Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Drive Finance Company (Canada) Limited v. Randhawa*, 2022 BCCRT 30

B E T W E E N :

DRIVE FINANCE COMPANY (CANADA) LIMITED

APPLICANT

A N D :

HARMANPREET SINGH RANDHAWA and INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This small claims dispute is about insurance coverage for vehicle damage that occurred around February 2021.

2. The applicant, Drive Finance Company (Canada) Limited (DFC), leased a 2014 Honda Civic (car) to the respondent Harmanpreet Singh Randhawa. Mr. Randhawa failed to make payments. In the process of repossessing the car, DFC discovered that someone had cut wires under the car's dashboard.

3. The car was the subject of a comprehensive insurance policy issued by the respondent insurer, Insurance Corporation of British Columbia (ICBC). DFC made a claim with ICBC for vandalism damage. ICBC denied the claim.

4. In this dispute, DFC asks for orders that ICBC pay for the car's repair. DFC also asks for orders that Mr. Randhawa pay money owed under his contract with DFC, which includes money for the car's repair. DFC claims $4,999. DFC is represented by an employee or principal.

5. Mr. Randhawa did not participate in this dispute. I discuss his default status below.

6. ICBC says the claim should be dismissed for 3 reasons. First, ICBC says DFC is not entitled to insurance coverage because its agreement with Mr. Randhawa was not a true lease and so DFC did not have an insurable interest in the car. Second, ICBC says Mr. Randhawa intentionally cut wires under the car's dash and that type of owner damage is not covered by the policy. Third, ICBC says Mr. Randhawa made a wilfully false statement to ICBC, namely that he did not cut any wires, so he forfeited his entitlement to insurance coverage. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. ICBC's submissions referred extensively to an unreported BC Provincial Court decision. At my request, ICBC provided a copy of the decision, which was provided to DFC for comments, which I considered.

11. 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

12. The first issue in this dispute is to what extent Mr. Randhawa is liable to DFC under their contract.

13. The second issue is whether DFC was an insured owner under the insurance policy, which depends on whether DFC's contract with Mr. Randhawa was a lease or a financing arrangement.

14. If DFC was an insured owner, the issues are whether:

    a. The wire-cutting damage was covered by the insurance policy, and

    b. Mr. Randhawa forfeited the claim by making an untruthful statement.

EVIDENCE AND ANALYSIS

15. As the applicant in this civil dispute, DFC must prove its claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision

16. On February 11, 2020, Mr. Randhawa signed a "lease agreement" (contract) with Jim Pattison Industries Ltd. (JPI), a vehicle dealer that is not a party to this dispute. The contract identified DFC as the "assignee", and in clause 17 said Mr. Randhawa acknowledged that JPI was assigning the car and the contract to DFC as soon as Mr. Randhawa signed it. On February 12, 2020, DFC purchased the car from JPI for $14,990 before tax.

17. It is undisputed that Mr. Randhawa fell behind on payments. In March 2021, DFC obtained the car keys from Mr. Randhawa's roommate. DFC could not start the car, so it had a licensed mechanic, Scott MacCulloch, attend with a new battery. Mr. MacCulloch provided an emailed report to DFC and a statement to ICBC. I accept both statements, which are consistent and undisputed. As Mr. MacCulloch was changing the battery, a man who identified himself as the car's owner approached and advised that he had cut some wires under the dash. Mr. MacCulloch's view was that the owner likely cut wires in an attempt to deactivate a device installed in the car that could immobilize the car if payments were late. The car was towed to Mr. MacCulloch's shop. The cut wires affected several critical safety systems. DFC had the vehicle repaired at a Honda service centre.

18. As noted above, Mr. Randhawa did not provide a Dispute Response, so he is in default. Typically, liability is assumed when a respondent is in default. This means that it is generally reasonable to assume that DFC's position about Mr. Randhawa's liability under their contract is correct. DFC provided receipts and other documents establishing that it incurred expenses repossessing and repairing the car in excess of the claimed $4,999. So, I allow the claim for $4,999 against Mr. Randhawa.

19. In submissions, DFC says it wants ICBC to pay for the "vandalism damages", which it says total approximately $2,400. I infer it wants ICBC to be jointly and severally liable with Mr. Randhawa for the repair cost portion of its claim.

20. ICBC denied DFC's insurance claim, taking the position that the contract was not a true lease but rather, "financing in the guise of a lease."

Did Mr. Randhawa lease the car or purchase it under a conditional sales agreement?

