



Civil Resolution Tribunal

Date Issued: July 4, 2022

File: SC-2022-001370

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Omoniyi v. Sehgal*, 2022 BCCRT 760

BETWEEN:

TOBILOBA OMONIYI

APPLICANT

AND:

SUMIT KUMAR SEHGAL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. The applicant, Tobiloba Omoniyi, gave \$5,000 to the respondent, Sumit Kumar Sehgal, which Mr. Omoniyi says was a down-payment for a truck Mr. Sehgal was

selling. Mr. Omoniyi later decided not to buy the truck and sought a refund of the \$5,000, which Mr. Sehgal refused. Mr. Omoniyi claims the \$5,000.

2. Mr. Sehgal says the parties agreed the \$5,000 was a non-refundable deposit. Because Mr. Omoniyi failed to complete the truck's purchase, Mr. Sehgal says Mr. Omoniyi is not entitled to any refund.
3. The parties are each 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). 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

ISSUE

8. The issue in this dispute is whether the claimed \$5,000 deposit is refundable.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Omoniyi must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. As noted, Mr. Sehgal was selling his truck for \$35,000. On February 15, 2022, Mr. Omoniyi test drove the truck. Mr. Omoniyi decided to buy the truck and paid Mr. Sehgal a \$5,000 deposit. On February 20, Mr. Omoniyi texted Mr. Sehgal to say he would “bring the rest of the cash by Tuesday or Wednesday” and asked Mr. Sehgal to “do the truck detailing”. On February 22, Mr. Omoniyi realized he was not able to get bank financing to pay the \$30,000 balance and so he told Mr. Sehgal he would not be buying the truck and asked for a refund of the \$5,000. None of this is disputed.
11. The parties did not have a formal written agreement. The car’s advertisement is not in evidence. As noted, Mr. Sehgal says the \$5,000 was a non-refundable deposit. Mr. Omoniyi says they never discussed the deposit being non-refundable. In the circumstances, I find it does not matter if the parties expressly discussed that the deposit was non-refundable. My reasons follow.
12. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract generally forfeits the deposit. An example of repudiation is when a party refuses to purchase what was bargained for. In contrast, a partial payment is made with the intention of completing a transaction,

such as with a down payment to cover work to be done or materials to be purchased under the contract. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30.

13. I find Mr. Omoniyi's \$5,000 payment was a true deposit. He paid the deposit so that Mr. Sehgal would hold the truck for him until he could pay the purchase price balance. Mr. Omoniyi repudiated the contract when he refused to purchase the truck. So, because the \$5,000 was a true deposit, Mr. Omoniyi forfeited it when he repudiated the purchase contract.
14. I note Mr. Omoniyi alleges he called Mr. Sehgal about the \$5,000 refund and that Mr. Sehgal initially agreed to refund it but then later refused saying it was non-refundable. I find such a call inconsistent with the parties' text messages in evidence. In particular, on February 22 Mr. Omoniyi messaged Mr. Sehgal "I don't want to continue with the transaction of purchasing the truck, when can you refund me ...". Mr. Sehgal immediately responded, "what happened yesterday you told me you coming". Mr. Omoniyi said he "can't go forward with this, I just need a refund back" and Mr. Sehgal replied the deposit was not refundable. I find this exchange likely was the first time Mr. Omoniyi advised he was not going to buy the truck and as noted Mr. Sehgal immediately said the deposit was non-refundable. I do not accept Mr. Sehgal ever agreed to refund the deposit. Given my conclusions above, I dismiss Mr. Omoniyi's claim.
15. 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. As Mr. Omoniyi was unsuccessful, I find he is not entitled to reimbursement of paid CRT fees. Mr. Sehgal did not pay fees and no dispute-related expenses were claimed.

ORDER

16. I dismiss Mr. Omoniyi's claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair