



Civil Resolution Tribunal

Date Issued: February 14, 2018

File: SC-2017-002782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grundy v. Ji*, 2018 BCCRT 38

B E T W E E N :

Huw Grundy

APPLICANT

A N D :

Xiaozhou Ji

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant purchased a 2003 Nissan Murano sport utility vehicle (SUV) from the respondent. The applicant says the respondent misrepresented the SUV's condition. He says that contrary to the respondent's Craigslist advertisement, it was not in good working order and the all-wheel drive (AWD) components had

been removed. The applicant requests an order that the respondent pay \$3,600 plus tax for repair costs.

2. Both parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

- a. Did the respondent misrepresent the condition of the SUV?
- b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. In February 2017, the respondent posted an advertisement on Craigslist which said he was selling a 2003 Nissan Murano SE AWD with clean title, no accidents, no leaking or rust, “engine running like new”, and up-to-date service for \$5,500. The respondent replied to the Craigslist advertisement and purchased the SUV from the applicant for \$5,500.
10. The applicant says that after he bought the SUV, he discovered: it was not running well, it had oil leaks, it had not been serviced properly, it required new brakes and rotors, the rear trunk handle did not work, and the check engine light came on after one day of driving. The applicant also says the AWD transmission had been removed and the missing components replaced with a fabricated cover.
11. The respondent says he did not modify the SUV, the applicant bought it of his own free will, and the respondent did not promise to provide a warranty.
12. As noted above, the applicant bears the burden of proof. Based on the evidence before me, I find that the respondent misrepresented the SUV by stating in his advertisement that it had AWD. My reasons for this conclusion follow.
13. The applicant says the respondent breached section 4 of the *Business Practices and Consumer Protection Act*. However, that statute and the *Sale of Goods Act* do not apply to private car sales. Private car sales are “buyer beware”, meaning that the buyer must assess the condition of the vehicle before purchasing it and there is no implied or legislated warranty. However, if a seller misrepresents the vehicle,

the buyer may be entitled to compensation for losses arising from that misrepresentation. "Misrepresentation" is a false statement of fact, made in the course of negotiations or in an advertisement, that has the effect of inducing a reasonable person to enter into the contract.

14. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item.
15. Based on the Craigslist advertisement, I find that the respondent fraudulently misrepresented the condition of the SUV. Both the title and the text of the advertisement described the SUV as "AWD". However, the February 24, 2017 estimate from the Nissan dealership provided by the applicant states that the SUV's driveshaft assembly was missing, and someone had fabricated a cover over the transfer case hole where the driveshaft connects. This evidence confirms that the SUV was not an AWD, contrary to the advertisement. The respondent either knew the AWD components had been removed, or recklessly advertised the SUV as an AWD without knowing the truth, and the applicant bought the SUV based on that false representation.

Remedy

16. The estimate says the part to repair the AWD assembly was \$1,450, plus sales tax. The estimate says the labour cost was unknown because of the fabricated cover over the transfer case hole. The applicant says the Nissan dealer told him the total would be \$4,000 including tax. I accept that evidence because it is consistent with the explanation in the written estimate. I order that the respondent pay the applicant \$4,000 for the cost of repairing the SUV's AWD.
17. The applicant was successful in this dispute. In accordance with the tribunal's rules, I find the respondent must also pay the applicant \$175 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.

18. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act* (COIA), as set out below in my order.

ORDERS

19. I order that within 30 days of this decision, the respondent pay the applicant a total of \$4,195.59, broken down as follows:
 - a. \$4,000 in damages, plus \$20.59 in pre-judgment interest under the COIA, and
 - b. \$175 as reimbursement of tribunal fees.
20. The applicant is entitled to post-judgment interest under the COIA.
21. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
22. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member