



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-007261

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Isaac v. 1079259 B.C. Ltd.*, 2022 BCCRT 459

BETWEEN:

KATHRYN ISAAC

APPLICANT

AND:

1079259 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about “add-on” coverages in a used van sale. Together with her then boyfriend KE, the applicant, Kathryn Isaac, bought the van from the respondent,

1079259 B.C. Ltd. (107). 107 does business as TriCity Mitsubishi. Ms. Isaac says 107's employee salesperson, BF, forged some of her signatures on the documents such that she appeared to authorize charges for credit protection and replacement insurance (collectively, the coverages). Ms. Isaac claims \$1,700 for the credit protection and \$1,499 for the replacement insurance, both of which she says were added after she signed the van's purchase contract. She also claims the associated financing charges, discussed below. KE and BF are not parties to this dispute.

2. 107 says BF attended Ms. Isaac's home and signed all documents, including the disputed coverages, with both Ms. Isaac and KE. 107 says Ms. Isaac has "buyer's remorse" and says it owes nothing.
3. Ms. Isaac is self-represented. 107 is represented by its owner, Jamie Arens.

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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.

ISSUES

8. The issues in this dispute are:
 - a. Is Ms. Isaac's signature forged on the documents with respect to the coverages?
 - b. Is Ms. Isaac entitled to the claimed \$1,700 and \$1,499 for the coverages, plus the associated financing charges?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Isaac must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Ms. Isaac did not provide any final reply submission, despite having the opportunity to do so.
10. 107 employed BF as a vehicle salesperson. BF was formerly friends and neighbours with Ms. Isaac. Together with KE, in June 2019 Ms. Isaac bought the used van from 107, with a financing agreement through a bank. BF completed the van sale on Ms. Isaac's porch. Ms. Isaac did not receive a copy of the van sale or related documents after the sale, and only asked for copies later in the summer of 2021. The van sale contract had Ms. Isaac's wrong address on it. None of this is disputed.

11. Ms. Isaac says because the van was financed and she had not received a copy of the related sale documentation, she had not realized she was paying more than she had agreed to. When Ms. Isaac received and reviewed the documents in the summer of 2021, she says she discovered the alleged forgeries with respect to the coverages. Bearing in mind my conclusion below that I accept Ms. Isaac's signatures and initials were forged with respect to the coverages, I accept Ms. Isaac's evidence how and when it came about that she discovered the forgeries.
12. 107's only submitted evidence is a notarized February 14, 2022 statement from KE. KE wrote he signed the van's purchase documents, including the coverages, together with Ms. Isaac and BF.
13. Both Ms. Isaac and KE signed the van loan agreement. A copy of that agreement in evidence says both Ms. Isaac and KE are liable individually and collectively for the payments owing under the loan. The undisputed evidence is that Ms. Isaac assumed responsibility for the van and the loan agreement, following her break-up with KE. In his statement, KE does not say he made or will make any payments on the van. So, I find only Ms. Isaac has made the van loan payments, including for the coverages, and that she will continue to do so.
14. Ms. Isaac says her relationship with KE ended shortly after the van purchase and they did not remain friends. A copy of a Facebook message in evidence shows she tried to reach out to him about this matter but she says he did not respond. Ms. Isaac says given how their relationship ended, she is not surprised he signed the document for 107 and did not respond to her. More on this below.
15. Ms. Isaac hired Brenda Petty Unlimited, LLC of Docufraud Canada to provide an expert forensic opinion about whether Ms. Isaac's signature was forged on the coverages sections of the van sale documents. Ms. Petty explains in her report that she is a designated Certified Questioned Document Examiner-Diplomate by the International Association of Document Examiners. She says she has been court qualified to give expert testimony in the United States, Canada, and other countries. She also says she has studied in this field since 2006. I accept Ms. Petty is qualified

under the CRT's rules to give expert evidence on the question of whether Ms. Isaac's signatures and initials are genuine on the coverages sections of the van sale documents.

