



Civil Resolution Tribunal

Date Issued: October 16, 2024

File: SC-2023-007118

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Campbell v. Ruttan*, 2024 BCCRT 1024

BETWEEN:

CAMERON GLEN CAMPBELL

APPLICANT

AND:

DALLAN RUTTAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This dispute is about buying a used vehicle.
2. The applicant, Cameron Glen Campbell, says he paid the respondent, Dallan Ruttan, \$1,000 to hold a vehicle until he could view it in person. He says Mr. Ruttan

misrepresented the vehicle's condition, and he decided not to buy it. Mr. Campbell alleges Mr. Ruttan agreed to return the money and claims \$1,000 in compensation.

3. Mr. Ruttan says Mr. Campbell paid him a \$1,000 deposit and he turned down other potential buyers to allow Mr. Campbell to view the vehicle. He says the vehicle was exactly as advertised and Mr. Campbell did not buy the vehicle for other reasons. Mr. Ruttan argues he is entitled to keep the deposit.
4. The parties are self-represented.
5. For the following reasons, I dismiss Mr. Campbell's claims and this dispute.

JURISDICTION AND PROCEDURE

6. 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)*. CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind that an oral hearing was not requested by either party, and the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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. Campbell is entitled to the return of the \$1,000 he paid to Mr. Ruttan.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Campbell, as the applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). Mr. Ruttan had the opportunity to provide documentary evidence and submissions but did not do so. So, I have relied on Mr. Ruttan’s statements in his Dispute Response filed at the start of this proceeding. 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. The parties do not dispute the following facts.
13. Mr. Ruttan listed a Suzuki Samurai for sale on Facebook for \$10,000. Mr. Campbell paid Mr. Ruttan \$1,000 to hold the vehicle until Mr. Campbell could travel to view it. After seeing the vehicle, Mr. Campbell chose not to buy it, and he asked Mr. Ruttan to return his \$1,000. Mr. Ruttan has not returned the money.

Is Mr. Campbell Entitled to the Return of his \$1,000?

14. I will start by outlining the applicable law. When one party pays money to another party in advance of a sale, in law that money is considered either a true deposit or a partial payment.
15. A true deposit is designed to motivate contracting parties to carry out contracts they have agreed to. A buyer who refuses to buy what they have bargained for generally

forfeits (gives up) the deposit. This is called “repudiation”. The non-repudiating (innocent) party may keep the full amount of the deposit without proof of damages (see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30).

16. 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 *Conner v. Bulla*, 2010 BCCA 457).
17. There is no documentary evidence before me about what the parties agreed to before Mr. Campbell paid Mr. Ruttan \$1,000. Mr. Campbell says it was a “holding fee”. Mr. Ruttan says it was a deposit. For the following reasons, I agree with Mr. Ruttan.
18. There is no suggestion that either party intended the \$1,000 to cover any costs such as car repairs, shipping, or another expense. So, I find the money was not a partial payment. Instead, Mr. Campbell says he paid the money to prevent Mr. Ruttan from selling the vehicle to someone else. Mr. Ruttan confirms this and says he turned away other customers to allow Mr. Campbell to view the vehicle. Given this, I find Mr. Campbell paid \$1,000 to Mr. Ruttan as a true deposit to secure the vehicle.
19. Since Mr. Campbell did not buy the vehicle, he presumptively forfeited the deposit to Mr. Ruttan. I will now turn to Mr. Campbell’s arguments on why Mr. Ruttan should return the deposit.

Mr. Ruttan Agreed the Money Was Refundable

20. Mr. Campbell says before he sent \$1,000 to Mr. Ruttan he asked Mr. Ruttan, "what if I don't want to buy the vehicle after seeing it?" Mr. Campbell says Mr. Ruttan replied, "Don't worry about it." Mr. Campbell says he took this to mean the money was not a deposit and only meant to hold the vehicle until he could view it. Mr. Campbell claims this is a common practice when buying items off Facebook and he

did not expect to incur any expenses to view the vehicle. Mr. Campbell did not provide any evidence to support this assertion. On its own, I find these alleged statements do not prove on a balance of probabilities that Mr. Ruttan agreed to return the money if Mr. Campbell did not buy the vehicle.

