



Civil Resolution Tribunal

Date Issued: December 17, 2024

File: SC-2023-005636

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Incredible Construction Ltd. v. Gagnon*, 2024 BCCRT 1280

B E T W E E N :

INCREDIBLE CONSTRUCTION LTD.

APPLICANT

A N D :

JONATHON ALLAN GAGNON, YVR USED CAR GALLERY LTD.,
WEYMOUTH ENTERPRISES INC. and SHELDON KWAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about a warranty for a used car. Incredible Construction Ltd. (Incredible) says it purchased a car and warranty from the respondents, Jonathon Allan Gagnon, YVR Used Car Gallery Ltd. (YVR), Weymouth Enterprises Inc. (Weymouth), and Sheldon Kwan, that turned out to be invalid. Incredible claims

\$5,000 from the respondents as a refund for the invalid warranty and for the inconvenience and stress resulting from dealing with this issue. Incredible is represented by its owner.

2. Weymouth and Mr. Kwan say that they are not responsible for any issues Incredible encountered with the warranty. They say that Weymouth only provided Incredible with the financing for the vehicle's purchase and that neither Weymouth nor Mr. Kwan sell or offer warranties. They say that all of Incredible's dealings for the warranty were with Jonathon Allan Gagnon. Mr. Kwan represents himself and Weymouth.
3. YVR and Jonathon Allan Gagnon did not file dispute responses and are technically in default, discussed in more detail below.

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). 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.
5. 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 and that an oral hearing is not necessary.
6. 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.
7. Where permitted by section 118 of the CRTA, 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

8. The issue in this dispute is whether any of the respondents are liable for the allegedly invalid warranty. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Incredible must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The evidence shows as follows. In May 2021, Incredible contacted YVR seeking to purchase a 2016 Land Rover from it. In a May 20, 2021 text message, Jonathon Allan Gagnon provided options for warranty coverage. Incredible chose the 4-year option priced at \$5,185. YVR said it would cover the cost for the warranty's first year, and also provided Incredible a \$1,000 discount for "lost parts", which Incredible says is for a missing key. In total, YVR charged Incredible \$2,725.80 for the 4-year warranty. A credit card receipt in evidence shows Incredible paid YVR this amount on May 20, 2021.
11. The bill of sale shows that Incredible purchased the vehicle from Weymouth and says that Incredible declined insurance and extended warranty. The finance agreement in evidence shows that Weymouth provided financing to Incredible for the purchase through General Bank of Canada.
12. In August 2022, Incredible took the vehicle to Jaguar Land Rover in Edmonton for servicing. Invoices in evidence show that Incredible paid \$3,729.97 in total for the service, including to re-seal the "T-case" which was leaking. I infer T-case refers to the transfer case. Based on the warranty documents that Jonathon Allan Gagnon sent to Incredible, the mechanical breakdown protection plan YVR sold to Incredible covered damage to the transfer case.

13. Incredible contacted YVR saying that Jaguar Land Rover informed it that the warranty for the vehicle was “not done”. Despite many follow up messages between August 18 and September 2, YVR and Jonathon Allan Gagnon did not provide any substantive response and largely ignored Incredible’s messages asking for assistance in ensuring the warranty was in place.
14. As noted above, both YVR and Jonathon Allan Gagnon are in default. Generally, liability is assumed where a party is in default. Here, I find the evidence shows that it was YVR who sold Incredible the warranty. Though it was likely Jonathon Allan Gagnon who made representations about the warranty, it was YVR that contracted to sell the warranty to Incredible. There is no evidence that Incredible contracted with Jonathon Allan Gagnon in their personal capacity. So, I find it would be unfair to assume liability against Jonathon Allan Gagnon who was not a party to the contract. So, I dismiss Incredible’s claim against Jonathon Allan Gagnon personally.
15. Based on the above evidence, including that Incredible paid out of pocket for the transfer case repairs, I find it more likely than not that YVR sold Incredible a warranty that was invalid as Incredible suggests. In other words, YVR misrepresented to Incredible that the vehicle had a 4-year warranty, which turned out to be untrue.
16. The evidence does not show that Mr. Kwan or Weymouth had any involvement in selling the warranty to Incredible. So, I find Incredible’s claims against them unproven and dismiss them.
17. I turn now to the appropriate remedy for YVR’s misrepresentation. Damages for misrepresentation are based on the principle of putting the injured party in the position they would have been in had the other party not made the misrepresentation (see *Payne v. Eagle Ridge Pontiac GMC Ltd.*, 2010 BCSC 1085). I find that had YVR not made the misrepresentation, Incredible would not have agreed to pay it \$2,725.80 for the warranty and it likely would have negotiated the \$1,000 discount for the lost key from the vehicle’s price instead. So, to put Incredible in the position that it would have been in had YVR not made the misrepresentation, I find it is entitled to \$3,725.80 in damages. I order YVR to pay Incredible this amount.

18. Incredible also seeks unspecified damages for the stress and inconvenience of dealing with the invalid warranty. While I accept that Incredible likely experienced some inconvenience, I find a car warranty contract is not a peace of mind contract where aggravated damages for mental distress are warranted (see *Chambers v. Ryan Warranty Services*, 2003 CanLII 5483 (ONSC) at paragraphs 46 and 47). So, I dismiss this part of Incredible's claim.
19. The *Court Order Interest Act* applies to the CRT. Incredible is entitled to pre-judgment interest on the \$3,725.80 from May 20, 2021, the date it purchased the warranty, to the date of this decision. This equals \$408.32.
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. Since Incredible was generally successful in its claims against YVR, I order YVR to reimburse Incredible \$175 for its paid CRT fees. None of the parties claim any dispute-related expenses, so I award none.

ORDERS

21. Within 30 days of the date of this decision, I order YVR to pay Incredible a total of \$4,309.12, broken down as follows:
 - a. \$3,725.80 in damages,
 - b. \$408.32 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
22. Incredible is entitled to post-judgment interest, as applicable.
23. I dismiss Incredible's remaining claims, including its claims against Weymouth, Mr. Kwan and Jonathon Allan Gagnon.
24. This is a validated decision and order. 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.

Nav Shukla, Tribunal Member