



# Civil Resolution Tribunal

Date Issued: September 18, 2023

File: SC-2022-009317

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Naidu v. A2Z Auto Ltd.*, 2023 BCCRT 787

**B E T W E E N :**

**ABHINESH NAIDU**

**APPLICANT**

**A N D :**

**A2Z AUTO LTD.**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Alison Wake

## **INTRODUCTION**

1. This dispute is about a deposit for a used vehicle. The applicant, Abhinesh Naidu, says he paid the respondent, A2Z Auto Ltd. (A2Z), \$2,000 as a deposit for a 2020 Toyota Tacoma (vehicle). Mr. Naidu decided not to purchase the vehicle, and claims a refund of the deposit.

2. Mr. Naidu acknowledges in submissions that A2Z refunded him \$500 in December 2022. So, he now only claims the remaining balance of \$1,500. Mr. Naidu represents himself.
3. A2Z says Mr. Naidu agreed the deposit was non-refundable. It says it owes Mr. Naidu nothing. A2Z is represented by an employee or principal.

## **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.
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. A2Z says that prior to this CRT dispute, Mr. Naidu pursued a complaint with the Vehicle Sales Authority (VSA). A2Z says that the VSA ruled in A2Z's favour, and that the "entire file" can be accessed through the VSA investigation office. Parties are told by CRT staff to provide all relevant evidence, and it is not the CRT's role to investigate or obtain evidence on a party's behalf. I note I would not have relied on the VSA's findings in any event, as they are not binding on me in this civil dispute about the parties' contract.

## ISSUE

7. The issue in this dispute is whether A2Z must refund the \$1,500 balance of the deposit to Mr. Naidu.

## EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant Mr. Naidu must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to those necessary to explain my decision. I note Mr. Naidu did not submit reply arguments, despite having the opportunity to do so.
9. In July 2022, Mr. Naidu contacted A2Z expressing interest in the vehicle. After discussing the vehicle with A2Z by phone, Mr. Naidu test drove it on July 28, 2022.
10. The parties disagree about what happened next. A2Z says Mr. Naidu agreed to buy the vehicle. Mr. Naidu says that he agreed to apply for financing for the vehicle, but that he understood he would make a final decision about whether to buy the vehicle after he knew what the interest rate and monthly payments would be.
11. In any event, the parties agree Mr. Naidu paid A2Z a \$2,000 cash deposit and signed a deposit agreement, which I will discuss further below. Mr. Naidu says that because he did not end up purchasing the vehicle, A2Z should refund the deposit to him.
12. Both parties provided in evidence the deposit agreement dated July 29, 2022, which is undisputedly signed by Mr. Naidu and a representative of A2Z. The deposit agreement provides three options to describe the purpose for which A2Z is accepting the \$2,000 payment (reproduced as written in the agreement):
  - a. **Deposit** – A sum of money paid by the Customer to the Dealer, which may or may not be forfeited if either the Customer or the Dealer does not perform their part of the agreement,

- b. **Down Payment** – A sum of money paid by the Customer as an initial part of the purchase price of a motor vehicle, but where the final sale is not yet completed,
  - c. **Partial Payment** – Part of an agreement to purchase a specific vehicle, but where a sale is completed (see Agreement for Sale for details).
13. In submissions, the parties both refer to the \$2,000 payment as a “deposit”. However, the deposit agreement shows an X in the box next to the “down payment” option, with Mr. Naidu’s initials next to it.
  14. The deposit agreement goes on to say that if the customer (Mr. Naidu) does not perform their part of the agreement by August 5, 2022, the deposit is not refundable. I accept Mr. Naidu’s undisputed submission that A2Z’s manager handwrote “subject to financing approval” next to this term. Mr. Naidu initialed next to this term as well. A2Z relies on this term, which I will refer to as the refundability term, in support of its position that the deposit is non-refundable. The deposit agreement also specifies that if the dealer (A2Z) does not perform its part of the agreement by August 5, 2022, the deposit will be refunded.
  15. Mr. Naidu says he was “rushed” to initial the deposit agreement. A2Z specifically disputes this, and says that Mr. Naidu went through the deposit agreement form carefully. In the absence of any evidence or further description from Mr. Naidu about how he was “rushed”, I find this allegation unproven.
  16. I turn to the effect of the deposit agreement, and in particular the refundability term. 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.

17. I find the characterization of the deposit as a “down payment” in the deposit agreement is not determinative. In the full context of the deposit agreement, I find the \$2,000 payment was intended as a true deposit because the agreement contemplated what would happen with the payment if the parties did not fulfil their obligations. In other words, if Mr. Naidu did not complete the purchase contract, the deposit would not be refunded, but if A2Z did not complete the purchase contract, it would refund the deposit.
18. As noted, generally a buyer who repudiates a contract forfeits the deposit. However, here I find the deposit agreement was modified by the handwritten condition that the payment was non-refundable “subject to financing approval”. I find this addition is ambiguous, or capable of more than one meaning. It could be interpreted as meaning that the deposit was non-refundable, except if the financing company did not approve Mr. Naidu’s financing application. I infer this is the interpretation A2Z suggests. However, it could also be interpreted as meaning that the deposit was non-refundable, subject to Mr. Naidu’s approval of the financing terms. Lastly, it could also mean that the non-refundability of the deposit was subject to both the financing company’s approval of Mr. Naidu’s financing application and Mr. Naidu’s approval of the financing terms. Either of these two latter interpretations would be consistent with what Mr. Naidu says was his understanding of the deposit agreement.
19. Where a contractual term is ambiguous, the legal principle known as *contra proferentem* says that the ambiguity must be resolved against the party who drafted the contract (see *Horne Coupar v. Velletta & Company*, 2010 BCSC 483). Because A2Z drafted the contract, the ambiguity must be resolved in favour of Mr. Naidu. So, I find the handwritten term must be interpreted as requiring Mr. Naidu’s approval of the financing terms before the deposit would become non-refundable, whether or not it also required the financing company’s approval.

20. Mr. Naidu says that he decided not to purchase the vehicle after he learned of the interest rate, which he says was too high. A2Z says that Mr. Naidu agreed to complete the purchase after speaking with the financing company, but later stopped responding to calls and ultimately advised that he had changed his mind. However, A2Z provided no evidence (such as a statement from its employees or from the financing company) in support of this argument. In the absence of any evidence that Mr. Naidu approved the financing arrangement, I find A2Z may not rely on the refundability term to refuse to refund the deposit. So, I find A2Z must refund the \$1,500 balance of the deposit to Mr. Naidu.
21. The *Court Order Interest Act* applies to the CRT. Mr. Naidu is entitled to pre-judgment interest on the \$1,500 refund. As there is no evidence before me of the specific date Mr. Naidu decided not to purchase the vehicle, I find it reasonable in the circumstances to award interest from the date Mr. Naidu filed this CRT dispute, November 28, 2022, to the date of this decision. This equals \$51.75.
22. 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, and find Mr. Naidu is entitled to reimbursement of \$125 in CRT fees.

## **ORDERS**

23. Within 21 days of the date of this order, I order A2Z to pay Mr. Naidu a total of \$1,676.75, broken down as follows:
  - a. \$1,500 in debt as reimbursement for the deposit,
  - b. \$51.75 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
24. Mr. Naidu is entitled to post-judgment interest, as applicable.

25. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Alison Wake, Tribunal Member