



Civil Resolution Tribunal

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File: SC-2021-002649

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson v. Ishak*, 2022 BCCRT 36

B E T W E E N :

LOGAN WILSON

APPLICANT

A N D :

DIANA ISHAK and JASON ISHAK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a boat purchase deposit. The applicant, Logan Wilson, says he agreed to buy a 2001 Searay 290 Sundancer boat (boat) from the respondents, Diana Ishak and Jason Ishak, subject to a boat survey, mechanical inspection and a sea trial. After examining the boat, Mr. Wilson cancelled the transaction and he claims \$2,500 as a deposit refund.

2. The Ishaks deny Mr. Wilson's claim. They say that Mr. Ishak is not a party to the contract. Also, Ms. Ishak says that she is entitled to keep the deposit because Mr. Wilson did not get a negative boat survey, mechanical inspection or sea trial.
3. Mr. Wilson is self-represented. Ms. Ishak represented herself and Mr. Ishak.

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. 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.
6. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue is whether Mr. Wilson is entitled to a refund of the \$2,500 deposit.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Wilson, as the applicant, must prove his claim on a balance of probabilities. 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.
10. Mr. Wilson agreed to buy the boat before viewing it. Mr. Wilson and Ms. Ishak entered a March 22, 2021 contract with the following terms:
 - a. The sales price is \$82,000.
 - b. Ms. Ishak is the seller and Mr. Wilson is the buyer. Mr. Ishak is not mentioned in the contract.
 - c. Ms. Ishak will hold a \$2,500 deposit. The deposit is refundable if the terms of the contract cannot be satisfied.
 - d. The offer is contingent on Mr. Wilson's boat survey, mechanical inspections and sea trial.
 - e. The transaction is made on an "as is" and "where is" basis.
11. Ms. Ishak says that Mr. Ishak did not have any communications with Mr. Wilson. Since Mr. Wilson does not dispute this submission, I accept it as accurate. Further, Mr. Ishak is not named as a seller in the contract. Based on the above, and the absence of evidence showing that Mr. Ishak owned the boat, I find that Mr. Wilson has not proved that he had a contract with Mr. Ishak. So, I dismiss Mr. Wilson's claim against Mr. Ishak.

12. It is undisputed that Mr. Wilson did not purchase the boat and Ms. Ishak did not return the \$2,500 deposit.
13. The contract is also subject to Mr. Wilson's boat survey, mechanical inspection and sea trial. The parties agree that, if the survey, mechanical inspection or sea trial are unfavourable, the contract can be cancelled and Mr. Wilson is entitled to a refund.
14. Mr. Wilson says he hired Marie-Andrée Veilleux from All Boat Survey to survey, or inspect, the boat. Mr. Wilson says that Ms. Veilleux inspected the boat with him on March 24, 2021. Mr. Wilson says that the boat was not in the advertised condition. He says that there was mold on the seats, oil in the engine compartment and had many rips and tears. Ms. Ishak says the mold was seasonal and the oil residue was a normal boat condition.
15. Mr. Wilson says that Ms. Veilleux verbally gave a negative review of the boat. Ms. Veilleux did not provide a statement but she sent Mr. Wilson a March 24, 2021 email. Ms. Veilleux wrote that she is a senior naval architect and, based on her observations, she thought the boat was worth approximately \$65,000 to \$75,000. Ms. Veilleux said the boat value could be 10 to 15 percent lower if it had been used exclusively in salt water. Mr. Wilson says Ms. Veilleux was unable to complete a survey because she needed Ms. Ishak's repair invoices. Ms. Veilleux's email says that she did not have boat information from the seller and she asked Mr. Wilson if he wanted a full survey report for insurance purposes.
16. On March 24, 2021, Mr. Wilson texted Ms. Ishak and told her that Ms. Veilleux said that the boat was only worth \$65,000, that Ms. Veilleux could not complete the survey without the repair receipts and that a mechanical inspection was needed. Mr. Wilson said that he would not purchase the boat unless Ms. Ishak reduced the price to \$65,000.

17. Ms. Ishak sent Mr. Wilson an email reply on March 24, 2021 saying that she would not reduce the price unless Mr. Wilson provided a survey showing defects. Ms. Ishak demanded full payment by March 29, 2021 or she said she would sell the boat to someone else.
18. Ms. Ishak says that Mr. Wilson was not entitled to cancel the transaction because he did not obtain a survey. Ms. Ishak says a boat survey is a detailed document consisting of over 40 pages of analysis which Ms. Veilleux has not prepared. However, I note that the contract does not specifically define the scope of the survey or require a written report. Based on Ms. Veilleux's March 24, 2021 email and both parties submissions, I find that Ms. Veilleux partially surveyed the boat but she did not prepare a complete survey report. Though a complete report was not prepared, I am satisfied that Ms. Veilleux's inspection, as a boat surveyor, was sufficient to be considered a survey. Further, I find that Ms. Veilleux's opinion that the boat was worth less than the purchase price was a valid reason for Mr. Wilson to treat the survey as having failed.
19. Ms. Ishak argues that Mr. Wilson changed his mind and cancelled the transaction based on his "gut feeling." I disagree. Based on Mr. Wilson's March 24, 2021 text message sent the same day as the inspection, I find that Mr. Wilson cancelled the transaction based on Ms. Veilleux's survey. Since the contract was subject to this survey, I find Ms. Ishak must refund the \$2,500.
20. Based on the above, I find it unnecessary to determine whether Mr. Wilson was also entitled to cancel based on the mechanical inspection or sea trial inspection clauses.
21. Ms. Ishak argues that she is entitled to keep the deposit because she incurred expenses dealing with Mr. Wilson. However, Ms. Ishak has not made a counterclaim. Further, based on my above finding that Mr. Wilson was entitled to cancel the contract, I find that Ms. Ishak has not proved that Mr. Wilson breached the contract.
22. For the above reasons, I find that Ms. Ishak must refund the \$2,500 deposit.

Interest, CRT fees and dispute-related expenses

23. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Wilson is entitled to pre-judgment interest on the \$2,500 refund from March 24, 2021, the date he requested a refund, to date of this decision. This equals \$9.07.
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. Wilson is entitled to reimbursement of \$125 in CRT fees. Mr. Wilson did not request reimbursement of dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Ms. Ishak to pay Mr. Wilson a total of \$2,634.07, broken down as follows:
 - a. \$2,500 as a deposit refund,
 - b. \$9.07 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
26. Mr. Wilson is entitled to post-judgment interest from Ms. Ishak, as applicable.
27. Mr. Wilson's claim against Mr. Ishak is dismissed.
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.

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 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.

Richard McAndrew, Tribunal Member