



Civil Resolution Tribunal

Date Issued: March 24, 2023

File: SC-2022-004414

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Feagan v. Kawen Holdings Ltd*, 2023 BCCRT 245

BETWEEN:

PAUL FEAGAN

APPLICANT

AND:

KAWEN HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about the sale of a used vehicle. After seeing an ad on Facebook, the applicant, Paul Feagan bought a Delorean from LA, who is not a party to this dispute. The respondent, Kawen Holdings Ltd. (Kawen), operates a car dealership. Benjamin Coyle, the owner of Kawen, communicated with Mr. Feagan about the potential sale, and then used Kawen's resources to help facilitate it.

2. Mr. Feagan says the vehicle was sold to him as working, but when he received it, he had to pay for repairs to bring it to running condition. Mr. Feagan says his contract was with Kawen, and Kawen should reimburse him for the cost of repairs. He claims \$4,097.
3. Kawen says it did not have a contract with Mr. Feagan, as it only acted as agent for LA. It asks for Mr. Feagan's claim to be dismissed.
4. Mr. Feagan represents himself. Kawen is represented by its owner, Benjamin Coyle.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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

9. The issues in this dispute are:
 - a. Is Kawen a party to the contract?
 - b. If so, did Kawen breach the contract such that it is responsible for the Delorean's repair cost?
 - c. Did Kawen negligently misrepresent the Delorean's condition?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Feagan must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I find Mr. Feagan did not have a contract with Kawen. Further, I find Mr. Feagan has not proven Kawen negligently misrepresented the Delorean's condition. My reasons follow.

Contract and the Law of Agency

12. The law of agency applies when a principal, in this case LA, gives authority to an agent, in this case Kawen, to enter into contract with third parties, such as Mr. Feagan, on the principal's behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will not generally be liable under a contract they make between the principal and a third party (*Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541).
13. The parties agree that Mr. Feagan contacted Mr. Coyle about purchasing a Delorean and having it shipped from Canada to the United Kingdom, where Mr. Feagan lived. In a series of April 16, 2021 Facebook messages summarized below, Mr. Feagan and Mr. Coyle discuss the potential sale. All phrases in quotation marks are reproduced as they were written in the Facebook messages.

14. Mr. Feagan contacted Mr. Coyle to express his interest and ask about fixing some minor issues on the Delorean as part of the sale. Mr. Coyle told Mr. Feagan he was selling the vehicle on behalf of a friend's widow (LA), and he could look into having repairs done. The parties discussed potential repairs, and Mr. Feagan made an offer to buy the car. Mr. Coyle said he would take the offer to LA.
15. While discussing payment, but before agreeing to buy the car, Mr. Feagan asked if Mr. Coyle's dealership takes credit cards. Mr. Coyle confirmed it did, but clarified the dealership was not involved in the sale other than for the purposes of using its resources to facilitate the sale. Mr. Coyle explained the dealership could collect on the credit card, and then give LA a cheque for the sale price.
16. Mr. Coyle then wrote to Mr. Feagan to say LA had agreed to the offered price. The parties discussed how Mr. Feagan would make payment. Mr. Coyle told Mr. Feagan to think of the dealership as a "broker/in trust money holder". Mr. Feagan asked to hear from "the lady selling the car" directly to ensure that she was okay with the dealership "acting as escrow."
17. When the sale finished, the bill of sale in evidence showed Mr. Feagan buying the car from LA. There was no mention of Kawen in the bill of sale.
18. Mr. Feagan submits that since he ultimately made the payment to Kawen, that shows he had a contract with them. I disagree. Kawen explicitly told Mr. Feagan that it was only accepting money on behalf of LA and would then forward her the sale proceeds. Mr. Feagan did not provide any other evidence to support his allegation that his contract was with Kawen, such as a copy of the advertisement.
19. Mr. Feagan admits in the Dispute Notice that Mr. Coyle advised he was selling the car on behalf of a friend. During the sale process, Mr. Feagan also said he wanted to speak to LA as the seller of the car, showing that he knew Kawen was not the seller, but was acting as an agent.

20. I find the evidence is clear that Mr. Coyle told Mr. Feagan that the dealership was not a party to the sale. Mr. Coyle said it was selling the car on behalf of someone else, and explained that he would take offers to LA, who would decide.
21. I find this means the law of agency applies. Mr. Coyle advised Mr. Feagan that Kawen was acting as agent. So, in keeping with the law of agency, Kawen is not liable under the contract.
22. In his submissions, Mr. Feagan also alleges that Kawen performed deficient work in repairing the Delorean's fuel pump. I note the parties discussed the fuel pump repairs in the course of negotiating the sale price. So, I find any repairs were part of the agreement Mr. Feagan had with LA. Mr. Feagan did not directly contract with Kawen to perform any repairs, so he does not have any claim against Kawen about those repairs.
23. For the above reasons, I find Kawen is not liable under the contract for the Delorean. So, I find it unnecessary to determine if it breached the contract. I note this also means I note I have not considered whether the implied warranties under the *Sale of Goods Act* apply, as they would first require me to find Kawen was a party to the contract.

Negligent Misrepresentation

24. An agent may still be jointly and severally liable with its principal for any tort committed by the agent while acting within the scope of the agent's authority (*Keddie*, cited above). The tort of negligent misrepresentation can occur when a seller does not exercise reasonable care to ensure its representations are accurate and not misleading.
25. To prove the tort of negligent misrepresentation, Mr. Feagan must show that Kawen owed him a duty of care, its representation was untrue, inaccurate, or misleading, Kawen made the representation negligently, he reasonably relied on it, and his reliance resulted in damages (See: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).

26. The applicable standard of care in a used car sale is to take “reasonable care” to not mislead the buyer about the vehicle’s condition. (See, for example: *Daniel v. Watkinson*, 2019 BCSC 319 at paragraph 57).
27. Mr. Feagan alleges the Delorean was sold to him as running and driving. However, he did not provide any copy of any advertisement making that claim in support his allegation. He also did not say who represented to him that the car was running and driving, when it was said, or any additional contextual information. I find he has not proven Kawen made a misrepresentation, and so has not proved his claim.
28. 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. In accordance with the CRTA and the CRT’s rules, as Mr. Feagan was unsuccessful, I find he is not entitled to any reimbursement. Kawen did not pay CRT fees and neither party claimed any dispute-related expenses.

ORDER

29. I dismiss Mr. Feagan’s claims and this dispute.

Christopher C. Rivers, Tribunal Member