



Civil Resolution Tribunal

Date Issued: July 30, 2024

File: SC-2023-007794 and
SC-CC-2023-009589

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Potter v. Parker*, 2024 BCCRT 733

B E T W E E N :

JONATHON BRUCE POTTER

APPLICANT

A N D :

DAVID EDWARD PARKER

RESPONDENT

A N D :

JONATHON BRUCE POTTER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. These two linked disputes are about a deposit for a truck. They consist of a claim and counterclaim between the same parties, so I have issued 1 decision for both disputes.
2. Jonathon Bruce Potter, the applicant and respondent by counterclaim, says he paid a \$500 deposit to hold a truck and price until he could view it in person. He decided not to purchase the truck and wants his \$500 deposit refunded. The respondent and applicant by counterclaim, David Edward Parker, does not dispute that the applicant paid the deposit, but says because the applicant backed out of the deal, they are entitled to keep the deposit.
3. In their counterclaim, the respondent claims \$4,000 for their time and loss of the sale of the truck. The applicant disputes this claim.
4. Both parties are self-represented.

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 the *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.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In this case, each party says something different was agreed about the deposit.

7. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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.

ISSUES

10. The issues in this dispute are:
 - a. Is the applicant entitled to the return of his \$500 deposit?
 - b. Does the applicant owe the respondent \$4,000, or some other amount, for their time and loss in the sale of the truck?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities, meaning more likely than not. The respondent must prove their counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision. The respondent did not provide any evidence in the claim or their counterclaim, despite being provided the opportunity to do so.

12. The parties agree that in July 2023, the respondent listed a truck for sale online. The applicant wanted to view the truck and paid the respondent a \$500 deposit.
13. The parties disagree on whether the deposit was refundable. A true deposit is designed to motivate contracting parties to carry out their agreements. A buyer who refuses to complete the contract generally forfeits (gives up) the deposit. This is called “repudiation”.
14. The non-repudiating (innocent) party may keep the full amount of the deposit without proof of damages, unless the parties agreed that the deposit was refundable when the parties made the agreement. See *Tang v. Zhang*, 2013 BCCA 52 and *Argo Ventures Inc. v. Choi*, 2020 BCCA 17 at paragraphs 39 to 43. Whether a deposit is refundable or non-refundable depends on the parties’ agreement.
15. The parties did not have a written agreement. A verbal contract is enforceable like a written contract, but it can be harder to prove. Some of their interactions and expectations are detailed in messages exchanged by the parties. The respondent does not dispute the content of the messages.
16. The messages show that on Tuesday, July 11, 2023, the applicant told the respondent he was interested in the respondent’s advertised truck. He said he could not view it until Friday or Saturday. The respondent replied that with a deposit they would hold the truck and if the applicant did not purchase it, they would give the deposit back.
17. The applicant messaged asking if the respondent would accept a deposit of \$300, and the respondent replied \$500 and that they would take the advertisement down immediately.
18. The applicant viewed the truck on July 14, 2023. He told the respondent on July 16, 2023, that he was not going to buy the truck. The respondent replied that he had another buyer.

19. The applicant messaged the respondent on July 23, 2023, asking for the \$500 deposit to be refunded.
20. Based on the parties' messages, I find the parties agreed that the \$500 deposit was refundable if the applicant did not buy the truck. The respondent submitted that there was no point to a deposit if it had to be refunded when a party repudiated the contract. However, I find they specifically agreed the deposit was refundable.
21. I find the applicant is entitled to the deposit's return.

Counterclaim

22. The respondent counterclaims \$4,000 for their time spent dealing with the marketplace advertisement, and for their loss in not selling the truck. They provided no evidence of their time spent, or of the final sale price of the truck. The only evidence about the truck's sale is their message to the applicant that they had another buyer. I find the respondent has not proved a loss in the sale of the truck.
23. CRT rule 9.5(5) says that the CRT will not order one party to pay another party compensation for "time spent" dealing with the tribunal proceeding except in extraordinary cases. I find this is not an extraordinary case.
24. I dismiss the counterclaim.

Interest

25. The applicant claims \$420 in interest at 10.5% as reimbursement for 8 month's interest on a loan taken for the deposit. He provided no evidence that the respondent agreed to pay interest on the deposit. If the parties do not have an agreement about interest, then the *Court Order Interest Act* applies. See *Hardwoods Specialty Products LP v. Rite Style Manufacturing Ltd.*, 2006 BCCA 139. The applicant is entitled to pre-judgment interest on the \$500 from July 16, 2023, the date he advised the respondent he was not buying the truck, to the date of this decision. This equals \$26.46.

Fees and Dispute-related Expenses

26. 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. I find the applicant is entitled to reimbursement of \$125 in CRT fees.
27. The respondent was not successful but did not pay any CRT fees. Neither party claimed dispute-related expenses.

ORDERS

28. Within 21 days of the date of this decision, I order the respondent to pay the applicant a total of \$651.46, broken down as follows:
- a. \$500 in debt,
 - b. \$26.46 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. The applicant is entitled to post-judgment interest, as applicable.
30. I dismiss the respondent's counterclaim.
31. This is a validated decision and order. Under CRTA section 58.1, 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.

Deanna Rivers, Tribunal Member