21. On February 11, 2020, ICBC issued an "Owner's Certificate of Insurance and Vehicle Licence" for the car (owner's certificate). The owner's certificate remained in effect in March 2021 when DFC repossessed the car and reported the damage. The certificate listed both DFC and Mr. Randhawa as owners. It identified DFC as the lessor and Mr. Randhawa as the lessee.

22. The insurance included comprehensive coverage with a $500 deductible, which was subject to ICBC's "optional policy". Clause 5.4 of the optional policy says ICBC will "indemnify an insured, to the extent of the insured's insurable interest, in respect of direct and accidental loss or damage to the vehicle […] for which the own damage coverage is provided." The term "insured" is defined in the policy, in part, as the person named as an owner in an owner's certificate, and the lessee of a vehicle described in an owner's certificate. As noted above, DFC is named as an owner in the owner's certificate.

23. Being named as an owner on the owner's certificate is not a complete answer because part 4 of the *Insurance (Vehicle) Act* (IVA) applies to all optional insurance contracts in BC. ICBC relies on section 57.1(2) of the IVA, which says a person is not considered to be a vehicle's owner only because the person has a lien on the vehicle or has legal title to the vehicle as security. As well, IVA section 1 defines "vehicle insurance" as excluding insurance "solely of the interest of a person who has a lien on, or has as security legal title to, a vehicle and who does not have possession of the vehicle." As mentioned above, ICBC further relies on *BB Auto Sales Ltd. v. ICBC*,

an unreported April 14, 2016 BC Provincial Court decision. In *BB Auto*, the court relied on IVA sections 1 and 57.1(2) in concluding that BB, as a "lienholder, at best," could not claim a loss. ICBC says DFC is a lienholder and not an owner, and therefore it is not entitled to insurance coverage.

24. DFC does not dispute that if it is merely a lienholder and not an owner, it has no claim to indemnification under the insurance policy. DFC argues that it is an owner, and its contract with Mr. Randhawa was a true lease.

25. A lease is a contract that allows for the use of something in exchange for payment. As noted by the court in *BB Auto*, the title "lease" on a contract, as here, does not make it a lease. The fact that ICBC agents registered the car with a "lessor" and "lessee", as here, does not make the contract a lease. The fact that ICBC has paid the "lessor" for previous claims under similar contracts in the past, as here, does not make the contract a lease. Rather, it is the legal relationship between the parties that determines whether the contract is a lease.

26. The leading case on distinguishing true leases from other agreements is *DaimlerChrysler Services Canada Inc. v. Cameron*, 2007 BCCA 144. Although *Cameron* considered the distinction between a true lease and a security lease under Part 5 of the *Personal Property Security Act*, the factors in *Cameron* have been applied in considering whether a lessor listed on an owner's certificate was an insured: see *Summit Leasing Corporation v. ICBC*, 2021 BCPC 293.

27. In *Cameron,* the court identified a list of factors that, if present, suggest an agreement was a security lease rather than a true lease, which I have paraphrased below:

    a. The nature of the lessor's business was to act as a financing agency,

    b. The agreement included an option to purchase for a nominal sum rather than market value,

    c. The equipment was selected by the lessee and purchased by the lessor for this specific lease,

d. There was a provision granting the lessee an equity or property interest in the equipment,

e. The lessee paid sales tax and other taxes,

f. The lessee was required to pay a substantial security deposit,

g. The lessee was responsible for comprehensive insurance on the equipment, licence fees to operate it, and required to maintain the equipment at their expense,

h. The agreement placed the entire risk of loss upon the lessee,

i. The agreement granted the lessor remedies similar to those of a mortgagee, included a liquidated damages clause, and contained default provisions highly favourable to the lessor,

j. There was a provision disclaiming warranties of fitness or merchantability, and

k. The total rentals approximated the equipment's value or purchase price.

28. None of these factors alone is determinative.

29. Here, I find the only factor unequivocally indicating a true lease is that Mr. Randhawa made no down-payment and therefore he started with no equity in the car. The security deposit was only $1,000 and was refundable, so I find that factor neutral.

30. I note clauses 8 and 9 in the contract said that DFC owns the car and the lease is a true lease and not a financing agreement or a security agreement. I put little weight on these clauses, which I find similar to giving the contract a title of "lease". The contract was a standard form contract supplied by DFC or the dealer, for Mr. Randhawa to accept or reject. I find there was no negotiation and agreement on specific terms. I find Mr. Randhawa was therefore unlikely to be aware of the implications of these clauses. They did not necessarily reflect his understanding of the relationship, which is further reason to treat them with caution.