16. In short, Ms. Petty wrote that the questioned signatures of Ms. Isaac (those relating to the coverages) were not genuine and not hers. Ms. Petty wrote the questioned signatures did not have the same formation and writing habit as the comparison signatures. Ms. Petty wrote there were "significant differences" and that even a lay person can see the differences. I agree. Ms. Petty similarly concluded the questioned initials (again, those relating to the coverages) were not genuine either. I accept Ms. Petty's opinion, noting there is no other expert evidence before me to the contrary.
17. In short, I find Ms. Isaac's signatures and initials about the coverages were forged on the van sale documents. I note 107 did not submit a written statement from BF and did not explain the absence of it. Notably, 107 did not say it could not reach BF although an email in evidence indicates that as of August 2021 BF was no longer 107's employee. However, another August 2021 email from Mr. Arens to Ms. Isaac says he spoke to BF that day. I draw an adverse inference against 107 and find it likely that it was BF, 107's employee, who forged Ms. Isaac's signature and initials with respect to the coverages. In reaching this conclusion, I also prefer Ms. Petty's neutral and professional expert opinion over KE's brief statement, since I find KE is likely not neutral given his former relationship with Ms. Isaac.
18. I find 107 is vicariously liable for its employee BF's conduct in forging Ms. Isaac's signatures. It does not matter that KE says he agreed to buy the coverages. What matters is that I find Ms. Isaac never agreed to buy the coverages. So, I find 107 must reimburse Ms. Isaac for the coverages' cost. The documents in evidence show these amount to the claimed \$1,700 for credit protection and \$1,499 for replacement insurance, totalling \$3,199. I note the documents indicate some tax was also applicable, but since Ms. Isaac only claims a total of \$3,199, that is all I allow. In reaching this conclusion, I accept Ms. Isaac is obliged to pay out the entire van loan that runs until June 2025 and includes the coverages.

19. Ms. Isaac also claims 12.49% interest on the \$3,199 award. Here, the parties did not have a contract that included an agreement on interest. So, I find in substance this rate of interest (financing charges) is part of her substantive damages claim. This rate is set out in the loan agreement with the bank and is both a past and future ascertainable loss. In other words, it is a damages claim because Ms. Isaac's signature was forged on documents that resulted in the coverages and associated financing charges being included in the loan without her consent.
20. So, calculated from the loan's first payment date of June 27, 2019 to the June 5, 2025 final loan payment date, the financing charges aspect of Ms. Isaac's damages claim equals \$2,376.50. Together with the \$3,199, this totals \$5,575.50. However, the CRT's small claims monetary limit is \$5,000. So, I limit Ms. Isaac's damages award to \$5,000.
21. The *Court Order Interest Act* (COIA) applies to the CRT. It says that unless the parties had an agreement about interest, pre-judgment interest must be applied to a monetary judgment from the date the cause of action arose, but not on any loss that occurs after the order's date. As noted, the parties to this dispute had no agreement about interest and the amount awarded above is not interest but all part of Ms. Isaac's substantive damages claim. I find Ms. Isaac is entitled to pre-judgment interest on the \$5,000 under the COIA. Bearing in mind the CRT's mandate that includes speed, efficiency, flexibility and proportionality, I find COIA is reasonably calculated on \$2,500 (based on roughly ½ the loan still to be paid) from June 27, 2019 to the date of this decision. This interest equals \$69.70. I note the CRT's small claims monetary limit does not apply to COIA interest, CRT fees, or dispute-related expenses.
22. 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. Ms. Isaac was successful and so I find she is entitled to reimbursement of \$175 in paid CRT fees.
23. Ms. Isaac claims \$1,695 as a dispute-related expense for Ms. Petty's expert opinion, a receipt for which is in evidence. I relied on and accepted this opinion. I find this

expense reasonable and justified as the burden to prove a forgery is on the person alleging it, which here was Ms. Isaac. I find Ms. Isaac is entitled to reimbursement of the \$1,695.

ORDERS

24. Within 21 days of this decision, I order 107 to pay Ms. Isaac a total of \$6,939.70, broken down as follows:
 - a. \$5,000 in damages,
 - b. \$69.70 in pre-judgment interest under the COIA, and
 - c. \$1,870, for \$175 in CRT fees and \$1,695 in dispute-related expenses.
25. Ms. Isaac is entitled to post-judgment interest, as applicable.
26. 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.
27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair