



Civil Resolution Tribunal

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File: SC-2021-009644

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jett Auction Limited v. Mahyaoui*, 2022 BCCRT 576

B E T W E E N :

JETT AUCTION LIMITED

APPLICANT

A N D :

ERRAZI MAHYAOUI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a vehicle purchased at an auction. The applicant, Jett Auction Limited (Jett), says the respondent, Errazi Mahyaoui, purchased a 2007 Lexus sport-utility vehicle (Lexus) during Jett's August 8, 2021 online auction. Jett says Mr. Mahyaoui paid a \$500 deposit, but then failed to complete the transaction, as agreed. Jett says it repossessed the Lexus and resold it to a third party. Jett claims \$2,930

for the difference between the original purchase price and auction fees and the resale price and auction fees.

2. Mr. Mahyaoui says he never bought a car online and his banking information was “scammed”. He denies any responsibility for Jett’s claim.
3. Jett is represented by its owner. Mr. Mahyaoui is self-represented.

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 in this dispute is to what extent, if any, Jett is entitled to \$2,930 in damages from Mr. Mahyaoui.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Jett must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. As noted, Jett says Mr. Mahyaoui bought the Lexus during its August 8, 2021 online auction, and then failed to pay for it. In contrast, Mr. Mahyaoui says he never purchased the Lexus and is not responsible to pay Jett anything. He says his bank information was scammed, including his social insurance number and access to his cell phone. He also says there was fraudulent activity on his debit card.
11. I find Jett's claim for \$2,930 is a claim for damages arising from Mr. Mahyaoui's alleged breach of contract. However, I find I do not need to determine whether or not Mr. Mahyaoui purchased the Lexus from Jett, or breached the parties' alleged contract. I say this because for the following reasons, I find Jett has not proved it is entitled to \$2,930 in damages from the car's purchaser, regardless of whether it was Mr. Mahyaoui or another person.
12. The normal remedy for breach of contract is damages. Damages for breach of contract are meant to put the innocent person in the same position as if the contract had been performed: *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.
13. As noted, in this dispute Jett claims \$2,930 in damages. Jett says this is the difference between the Lexus's agreed purchase price with Mr. Mahyaoui, and the price the Lexus was later sold for, plus the difference in auction fees.

14. In its application for dispute resolution, Jett said that the Lexus's total purchase price was \$15,726.90, which included the vehicle price (\$13,300), a buyer's fee (\$665), a car history report, a live auction online fee, and GST and PST. An August 28, 2021 bill of sale addressed to Mr. Mahyaoui in evidence confirms this. The bill of sale has some handwriting on it, which I find shows that the Lexus was resold to a third party in October, 2021.
15. Jett included in evidence a breakdown of its \$2,930 claim for the difference in the purchase price and auction fees as follows:
 - a. \$2,300 – difference in vehicle sale price
 - b. \$900 – storage fees
 - c. \$115 – loss of difference in buyer auction fee
 - d. \$115 – loss of difference in seller auction fee
16. The above amounts total \$3,430, and then Jett reduced this by \$500 to account for the deposit paid. This reduced amount totals the claimed \$2,930. However, despite providing a breakdown of the \$2,930 claimed, Jett did not provide documentary evidence of the Lexus's resale amount, such as a second bill of sale that sets out the resale price and associated fees, including auction fees, that were charged to the third party purchaser. Jett also did not provide evidence of the auction fees paid by the seller for either the Lexus's initial sale or resale. Given this, I find the submitted evidence does not establish that Jett suffered a loss when it resold the Lexus to a third party. Parties are told to provide all relevant evidence as part of the CRT's process and for reasons that are unexplained Jett failed to provide this clearly relevant evidence.
17. I also note that Jett's \$2,930 damages claim also includes \$900 in storage fees allegedly incurred by Mr. Mahyaoui. Although Jett noted that Mr. Mahyaoui did not pay for storage fees in its application for dispute resolution, Jett's only requested remedy is the difference in purchase price and auction fees. I find Jett's application

for dispute resolution did not include a claim for payment of storage fees allegedly incurred by Mr. Mahyaoui. Given this, I find it would be procedurally unfair to address this alleged debt that was not included in the Dispute Notice. On that basis, I decline to make any award for the alleged unpaid storage fees.

18. In summary, in order to be successful in its claim against Mr. Mahyaoui for \$2,930 in damages, one of the things Jett must prove as the applicant is that it suffered damages totaling \$2,930. Here, I find Jett has not met that burden. I find the available evidence does not establish that Jett suffered any loss when it resold the Lexus to a third party. Given this, and as noted above, I find I do not need to determine whether Mr. Mahyaoui purchased the Lexus or breached any alleged contract with Jett. I dismiss Jett's claim for \$2,930.

19. 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. As Jett was unsuccessful, I dismiss its CRT fee claim. Mr. Mahyaoui did not pay CRT fees and neither party claimed any dispute-related expenses, so I award none.

ORDER

20. I dismiss Jett's claims and this dispute.

Leah Volkens, Tribunal Member