31. DFC's evidence is that it is in the business of "offering non-prime leasing solutions" to customers for whom traditional bank lending is not available. The name Drive Financing Company (Canada) Limited suggests DFC is in the business of financing, that is, providing money to purchase vehicles. This is also consistent with the evidence that Mr. Randhawa selected the car from a dealership. Although Mr. Randhawa did not give evidence, I find on a balance of probabilities that he likely selected the vehicle he wanted from the dealership before DFC purchased it. This is supported by the purchase documents showing DFC did not acquire the car until after the contract was signed. I find these factors indicate the contract was not a true lease.

32. Under the contract, Mr. Randhawa was responsible for licensing fees, insurance, and all maintenance, repairs and operating expenses. DFC disclaimed all representations and warranties of merchantability or fitness: see clause 21. The contract placed the entire risk of loss on Mr. Randhawa: see clauses 21, 23, 33 and 34. As well, the aggregate rental payments, $24,673.68, far exceeded the car's $14,900 purchase price. These factors all indicate the contract was not a true lease.

33. Another common characteristic of true leases is an excess kilometer charge to compensate the lessor for extra wear and tear on the vehicle which would presumably reduce the market value at the term's end: see *Cameron* at paragraph 27. There is no excess kilometer charge in the contract.

34. The default terms are found in clause 33. If Mr. Randhawa failed to make any payment when due, DFC was able to repossess the car, terminate the lease and require payment of liquated damages. The liquidated damages included all remaining payments to the term's end, the car's residual value of $1,000, and the cost of enforcing DFC's rights, including legal fees, less the net proceeds of sale and certain other refunds calculated by DFC. I find the default provisions are significantly favourable to DFC and support a conclusion the contract was not a true lease..

35. In *Summit Leasing*, the court found the agreement in question was a true lease. The predominant factor was that at the term's end the user had the option to purchase the truck for fair market value. Here, Mr. Randhawa was required to pay the $1,000

residual value whether he wished to purchase the car or not. I find this meant it was likely that he would keep the car, as this is the economically rational decision.

36. ICBC and DFC disagree about whether $1,000 is a fair estimate of the car's market value at the 3-year term's end. DFC says the car had an initial wholesale value of $10,753. It submitted current Black Book prices for the 2012 version of the same model car as evidence of the depreciation over time. However, the wholesale base price for the 2012 version is $6,300. DFC made deductions for excess kilometres in its calculations, but I do not agree with DFC's suggestion, unsupported by any evidence, that it is reasonable to assume an average user will put 125,000 kms on a vehicle in 3 years. On the evidence, I find the $1,000 buyout does not reflect fair market value for the car, which I find would be somewhere around $6,000 wholesale.

37. I conclude that DFC's contract with Mr. Randhawa was a financing arrangement and not a true lease. In reaching this conclusion, I rely on the majority of factors indicating a security interest, but I place considerable weight on the requirement to pay the residual value, which was well below market value, at the term's end.

38. Given these findings, I conclude that DFC was not an owner under the IVA, and not an insured under the optional insurance contract. This means DFC had no right to indemnification under the insurance contract. As a result, it is not necessary to consider the other issues identified above. I dismiss the claim against ICBC.

39. The *Court Order Interest Act* applies to the CRT. DFC is entitled to pre-judgment interest on the $4,999 awarded against Mr. Randhawa from April 4, 2021, the date I find the car's repairs were complete, to the date of this decision. This equals $17.44, which is exclusive of the CRT's small claims monetary limit, along with CRT fees.

40. 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. DFC was successful only against Mr. Randhawa, so I find Mr. Randhawa must reimburse DFC's $175 in CRT fees. DFC did not claim any dispute-related expenses. ICBC did not pay fees or claim expenses.

ORDERS

41. Within 14 days of the date of this order, I order Mr. Randhawa to pay DFC a total of $5,191.44, broken down as follows:

    a. $4,999.00 in debt and damages,

    b. $17.44 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175.00 in CRT fees.

42. DFC is entitled to post-judgment interest from Mr. Randhawa, as applicable.

43. I dismiss DFC's claims against ICBC.

44. 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. However, under CRTA section 56.1(2.1), a party in default (here, Mr. Randhawa) has no right to make a notice of objection.

45. 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.

Micah Carmody, Tribunal Member