



Civil Resolution Tribunal

Date Issued: June 10, 2024

File: SC-2023-004684

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yusuf v. Wang*, 2024 BCCRT 520

B E T W E E N :

ADEYINKA YUSUF

APPLICANT

A N D :

CUILING WANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about the failed sale of a used car.
2. The applicant, Adeyinka Yusuf, says he paid the respondent, Cuiling Wang, a \$1,000 deposit for a used car. The applicant says he failed his driver's license test, and he also realized the car was overpriced, so he no longer wanted it. The applicant says

the respondent refused to refund the deposit. He requests that the respondent refund the \$1,000.

3. The respondent says the applicant is not entitled to a refund. The respondent says the applicant never said he did not have a driver's license, that they turned down other potential buyers while waiting for the respondent to complete the purchase.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
7. The CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by telephone or videoconference. In this dispute, the applicant says the respondent's version of events contains false statements. Neither party requested an oral hearing. In the circumstances of this dispute, I find I can fairly make findings about what occurred based the applicant's evidence, which includes text messages the parties exchanged at the time of the disputed events. I find that cross-examination is unlikely to assist in deciding this dispute. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

ISSUE

8. Is the applicant entitled to a \$1,000 refund?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
10. The respondent did not provide documentary evidence, although they had the opportunity to do so.
11. The applicant provided screenshots of a series of texts he exchanged with the respondent about the car. In the texts, the parties arranged for the applicant to view the car on April 19, 2023. They then exchanged further texts, including the following:
 - April 19: the respondent confirmed that the applicant had paid \$1,000 by e-transfer as a "deposit for the listed car", and that the remaining \$1,700 would be paid when the transaction was completed.
 - April 20: the applicant said they had "changed their mind about buying the car", and directed the respondent to "refund my deposit."
 - The respondent replied that they would not refund the deposit because they told other potential buyers on April 19 and 20 that the car was already sold.
 - April 25: the applicant said that he knew the car had not yet sold, but he had failed his driver's license road test, so could not buy a car. The applicant again asked for his deposit back.
 - The respondent refused to refund the deposit.
12. Courts have considered when deposits are refundable. In those cases, courts have said that a true deposit is designed to motivate contracting parties to carry out contracts they have agreed to. A buyer who refuses to purchase what they have bargained for generally forfeits (gives up) the deposit. This is called "repudiation".

13. In contrast, courts have said that a partial payment is different from a deposit. A partial payment is made with the intention of completing a transaction. For example, a homeowner may give a contractor a partial payment to cover materials to be used in a contract to rebuild a deck. 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. The applicant says the deposit is refundable because the parties had not agreed that it was non-refundable. However, this position is not consistent with the law on deposits summarized above. There is no legal authority says that a deposit is refundable unless the parties specifically agree that it is non-refundable.
15. I find the text messages show that the \$1,000 the applicant paid was a true deposit, rather than a partial payment. I find this because there is no suggestion that either party intended the \$1,000 to cover any cost such as car repair, shipping, or another expense. Rather, the text messages show that the \$1,000 was used to secure the contract, so that the respondent would not sell the car to anyone else. This means that the \$1,000 was a true deposit, and not a partial payment.
16. The applicant argues that when he paid the deposit, he told the respondent he would only pay the remaining balance if he passed his driving test. The respondent denies this, and says they were unaware the applicant had no licence.
17. The applicant bears the burden of proof, and I find the applicant has not proved that passing a driver's test was a condition of their agreement. The text messages on April 19 and 20, where the parties agree on the sale terms, do not mention driver's licences or tests.
18. Also, the applicant says, and the text messages confirm, that the applicant did not refuse to purchase the car because he had no driver's licence. Rather, the applicant submits that he changed his mind about the car because, "I realized I would spend more money fixing the defects on the car so I decided I was no longer going to buy

the car.” So, the applicant decided he had made a bad bargain. That does not legally entitle to the applicant to a refund of the deposit.

19. Since the \$1,000 was a true deposit, and the applicant decided not to complete the contract, I find the applicant is not entitled to any refund. I dismiss the applicant’s claim.
20. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss his claim for reimbursement of CRT fees. The respondent is the successful party. They paid no CRT fees and claim no dispute-related expenses, so I award no reimbursement.

ORDER

21. I dismiss the applicant’s claims.

Kate Campbell, Vice Chair