



# Civil Resolution Tribunal

Date Issued: March 13, 2018

File: SC-2017-004832

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jerome v. Maple Ridge Volkswagen*, 2018 BCCRT 76

**B E T W E E N :**

Richard Jerome

**APPLICANT**

**A N D :**

Maple Ridge Volkswagen

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This dispute is about a used 2009 Toyota Rav4 (car) the applicant Richard Jerome bought from the respondent Maple Ridge Volkswagen on September 5, 2017 for around \$16,000.

2. The applicant says the respondent sold the car with a defective right front side passenger wheel bearing. The applicant wants the respondent to reimburse him \$635.11 for repairs to the wheel bearing and \$150 for his time spent dealing with the issue. The 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.
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 sell the car with a defective wheel bearing?

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. Unlike private sales of used vehicles, the respondent's sale of the car to the applicant was not 'buyer beware'. This is because the respondent is in the business of selling cars. As such, the implied warranty provisions in section 18 of the *Sale of Goods Act* applies to it, namely that the item is in the condition described and is of saleable quality. Under the *Sale of Goods Act*, if the buyer has examined the goods, there is no implied condition about defects that the examination ought to have revealed. Here, the applicant did not inspect the car before purchasing it because as part of the sale the respondent performed the inspection. Thus, I find the implied warranty described above applies.
10. As part of the sale agreement, the respondent's mechanics did a safety inspection on the car. The respondent says the car passed this inspection. The respondent's inspection report included "satisfactory" check marks for both left and right bearings. The respondent's "inspection comments" on the report were limited to "oil change, air filter, rear brakes, rock chip".
11. The day after he bought the car, the applicant had a third party inspection done by Day-Lite Automotive (Day-Lite), with the applicant complaining of a noise. Day-Lite test drove the car and found it was "quite apparent" it was a wheel bearing issue. In its statement provided to the tribunal, Day-Lite says that upon closer examination it was clear that the front right wheel was badly worn and needed to be replaced. Day-Lite says it advised the applicant to do so as soon as possible, as driving was dangerous because the worn bearing could cause the wheel to seize and the driver to lose control of the car.

12. On September 8, 2017, the applicant asked the respondent to fix the problem, but the respondent refused, on the basis that the car passed its inspection and the bearing was a maintenance issue rather than a safety issue.
13. However, in its submissions the respondent does not dispute Day-Lite's evidence that the wheel bearing was worn and required replacement. Instead, the respondent relies on its offer to take back the Rav4 and return the applicant's money.
14. The respondent does not dispute the applicant's submission that its offer of a refund was a store credit. The applicant submits he wanted a Rav4 and the respondent did not have another. I find the applicant was entitled to have the car repaired and claim reimbursement for this expense.
15. I find that the wheel bearing was worn and that its condition was a potential safety issue that required immediate repair. I find that the respondent should have disclosed the worn wheel bearing and instead wrongly stated on the inspection report that it was in satisfactory condition.
16. Given the above, I find the respondent is responsible for the worn wheel bearing replacement cost.
17. The question then is whether Day-Lite's September 13, 2017 invoice for \$653.11 is reasonable. The applicant says he had obtained a second quote "within \$20" of Day-Lite's quote. The respondent says a replacement wheel bearing part costs in the range of \$110 to \$152, and provided its own estimates in support along with a \$218.80 invoice from a Toyota dealership for the part. It is unclear why the respondent gave the \$110 to \$152 range, given the \$218.80 invoice.
18. In any event, I find the applicant's decision to have Day-Lite perform the work was reasonable, given the safety issue and given the respondent refused to do the replacement. That the respondent may have been able to complete the repair for less is not determinative. I find the respondent must reimburse the applicant the \$653.11.

19. The applicant also claimed \$150 for the time he spent dealing with the car repairs, based on 5 hours at \$30 per hour. I find such an award would be inappropriate. As set out in several past tribunal decisions, generally speaking the tribunal does not make these kinds of awards. I see no reason here to deviate from that practice.

## **ORDERS**

20. In accordance with the Act and the tribunal's rules, within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$793.00, broken down as follows:

- a) \$653.11 as reimbursement for the wheel bearing replacement,
- b) \$2.89 in pre-judgment interest under the *Court Order Interest Act*, calculated from September 13, 2017,
- c) \$125 in tribunal fees, and
- d) \$12 in dispute-related expenses for registered mail to the respondent.

21. The applicant's remaining claim for \$150 is dismissed. The applicant is also entitled to post-judgment interest as applicable.

22. 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.

23. 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.

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Shelley Lopez, Vice Chair