



Civil Resolution Tribunal

Date Issued: May 25, 2018

File: SC-2017-003918

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Wild Grizzly Transport LTD*, 2018 BCCRT 203

B E T W E E N :

Trevor SMITH

APPLICANT

A N D :

Wild Grizzly Transport LTD

RESPONDENT

A N D :

Trevor SMITH

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the private sale of a used car.
2. The applicant Trevor SMITH says the respondent Wild GRIZZLY Transport Ltd fraudulently misrepresented a 1967 Fiat 850 (car) he purchased. He seeks a \$1,500 refund, \$140 for a vehicle inspection and \$300 for towing the car when he discovered it could not be insured.
3. The respondent, through its principal Pasquale Zampieri, says the car was represented accurately, sold “as is” “non runner” with no warranties and as a final sale.
4. By counterclaim, the respondent seeks \$4,515 as compensation because its principal had to take time away from his company to address this dispute.
5. The parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did the respondent misrepresent the car it had for sale?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. The respondent advertised the car on Craigslist as “solid” and “was running the other day” but with problems since then with the starter. The price was \$2,500 and the car was described as “garage-kept” and “an eye catcher.”
12. The applicant did not inspect the car prior to buying it.
13. The applicant filed text messages showing that both parties understood that, upon the respondent receiving payment, a tow truck would pick up the car and bring it to the applicant. Based on this evidence, I find that the applicant knew that the car was not running, prior to the transaction completing.
14. The evidence shows that the car had an inspection report on it, meaning that it could not be registered or insured until certain repairs were satisfactorily completed. I find that the applicant was not aware of the inspection report prior to

buying the car, which is undisputed. He found out about the inspection report only after selling the car to a subsequent owner who tried to register it.

15. The applicant says he would not have purchased the car had he known about the inspection report.
16. The applicant filed photographs showing that the car was rusty and had broken tail lights. The applicant was upset with the car's condition.
17. The applicant also says that the respondent told him the car had "no rust" on it. I find it unlikely that the respondent made this representation. The Craigslist advertisement does not mention rust.
18. The *Sale of Goods Act* does not apply to private car sales. Private car sales are governed by the principle "let the buyer beware", meaning that the buyer is responsible to assess the vehicle's condition before purchasing it. There is no implied or legislated warranty. This principle is discussed in the case *Rusak v. Henneken* [1986] B.C.J. No. 3072 (S.C.). A seller is not under any duty to disclose known defects, but must not actively conceal them.
19. However, the buyer beware principle does not permit misrepresentation when advertising a used car for sale. "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. If a seller misrepresents the vehicle on an issue material to the purchaser's decision to enter the agreement, the buyer may be entitled to compensation for losses arising from that misrepresentation.
20. There are 2 types of misrepresentation: fraudulent and negligent. 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 negligent misrepresentation.
22. The applicant has not proven, on a balance of probabilities, that the respondent misrepresented the car's rust, particularly given the content of the Craigslist advertisement.
23. Given the law on private used car sales, the applicant bears the onus of assessing the car's condition. A reasonable person in the applicant's position would have inspected the car. The applicant decided to purchase the car sight unseen. The content of the Craigslist advertisement is not misleading. Had he examined the car, the applicant would have observed both the degree of rust and the broken taillights.
24. The applicant's central concern was that he did not know about the inspection report. Again, I find the applicant should have examined the car and made inquiries about it, including about roadworthiness if that was important to him, prior to buying it. A 1967 vehicle, especially one that does not start reliably, may not be drivable. Inquiries about these issues should have been made as part of the applicant's buyer beware responsibility.
25. The applicant says the respondent told him the car had belonged to the respondent's principal's father. Based on the email evidence between the applicant and the car's prior owner, the respondent's statement was untrue. However, the applicant was willing to purchase the vehicle without looking at it or satisfying himself about whether it had an inspection report on it. Therefore, I find that any misrepresentation about the car's prior ownership was not material to the applicant's decision to purchase it.
26. The applicant was concerned that the car could not have been "garage kept" based on the degree of rust he observed on the car. However, the applicant provided evidence that the car had been kept in a garage by the previous owner.

Any duration of storage in a garage is sufficient to justify the advertisement “garage-kept” as accurate, where no further details are given.

27. The respondent’s submissions about the applicant allegedly “curbing” the car are not relevant to this dispute and I will not comment further on them.
28. While it is unfortunate that the applicant purchased a car that did not meet his expectations, he failed to inspect the car or make proper inquiries about it. He did not meet the burden of establishing that the respondent knowingly concealed the inspection report, and failed to prove that the respondent misrepresented the car’s condition, either negligently or otherwise, on a material point.
29. I find that the applicant has not proven that the Craigslist advertisement of a “solid” vehicle was misleading. The advertisement disclosed that the car was not starting, and the year of manufacture. Both parties knew it would need to be towed, not driven, to its new owner. I find the respondent did not misrepresent the car. In these circumstances, largely due to the buyer beware principle, I find the applicant’s claim must be dismissed.
30. The counterclaim for \$4,515 to compensate the respondent for the principal’s time away to address this dispute is dismissed. Section 20 of the Act provides a general rule that parties are to represent themselves in tribunal proceedings. Generally claims for time spent on the dispute are not allowed, consistent with self-representation where legal fees would not be reimbursed.
31. Given that the applicant was unsuccessful in the main claim, but the respondent failed in his counterclaim, I make no order for reimbursement of tribunal fees.

ORDER

32. I dismiss the applicant's dispute and I dismiss the respondent's counterclaim.

Julie K. Gibson, Tribunal Member