



Neutral Citation: 2017-BCRMD-004

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 and the
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT S.B.C. 2004 C. 2**

BETWEEN:

WES VERMEULEN

Complainant

AND:

**FUEL MOTORSPORTS LTD.
(Dealer #40101)**

Motor Dealer

AND:

**CODY CHRISTOPHER
(Salesperson #201542)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPLICATION TO ADJOURN HEARING DATE

By way of written submissions.

INTRODUCTION

[1] The lawyer for Fuel Motorsports Ltd. and Cody Christopher has requested an adjournment of the Hearing set for March 22, 2017, for this matter. The lawyer was retained on or about March 9, 2017, and indicates that he is unavailable for the March 22, 2017, hearing date and asks that the date be adjourned to a mutually agreeable date as they also need to review documents and may request additional documents.

[2] Daryl Dunn, Manager of Compliance and Investigations, raises a concern that the consumer issue has not been addressed and that the consumer remains in possession of a vehicle that is alleged to be unsafe and unsuitable for transportation.

ALLEGATIONS

[3] The alleged issues [summarized] are that Fuel Motorsports Ltd. and Cody Christopher:

- (a) Displayed and sold a motor vehicle to a consumer that was not compliant with the safety requirements of the *Motor Vehicle Act*;
- (b) Made a misrepresentation regarding the motor vehicle's damage history contrary to the *Motor Dealer Act Regulation* and Part 2 of the *Business Practices and Consumer Protection Act* (BPCPA);
- (c) Failed to state a material fact - that there was a lien on the motor vehicle that was sold to the consumer, also contrary to the BPCPA.

LEGAL CONSIDERATIONS

[4] In considering a request for an adjournment, I am to consider the following factors:

- (a) the reason for the adjournment,
 - (b) whether the adjournment would cause unreasonable delay,
 - (c) the impact of refusing the adjournment on the other parties,
 - (d) the impact of granting the adjournment on the other parties, and
 - (e) the impact of the adjournment on the public interest.
- Registrar's Rule 35(4)

(a) Reason for the adjournment

[5] The reason for the adjournment is to allow Fuel Motorsports Ltd. and Cody Christopher to be represented by the lawyer of their choosing at the hearing. There is no automatic right to be represented by a lawyer before administrative tribunals: *British Columbia v. Christie* [2007] 1 SCR 873, 2007 SCC 21 (Supreme Court of Canada). The circumstances of each specific case will dictate its seriousness and whether legal representation is appropriate to ensure fairness in the proceedings.

[6] Fuel Motorsports Ltd.'s registration may be in jeopardy in this case because section 8.1(4)(b) of the *Motor Dealer Act* says that any dealer who breaches Part 2 of the BPCPA (misrepresentations/deceptive acts or practices), even once, is grounds for the Registrar to cancel their registration as a motor dealer. Further, past decisions of the Registrar indicate that the selling of unsafe vehicles is of high concern in this industry. The same level of concern applies to a licensed salesperson who participated in such a transaction. Therefore, the level of procedural fairness to be provided to Fuel Motorsports and Cody Christopher in this case is higher on the

Baker spectrum and militates in favour of allowing an adjournment so they can have legal representation: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (Supreme Court of Canada).

(b) *Whether the adjournment would cause unreasonable delay*

[7] There is no evidence to suggest the adjournment would create an unreasonable delay. This can be managed by directing that a new hearing date be set in the near future.

(c) *Impact of refusing the adjournment*

[8] On the limited information provided, refusing the adjournment may require Fuel Motorsports Ltd. and Cody Christopher to proceed at the hearing without legal representation. Or, they may need to find another lawyer who is available, but will have little time to prepare for the hearing.

(d) *Impact of granting the adjournment*

[9] On the submissions from Mr. Dunn, the delay will cause the consumer to wait further to see if there will be any resolution to their complaint. The consumer remains in possession of a motor vehicle that is alleged to be unsafe and unsuitable for transportation.

(e) *Impact on the public interest*

[10] With this matter remaining unresolved, consumers may be dealing with Fuel Motorsports Ltd. who may continue to be selling unsafe vehicles. This is a serious concern to the public interest that needs to be addressed quickly. I note the Authority did not ask for a suspension of Fuel Motorsports Ltd.'s registration pending the hearing being conducted. This public interest concern may be mitigated by (a) adding conditions on the motor dealer's registration (section 4(4) of the *Motor Dealer Act*), and (b) some diligence on the part of the Authority to review the sales of Fuel Motorsports Ltd.'s pending the hearing in this matter.

DECISION

[11] On balance, I would grant the adjournment of the hearing dated March 22, 2017, on the following conditions:

- (a) A new hearing date is to be set to occur by the end of April 2017.
- (b) The following conditions are added to the registration of Fuel Motorsports Ltd. under section 4(4) of the *Motor Dealer Act*:
 - (i) To ensure all motor vehicles are inspected for compliance with the *Motor Vehicle Act* prior to being displayed for sale or sold to consumers,

- (ii) To provide consumers a copy of a motor vehicle's inspection report showing its compliance with the *Motor Vehicle Act* prior to the consumer agreeing to purchase the motor vehicle, and
- (iii) To keep a copy of all motor vehicle inspections on file with each vehicle sale for inspection by the Authority.

I would note the conditions in (b) are essentially already the legal requirements placed on all motor dealers.

Date: **March 14, 2017**

"Original signed"

Ian Christman J.D., Registrar