

**BETWEEN**

**DS**  
APPLICANT

**AND**

**VH LIMITED**  
RESPONDENT

Date of Order:

11 February 2016

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

## **Facts**

[1] DS wished to purchase a car to convert to a taxi, so in August 2014 he test-drove a car for sale from the yard of VH Limited ('VH'). He took it to his friend's mechanical workshop and his friend identified a number of issues. DS then negotiated a price of \$21,000.00 with VH, and they agreed that they would fix the specified items.

[2] That same day, DS recorded the agreement in Mandarin on a handwritten piece of paper which he signed and AA for VH signed (although she does not understand Mandarin). All parties agree that DS paid a deposit of \$1,000.00 on signing. The numbered items on the written document were translated at the hearing by the court-appointed interpreter. They were that VH would repair the tyre, balance, and repair the disc pad and that DS would get the deposit refunded if the car turned out not to be suitable for conversion to a taxi. Even though they were recorded by DS in Mandarin, and VH could not understand them, VH agreed that they are an accurate record of what was agreed verbally.

[3] Subsequent to this agreement, DS asked several more questions about the vehicle such as whether it came with warranty cover, and what its fuel economy was. He was not satisfied with the answers given and sent an email the day after signing the agreement saying that he would like to "cancel the order".

[4] The relevant law is the general law of contract. The Consumer Guarantees Act would apply if there were issues of quality in dispute because although DS was buying the car for a business purpose, the parties had not contracted out of the Act and he is therefore a consumer under the definition contained in the CGA. However, the issues in dispute are of a contractual nature, specifically whether or not the deposit is refundable. DS claims a refund of the \$1,000.00 deposit.

## **Issues**

[5] The issues to determine are:.

- a. Was a contract formed when DS paid the deposit and signed the handwritten document, and if so, what was the nature of the contract?
- b. Was DS in breach of the contract by cancelling two days later?

c. Is DS entitled to a refund of the deposit paid?

*Was a contract formed when DS paid the deposit and signed the handwritten document, and if so, what was the nature of the contract?*

[6] I find that a conditional contract was formed when DS paid the deposit. The conditions were recorded as numbered items 1 to 4 on the handwritten agreement dated 29 August 2014.

[7] DS says he was expecting a more formal agreement to be signed and was of the view that he had not yet entered into a contract. However, a price had been agreed, DS having already had the vehicle mechanically checked prior to negotiating the terms of the contract with VH, a deposit had been paid and VH had undertaken to carry out items of repair on the vehicle, a process they have provided evidence to show had already been started when DS purported to cancel.

[8] VH also point out that the wording used by DS in his email the day after the agreement was signed, "I would like to cancel the order", suggests he knew he had entered into a contract. While this wording may have been simply reflective of English not being DS's first language, I note that VH's view about the wording is consistent with the conclusions I reach here, that a contract had been formed.

*Was DS in breach of the contract by cancelling two days later?*

[9] I find that because there was a conditional contract formed, DS was only entitled to cancel the contract if the conditions recorded on the handwritten agreement were not met. In his email he does not give the reasons, simply saying that he wishes to cancel, but he did not dispute VH's conclusion that it was because he was not satisfied with the answers VH provided to questions raised after the agreement was signed.

[10] DS had asked about a warranty, fuel economy, whether GST was included in the price and whether there would be a written contract. VH replied that a warranty is not available for commercial vehicles; fuel economy information was not available for the vehicle (something they supported with written evidence at the hearing, and that GST is always included in the sales price (although DS says they gave him no answer at the time). DS also says they did not answer his question about a formal contract and VH did not comment on this issue.

[11] All of the above questions are issues that could have been researched and/or clarified prior to negotiating and entering into the contract and none relate to the conditions that were agreed in the handwritten document. Apart from the three repair items, the only condition that would allow DS to cancel the contract was whether the car was able to be converted into a taxi. That had not yet been investigated and none of the subsequent questions asked pertain to that issue - VH says they sell a lot of cars for intended taxi use, are therefore familiar with the conversion requirements, and do not believe there would have been any issue with conversion.

[12] For all the above reasons, DS was not entitled to cancel the contract.

*Is DS entitled to a refund of the deposit paid?*

[13] I find that the payment made was a deposit, not a partial payment, and therefore VH's actual losses are not required to quantify any specific loss. In addition, one of the conditions that were agreed between the parties was that the deposit would be refunded if the car was not able to meet the requirements to become a taxi. The inference is that the deposit is not refundable under any other circumstances. As DS has breached the contract, VH is entitled to retain the deposit. The claim is therefore dismissed.