



Civil Resolution Tribunal

Date Issued: April 12, 2018

File: SC-2017-005821

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Budney v. Schwartz*, 2018 BCCRT 129

B E T W E E N :

Robyn Budney

APPLICANT

A N D :

Michael Schwartz

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the purchase of a used car through a private sale.
2. The applicant purchased a 2000 Pontiac Grand Prix (car) from the respondent. The applicant says the respondent misrepresented the car's condition. She says

that contrary to the respondent's Craigslist advertisement, it was not in "excellent condition" nor "fully serviced and ready to go".

3. The applicant requests an order that the respondent refund her the \$3,800 purchase price.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. Under tribunal rule 126, 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 it considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondent misrepresent the condition of the car?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. 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.
11. In early October 2017, the respondent posted an advertisement on Craigslist which said he was selling a 2000 Pontiac Grand Prix in “excellent condition” which was “fully-serviced and ready to go”.
12. The respondent came to look at the car and requested a test drive. The uncontested evidence is that the respondent refused to allow a test drive, saying the car was not insured for it. Instead, the respondent drove the applicant and her son around in the car.
13. A few days later, on October 10, 2017, the applicant purchased the car for \$3,800.
14. The applicant says after she bought the car: it was not running well, had oil leaks, and required significant service to be made roadworthy. The car was driving so poorly on the first day that the applicant took it to Tirecraft for inspection. Tirecraft told her it was not safe to drive the car.
15. On October 13, 2017, Tirecraft provided the applicant with a printed quote for repairs to the car. This evidence shows that, contrary to the respondent’s submission, the applicant did not drive the car for a week before realizing it had problems. I accept the applicant’s evidence that she identified significant problems with the car on the first day, and took it to Tirecraft promptly for inspection.

16. Tirecraft reported, in a more detailed document dated October 20, 2017, that the “car is unsafe to drive at this point. Will need to repair control arm bushings, coilsprings and replace tires at the bare minimum to deem vehicle safe.” Tirecraft recommended more than \$5,000 in repairs.
17. The respondent says the car was roadworthy, in good shape and had low mileage for its year. He says the applicant wanted the car and decided to buy it. He says there was no warranty because this was a private second-hand car sale. The respondent says the applicant was swayed by Tirecraft trying to upsell her.
18. As noted above, the applicant bears the burden of proof. Based on the evidence before me, I find that the respondent misrepresented the car in his advertisement. My reasons for this conclusion follow.
19. Neither section 4 of the *Business Practices and Consumer Protection Act* nor the *Sale of Goods Act* 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, the buyer beware principle does not permit misrepresentation when advertising a used car for sale. 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.
20. 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.
21. A seller must exercise reasonable care to ensure representations are accurate and not misleading. A failure to exercise this reasonable care is called negligent misrepresentation.

22. Based on the Craigslist advertisement, I find that the respondent fraudulently misrepresented the condition of the car. I find it was not in excellent condition nor was it “fully serviced and ready to go”. The evidence reveals that, at the time, the car had improper alignment, described by Tirecraft as being “way off center.” The left front lower control arm bushing was out of place, such that the arm was hitting the sub frame. The car had oil leaks and power steering pump drips, excessive cracks at the super charge drive belt, and “rotten” tires.
23. Given the number and scope of the problems identified with the car, I reject the respondent’s assertion that Tirecraft’s inspection was merely an attempt to upsell the applicant. I accept Tirecraft’s documents as evidence of the car’s poor condition.
24. Given the close timing of the advertisement and Tirecraft’s report, I find that the respondent either knew the car was in poor repair, or recklessly or negligently advertised the car as being in excellent condition and fully-serviced. I also find that he misled the applicant by denying her request for a test drive. The applicant bought the car based on, and as a result of, his false representations.
25. I order that the respondent refund the purchase price of the car to the applicant.
26. I also find that the \$70.00 cost of Tirecraft’s inspection and quote, needed for the applicant to understand the car’s true condition, should be refunded to her.
27. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason to depart from the general rule here. I find the applicant is entitled to reimbursement of \$175.00 in tribunal fees.

ORDERS

28. Within 7 days of the date of this order, I order the respondent to pay the applicant a total of \$4,063.60 broken down as follows:
 - a. \$3,800 as a refund for the purchase of the car;
 - b. \$70.00 for the Tirecraft inspection and quote;
 - c. \$18.60 in pre-judgment interest under the *Court Order Interest Act*; and
 - d. \$175.00 in tribunal fees.
29. I also order that within 7 days of this order, if the respondent has paid the amounts listed above, the applicant make arrangements to make the car available for the respondent to pick up, at a mutually agreeable time and date no later than May 12, 2018, with ownership to be transferred back to the respondent at that time. I further order that the respondent is responsible for any filing costs or taxes associated with this transfer of ownership.
30. If the respondent fails to pick up the car by May 12, 2018, the applicant can dispose of it as she sees fit and retain any proceeds from it.
31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.
33. 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.

Julie K. Gibson, Tribunal Member