

Devon Chance v Selena Auto Sales

Case No. 08072017– A-5

File No. for Referral to BOC – B-5-17

Hearing Date: 13th December 2017

**Commissioners Present: Chairman: Ronald Burch-Smith,
Commissioners: Rosalie Robertson, Ramesh Seebaran**

1. On 4th August 2017, Mr. Devon Chance made a complaint to the Competition and Consumer Affairs Commission that he purchased a Toyota RZ Minibus, Registration No. BNN 5207 from Selena's Auto Sales on 2nd May 2017. He paid a deposit of **\$500,000** with agreed monthly installments of **\$83,000**. He claimed that within a day it developed mechanical problems which he reported to the supplier. He was given a month to pay the insurance premium and the legal fees but it appears this was never paid.
2. It was repaired and returned to him, but these problems persisted. He returned it to the supplier 4 times. He had left it with the supplier for most of the period between the 3rd May 2017 and 12th June 2017. He did the without the supplier's assistance as the supplier's efforts had not proved effectual. On his own he changed the clutch plate, pressure plate, throw out bearings, steering rack end, power steering belt and for good measure replaced the tyres. He provided us with a statement from his mechanic for **\$141,1000** for these and other repairs. His ability to operate it for hire was impaired for the period.
3. Mr. Chance said that the cost of repairs and his diminished earnings occasioned by the mechanical downtime impaired his ability to make the installments due. He reported that he resumed work on 12th June 2017. The bus had continuing problems. He paid the supplier **\$45,000** on 12th

July rather than the installment of \$83,000 then due. We have seen that receipt. He said he was told he should fix the bus and bring the remainder of the installment within 2 weeks.

4. On 28th July the bus was seized from him by agents of the supplier. On that day he had further repairs to do. He went with them to the supplier and he was informed by the supplier that he owed the additional sum of **\$38,000** on his previous installment and **\$83,000** on the August installment, upon which the bus would be returned to him.
5. Mr. Chance said he attempted to pay the sums due on 31st July but the dealership was closed. On 2nd August 2017 he returned but the dealer did not accept the payment proffered as the person authorized to write receipts was at court and would call him. He was called the next day and invited to pay on 4th August. On that day he was informed that the bus would not be returned to him as it appeared to the proprietor that he was unable to sustain his obligations to pay and the agreement would be terminated. He asked about a refund of his down payment, but was told that the dealer's attorney would write him within a week. He has not received that communication.
6. The Commission wrote to the supplier on 10th August 2017 setting out Mr. Chance's complaint and referring the supplier to the law. Mr. Satyesh Kissoon of the law firm of Kissoon and Kissoon, replied on 16th August 2017 by letter. Mr. Kissoon acknowledged the letter and informed that the purported proprietor Mrs. Rabeena Khan was abroad on urgent business and would visit the commission on her return. She has not done so.
7. The Commission's Director wrote to Mrs. Khan on 6th December 2017 informing her of the commission's intention to hold a hearing into the

matter on 13th December 2017 and serving her a summons to appear. This letter and summons were hand-delivered. Mrs. Khan did not appear.

8. We have not been supplied with the agreement of sale or any document setting out the terms of the agreement between the parties. The consumer said he didn't have it. We are satisfied from Mr. Chance's evidence that the supplier failed to provide him with a working bus. The supplier is required by law to offer the consumer a 6-month warranty by **section 19 of the Act**. We are satisfied that the bus was not sufficiently operable to meet that standard and the supplier has breached her obligations in that regard. She has a statutory duty under **section 22** to repair the bus or refund her customer. The supplier's election to keep the bus and the sums paid to her are unlawful.
9. We find that the supplier has breached her obligations under the Consumer Affairs Act. Mr. Chance is entitled to a full refund of his deposit of \$500,000, the cost of repairs paid by him of \$141,100 and his 12th June 2017 installment of \$45,000.
10. **The supplier must refund Mr. Chance the total sum of \$686,100 within 28 days of the date of this order.**
11. If the supplier, Mrs. Rabeena Khan pays Mr. Chance this sum, we advise in accordance with **section 96 and 98 of the Act** that further proceedings be stayed. If the supplier fails to comply, she should be brought before the Court for order for compensation **and** that the Director of Public Prosecution be advised to prosecute her for the offences committed under the Act.

12. We are aware that unreasonable behavior is not the exclusive province of suppliers. We are heartened that for the most part, suppliers act reasonably and fairly, particularly when complaints are made to us. We regret that the supplier did not participate in these proceedings.

13. We remain concerned about the lack of legislation to regulate hire purchase agreements, particularly in this vexed area of used vehicles. We feel that standardized terms would serve to the benefit of both suppliers and consumers and remove many difficulties faced in the industry.

Dated 30th January 2019

Ronald Burch-Smith, Chairman

Rosalie Robertson, S.C., Commissioner

Ramesh Seebarran, Commissioner