but reduced the price to \$4,000 in July 2020. Ms. Shaw disagrees but does not say what she understood the vehicle price to be. She says Mr. Varga would not "sign the truck over" until he was happy with the purchase price. I infer Ms. Shaw means she owes

Mr. Varga nothing more for the vehicle, beyond the \$1,500 she already paid. As explained below, I disagree.

14. Mr. Varga submitted a July 8, 2020 vehicle transfer/ tax form which, he says, shows that he and Ms. Shaw agreed to reduce the vehicle price from \$5,000 to \$4,000. I disagree. The form lists the vehicle's selling price as \$1,000. Below the selling price is a place for the seller to sign the form, confirming that the selling price is true. The form includes a signature for "Vilmos Varga" which I accept as Mr. Varga's signature, as he does not dispute it. However, as explain below, I do not find that Ms. Shaw agreed to pay \$1,000 for the vehicle, despite that being the listed purchase price on the vehicle transfer/ tax form.
15. Mr. Varga submitted an October 31, 2020 document entitled "Promissory Note" in which Ms. Shaw agrees that she owes Mr. Varga for the vehicle. In the document Ms. Shaw agrees to pay Mr. Varga a total of \$2,850 by December 31, 2020 or she will forfeit the vehicle back to Mr. Varga. The parties agree that Mr. Varga had loaned Ms. Shaw \$350 for rent. So, I find the \$2,850 in the promissory note is the combination of that \$350 loan plus \$2,500 owing on the vehicle's purchase price, which I find was likely \$4,000.
16. Both parties signed the document, as well as 2 witnesses, including Mr. Varga's representative in this dispute.
17. Ms. Shaw says she signed the promissory note under duress because she would not be allowed to move out unless she signed the note, and she was pregnant at the time. I infer from both parties' submissions that Mr. Varga's representative was either the owner of Ms. Shaw's rental unit, or the property manager.
18. Duress is a defence to the enforceability of an agreement. In other words, if Ms. Shaw signed the promissory note under duress, it will not be a binding agreement. To establish duress, Ms. Shaw must prove that Mr. Varga put her in a position where she had no realistic alternative to accept the offer (see *Dairy Queen Canada Inc., v. M.Y. Sundae*, 2017 BCCA 442). I do not find that to be the case here. It is undisputed

that Mr. Varga was Ms. Shaw's neighbour and not her landlord or property manager. Ms. Shaw has not explained how Mr. Varga attempted to, or could have, prevented her from moving out until she signed the promissory note. It is also unclear to me how Ms. Shaw's pregnancy contributed to her claim of duress.

19. Ms. Shaw provided no evidence, such as statements from either of the 2 witnesses, to support her claim of duress. On balance, I find Ms. Shaw has failed to prove she was coerced into signing the promissory note on October 31, 2020. So, I find the promissory note is a binding agreement between the parties.
20. In February 8, 2021 text messages between Ms. Shaw and Mr. Varga's representative, Ms. Shaw said she could not get the money to Mr. Varga because she could not contact him. She said she was told she was not allowed on the property. Ms. Shaw did not deny owing Mr. Varga money, or dispute the promissory note in the text messages.
21. On balance, I find Ms. Shaw agreed to pay Mr. Varga a total of \$2,850 by December 31, 2020, or forfeit the vehicle back to him, as set out in the October 31, 2020 promissory note. It is undisputed that Ms. Shaw has not paid Mr. Varga any money since then.
22. Section 118 of the CRTA allows me to make an order for specific performance of an agreement relating to personal property. I find the October 31, 2020 promissory note is such an agreement. So, I find I have the jurisdiction to enforce the promissory note and order Ms. Shaw to return the vehicle to Mr. Varga.
23. Mr. Varga has asked for the return of the vehicle, rather than payment of the outstanding balance as a remedy here. He believes Ms. Shaw will not pay him any money, even if she is ordered to. Mr. Varga points out that Ms. Shaw was previously unemployed and had trouble paying her rent. In these circumstances, and given the October 31, 2020 agreement between the parties, I find it appropriate to order that Ms. Shaw return the vehicle to Mr. Varga, according to the terms of my order below.

24. 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 Mr. Varga is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order I order Ms. Shaw to return the 2005 Cadillac Escalade to Mr. Varga at his home or at a mutually agreed upon place and time, at Ms. Shaw's expense. Both parties must comply with any applicable provincial or federal health orders in light of the COVID-19 pandemic, including any applicable social distancing advisories.

26. I order Ms. Shaw to pay Mr. Varga \$175 in CRT fees within 30 days.

27. Mr. Varga is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

28. 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.

29. 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 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.

Sherelle Goodwin, Tribunal Member