



Civil Resolution Tribunal

Date Issued: June 12, 2024

File: SC-2023-004677

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reinsch v. Willetts*, 2024 BCCRT 532

BETWEEN:

VICTORIA LYNNE REINSCH

APPLICANT

AND:

ALLAN WILLETTS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a deposit for a used 5th wheel trailer.

2. Victoria Lynne Reinsch agreed to buy a 2005 Forest River trailer from Allan Willetts for \$40,000. She paid \$4,000 of an agreed-upon \$5,000 deposit before asking to cancel and get her money back. She claims the deposit's return.
3. Mr. Willetts says he was willing to refund part of the deposit when he sells the trailer, but that he has not done so yet. He asks me to dismiss Mrs. Reinsch's claims.
4. The parties are each self-represented.
5. For the reasons that follow, I dismiss Mrs. Reinsch's claims.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
7. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.
8. 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 court.
9. Where permitted by CRTA section 118, 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

10. The issue in this dispute is whether Mr. Willetts must return Mrs. Reinsch's \$4,000 deposit.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mrs. Reinsch, as applicant, must prove her 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.
12. On February 27, 2023, the parties signed a contract for Mrs. Reinsch to buy the trailer from Mr. Willetts for \$40,000. The contract required Mrs. Reinsch to pay a \$5,000 deposit by e-transfer. Owing to daily transaction limits, she paid 2 installments of \$2,000 each. The parties then encountered challenges about the trailer's registration.
13. Mrs. Reinsch says she asked for the trailer's registration, which was with the Province of Alberta. She says Mr. Willetts was unable to provide it. However, Mr. Willetts says she asked for British Columbia registration. He says he told her he would provide it, but that it would take some time. He says he then arranged for registration in British Columbia. He provided the CRT with the trailer's British Columbia registration, dated March 13, 2023.
14. On March 8, 2023, Mrs. Reinsch asked for her deposit back. In a March 10 text message, Mr. Willetts agreed to return the deposit "after the trailer sells."
15. He submits the trailer has not yet sold, but that he intended to return her deposit when it does, minus expenses he incurred, such as taxes and registration fees.
16. Mrs. Reinsch says the parties never discussed the deposit being non-refundable. In the circumstances, I find it does not matter if they expressly discussed that the deposit was non-refundable. My reasons follow.

17. 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 they had agreed to buy, which is what happened here when Mrs. Reinsch refused to purchase Mr. Willetts' trailer.
18. 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.¹ There is no evidence here that Mrs. Reinsch provided the deposit to allow Mr. Willetts to do any work on the trailer and the contract explicitly says the trailer is sold "as is, where is."
19. So, I find the \$4,000 payment was a true deposit. Mrs. Reinsch says she found an alternative option by March 8, which suggests she was looking for other trailers during the period from when she entered the contract on February 27 to when she asked for her deposit back on March 8. I find this makes it likely that she paid the deposit to hold the trailer in case she could not find a better option.
20. I also find Mrs. Reinsch repudiated the contract when she told Mr. Willetts she wanted her deposit back. It was her decision, not his, to cancel the sale.
21. Mrs. Reinsch says she gave Mr. Willetts as long as she could for him to prove ownership by giving her the registration. She says without the registration, she was not able to arrange for financing or insurance. Her actions show she did not require the registration prior to entering the contract.
22. However, as I note above, Mr. Willetts says he told Mrs. Reinsch he would provide her with proof but that it would take some time. Mrs. Reinsch does not address Mr. Willetts' statement other than by saying that he did not have proof of ownership. The registration is dated March 13, which is approximately 2 weeks after the parties entered into the contract. I find this is reasonable, given Mr. Willetts' undisputed

¹ See: *Tang v. Zhang*, 2013 BCCA 52, at paragraph 30.

statement that he arranged for registration in British Columbia and that the contract does not have any set date by when Mr. Willetts had to produce proof. I find the evidence shows he continued to act within the agreement's terms to ensure the sale could complete.

23. While Mrs. Reinsch says she gave Mr. Willetts "as long as she could," she does not explain what she means by that or why the transaction had to complete by any particular date.
24. Since I have found the payment was a true deposit, and that it was Mrs. Reinsch who repudiated the parties' contract, I find she is not entitled to the deposit.
25. To the extent Mrs. Reinsch argues Mr. Willetts should be bound by his texted agreement to return the deposit, I note any agreement he made was undeniably on the condition that he first sell the trailer. There is no evidence it has sold. Mrs. Reinsch sent a thumbs-up emoji to Mr. Willetts' message about selling the trailer before repaying any deposit, which suggests she agreed with and understood that course of action. However, by starting this dispute, I find she ultimately rejected Mr. Willetts' offer and he is not bound by it.

26. 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. I see no reason in this case not to follow that general rule. I dismiss Mrs. Reinsch's claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

27. I dismiss Mrs. Reinsch's claims and this dispute.

Christopher C. Rivers, Tribunal Member