Mr. Ruttan Misrepresented the Vehicle's Condition

21. Mr. Campbell claims he did not buy the vehicle because Mr. Ruttan misrepresented the vehicle's condition. I infer Mr. Campbell argues that Mr. Ruttan's alleged misrepresentations breached the parties' agreement.
22. Mr. Campbell claims that the Facebook ad said the vehicle had a newly refurbished mechanical system with the major parts replaced. Mr. Campbell says Mr. Ruttan told him on the phone that the vehicle could do 90 km per hour on the highway and the vehicle did not need any other repairs or major expenses. Mr. Campbell also claims Mr. Ruttan said that the vehicle could be insured as a collector.
23. When Mr. Campbell viewed the vehicle, he says he discovered:
 - a. The vehicle's carburetor, tires, and wipers needed to be replaced.
 - b. There were major issues with the integrity of the motor mounts.
 - c. The vehicle's paint and body work was peeling.
 - d. There were too many changes and alterations to the vehicle for it to qualify as a collector.

Mr. Campbell also claims that during the inspection, Mr. Ruttan admitted that the vehicle could not go above 80 km per hour.

24. In his Dispute Response, Mr. Ruttan says the vehicle was exactly as advertised and he later sold the vehicle to a happy customer.
25. As noted, Mr. Campbell must prove his claims. Mr. Campbell did not provide any documentary evidence, such as the Facebook ad, any messages between the

parties, or photographs of the alleged vehicle issues, to support his misrepresentation claim. So, I find Mr. Campbell has not proven that Mr. Ruttan misrepresented the vehicle's condition.

Mr. Ruttan Agreed to Return the Money

26. Mr. Campbell says during their face-to-face meeting, Mr. Ruttan confirmed he would give back the money. In his Dispute Response, Mr. Ruttan admits they discussed the money, but he says he did not sign anything or agree to refund the deposit. Instead, Mr. Ruttan says he told Mr. Campbell he would contact him later that day.
27. On June 4, 2023, Mr. Ruttan emailed Mr. Campbell. In the email, Mr. Ruttan wrote that Mr. Campbell had paid \$1,000, Mr. Campbell had decided not to buy the vehicle, and Mr. Campbell had forfeited the deposit. At the end of the email, Mr. Ruttan still offered to return the money once he sold the vehicle. I find this email supports Mr. Ruttan's version of events. So, I accept that Mr. Ruttan did not agree to refund the deposit during the parties' face-to-face meeting.
28. Mr. Campbell argues that the June 4th email proves that Mr. Ruttan agreed to return the money once he sold the vehicle. It is undisputed that Mr. Ruttan later sold the vehicle. However, I find the parties did not have an agreement that Mr. Ruttan would return the deposit. In law, an agreement requires three things, an offer, acceptance of that offer, and consideration (value) flowing between the parties (see *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 at paragraph 72).
29. Based on Mr. Campbell's emailed response, I find he did not accept Mr. Ruttan's offer. In his June 6, 2023 email, Mr. Campbell wrote that the money was not a deposit, Mr. Ruttan committed fraud, and the vehicle had various alleged issues. Mr. Campbell concluded the email by writing, "I will get my money back from you one way or another. You should do the right thing and pay it back now. Retribution starts today." Based on Mr. Campbell's language, I find he rejected Mr. Ruttan's offer. So, I find the parties did not have an agreement that Mr. Ruttan would return the deposit once he sold the vehicle.

Conclusion

30. In conclusion, I find Mr. Campbell has not proven that he is entitled to the return of the deposit. So, I dismiss his claim for \$1,000.
31. 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. Mr. Campbell was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Mr. Ruttan did not claim any dispute-related expenses, so I order none.

ORDER

32. I dismiss Mr. Campbell's claims and this dispute.

Jeffrey Drozdiak, Tribunal Member