



Civil Resolution Tribunal

Date Issued: October 3, 2022

File: SC-2021-009104

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Park v. Itani*, 2022 BCCRT 1081

BETWEEN:

SUJIN PARK

APPLICANT

AND:

TAHA ITANI

RESPONDENT

AND:

SUJIN PARK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the failed sale of a used car. The applicant and respondent by counterclaim, Sujin Park, paid the respondent and applicant by counterclaim, Taha Itani, \$3,000 as a deposit for a vehicle Mr. Itani was selling. Ms. Park says Mr. Itani hid information about the car and so she decided not to buy the vehicle. She sought a refund of the \$3,000 she paid, which Mr. Itani refused. Ms. Park claims the \$3,000.
2. Mr. Itani says the deposit was non-refundable and because Ms. Park chose not to buy the vehicle, he does not need to return the money. In his counterclaim Mr. Itani seeks reimbursement of \$190.97 for an inspection he says he paid for at Ms. Park's request, as well as \$3,200 as compensation for having to later sell the vehicle at a lower price. Ms. Park denies owing Mr. Itani anything.
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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.

6. Section 42 of the CRTA says that 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. Park's \$3,000 deposit refundable?
 - b. Is Mr. Itani entitled to a refund of \$190.97 for a paid vehicle inspection?
 - c. Is Mr. Itani entitled to \$3,200 for a loss in purchase price when reselling the vehicle?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Park must prove her claim on a balance of probabilities (meaning "more likely than not"). In his counterclaim, Mr. Itani bears this same burden. While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note Mr. Itani did not provide any reply submissions in his counterclaim, despite the opportunity to do so.

Is Ms. Park's \$3,000 deposit refundable?

10. It is undisputed that Mr. Itani advertised a Lexus RX350 SUV for sale on Kijiji for \$24,500. On September 14, 2021, the parties exchanged text messages about the vehicle. The actual advertisement is not in evidence. However, the text messages

show that Mr. Itani described the vehicle as being inspected and in good condition with a recent out-of-province inspection. In response, Ms. Park asked “can I purchase it?” and “can I put a deposit on it?”. Mr. Itani texted Ms. Park the vehicle was “rebuilt status” due to an accident, with no mechanical damage. The parties ultimately agreed on a total purchase price of \$23,000 with a \$3,000 deposit.

11. Before paying the deposit, Ms. Park requested a written contract, which Mr. Itani drafted and sent to Ms. Park, though Ms. Park undisputedly never signed it. The unsigned agreement is silent on whether the deposit was refundable or not. In any event, upon receiving the contract Ms. Park e-transferred \$3,000 to Mr. Itani.
12. Over the next few days Ms. Park essentially got “cold feet” about the vehicle’s rebuilt status and out-of-province registration. Ms. Park says Mr. Itani misrepresented the vehicle’s condition and overcharged her. Ultimately, she refused to complete the sale and asks that Mr. Itani refund her deposit, which he has refused to do.
13. 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).
14. I find Ms. Park’s \$3,000 payment was a true deposit. In her submissions Ms. Park says she “automatically thought” the deposit was refundable, and says she was “not paying him partially with the intention to purchase”. Mr. Park further says when she has dealt with car dealerships in the past, she has had her deposit refunded. First, this is a private sale, not a sale involving a business like a dealership. Second, despite Ms. Park’s assertions, I find the deposit was intended so Mr. Itani would hold the vehicle for Ms. Park while she arranged for financing for the \$20,000 balance, and

because Ms. Park admittedly knew there were others interested in the vehicle at the time she offered to make a deposit.

15. So, who repudiated the contract? As noted, Ms. Park says Mr. Itani improperly withheld information about the car's rebuilt status. However, it is unclear what she believes Mr. Itani should have further disclosed about the vehicle. She says she contacted the autobody shop where the repairs were completed and they "said there was a mechanical issue", contrary to what Mr. Itani told her. I do not accept this. First, Ms. Park provided no evidence in support of this argument, such as a statement from the repair shop. Additionally, the CarFax report in evidence says in June 2020 the vehicle had "damage to right side" and noted it as "minor damage". In July 2020, the vehicle was registered as "rebuilt/rebuildable". I find nothing in the evidence points to any structural or mechanical damage to the vehicle. Also, I find the CarFax report is consistent with Mr. Itani's description of the vehicle damage to Ms. Park in the parties' text messages. So, I find Mr. Itani did not misrepresent the vehicle.
16. Given this, I find it was Ms. Park who repudiated the contract when she refused to complete the purchase. Therefore, because the \$3,000 was a true deposit, Ms. Park forfeited it when she repudiated the contract. I dismiss Ms. Park's claim.

Is Mr. Itani entitled to a refund of \$190.97 for a vehicle inspection?

17. Mr. Itani says he paid \$190.97 for a vehicle inspection at Ms. Park's request. He seeks reimbursement for this amount because Ms. Park failed to complete the sale. Ms. Park says Mr. Itani offered to pay for the inspection.
18. In the text messages in evidence the parties both offer to pay for the inspection at one time or another. Ultimately nothing turns on this because Mr. Itani provided no evidence he took the vehicle for the inspection or how much he paid if he did. Mr. Itani did not provide any supporting evidence for this claim, such as a receipt. So, I dismiss Mr. Itani's claim for reimbursement as it is unproven.

Is Mr. Itani entitled to \$3,200 for a loss in purchase price?

19. Mr. Itani says after Ms. Park refused to complete the sale he had to repost and sell the vehicle at a lower price. He says he finally sold it for \$19,000. Mr. Itani does not explain the \$3,200 figure.
20. Further, Mr. Itani did not provide any evidence in support of this claim, such as any proof he sold the vehicle or for how much. So, I dismiss this claim as unproven.
21. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As both parties were unsuccessful, I find neither are entitled to reimbursement of their tribunal fees. Neither party claimed dispute-related expenses.

ORDER

22. I order Ms. Park's claim, Mr. Itani's counterclaim, and this dispute, dismissed.

Andrea Ritchie, Vice Chair