



Civil Resolution Tribunal

Date Issued: July 4, 2018

File: SC-2017-005615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bonnett v. Tolsma*, 2018 BCCRT 302

B E T W E E N :

Douglas Bonnett

APPLICANT

A N D :

James Tolsma

RESPONDENT

A N D :

Douglas Bonnett

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Michael J. Kleisinger

INTRODUCTION

1. Douglas Bonnett purchased James Tolsma's 2003 BMW sedan (car) for \$1,000 cash and Mr. Bonnett's 1980 Honda motorcycle (motorcycle). Neither party is happy with the deal they made. Mr. Bonnett wants Mr. Tolsma to pay for repairs to the car. Mr. Tolsma counterclaims for an amount he says the motorcycle was overvalued at the time of sale.
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*. 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. I decided to hear this dispute through written submissions. Although there is some conflicting evidence, I found that I was able to resolve this matter based on the evidence that was not in dispute.
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. In resolving this dispute, the tribunal may make order a party to do or stop doing something, order a party to pay money, and order any other terms the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did the parties misrepresent the vehicles that they sold to each other?
 - b. If so, what are the appropriate remedies?

EVIDENCE

8. In September 2017, Mr. Tolsma advertised the car on Craigslist for approximately \$4,000. The Craigslist advertisement is not in evidence.
9. On September 26, 2017, the parties met to discuss the sale. Mr. Bonnett says that he did not have to opportunity to “sufficiently” test drive the car because it was not insured. He says there was no engine light on at the time of the test drive.
10. Mr. Tolsma says that he and Mr. Bonnett went on a test drive together at which time they discussed the noisy brakes and the clutch. Both parties agree that Mr. Tolsma told Mr. Bonnett that the clutch may need to be adjusted.
11. Mr. Bonnett agreed to buy the car for \$3,000. He paid \$1,000 in cash and transferred ownership of the motorcycle to Mr. Tolsma. The parties valued the motorcycle at \$2,000 on the transfer form that they submitted later that day.
12. Neither party had the vehicles professionally inspected or appraised before the sale.
13. Mr. Bonnett says that shortly after transferring the car into his name, the engine light came on and he experienced problems with the clutch.
14. On September 28, 2017, Mr. Bonnett took the car to a mechanic who quoted that the clutch and flywheel would cost \$2,424.57 to replace. Mr. Bonnett did not repair the car at that time. On April 28, 2018, Mr. Bonnett took the car to another

mechanic who suggested that it would cost \$4,824.16 to replace the clutch and fix other problems with the car.

15. Mr. Bonnett wants Mr. Tolsma to reimburse him the \$200 paid to diagnose the car's problems and \$2,424.57 to replace the clutch and flywheel.
16. Mr. Tolsma counterclaims. He says that he has learned more about the motorcycle since the sale, including that it may not have been built in Japan and that it has been modified with non-Honda replacement parts. He says these considerations devalue the motorcycle well below the \$2,000 that the parties agreed it was worth at the time of sale. He seeks \$2,600, which he says is the difference between the car's value at the time of sale and the true value of the motorcycle. Mr. Tolsma relies on a letter from a motorcycle dealership manager who says the motorcycle is worth up to \$500 for its parts.

LAW AND ANALYSIS

17. Generally speaking, private sales are governed by the principle of "buyer beware." A buyer is responsible for assessing a vehicle's condition before purchasing it. As noted in *O'Shaughnessy v. Sidhu*, 2016 BCPC 308 at paragraph 116, "a party is expected to look out for himself and make his own bargains and if he has done so foolishly it is his own fault."
18. The buyer beware principle will not apply if the seller makes a misrepresentation when advertising a used vehicle. A misrepresentation is a false statement of fact, made in the course of a negotiation that induces the buyer into the sale. If a seller misrepresents the vehicle on an issue material to the buyer's decision to enter into the agreement, the buyer may be entitled to compensation for losses arising from the fraudulent or negligent misrepresentation.
19. A fraudulent misrepresentation occurs when:
 - (a) The seller made a false representation to the buyer;

- (b) The seller knew that the representation was false, or made the representation recklessly, not knowing if it was true or false; and
- (c) The false representation caused the the buyer to act; and
- (d) The buyer's actions resulted in a loss.

Bruno Appliance and Furniture, Inc. v. Hryniak, 2014 SCC 8 at paragraph 21

20. A negligent misrepresentation occurs when:

- (a) There is a duty of care based on a "special relationship" between the seller and buyer;
- (b) The representation was untrue, inaccurate, or misleading;
- (c) The seller acted negligently in making the representation;
- (d) The buyer, acting reasonably, relied on the negligent misrepresentation; and
- (e) The reliance was detrimental to the buyer and resulted in damages.

Queen v. Cognos Inc., [1993] 1 SCR 87 at 110

21. From my review of the evidence, I find that neither party has proven, on a balance of probabilities, that the other party induced them into the contract with a fraudulent or negligent misrepresentation.

22. While the Craigslist advertisement is not in evidence, I cannot find that Mr. Tolsma made any misrepresentations with respect to condition of the car. His comment about the clutch needing adjustment was not a guarantee that the clutch or the car itself was in any particular condition. If anything, his comments indicated that there was a problem with the clutch. In my view, these comments should have prompted Mr. Bonnett to hire someone to inspect the car. In all likelihood, an inspection would have revealed the true condition of the clutch and the other problems that Mr. Bonnett now complains about.

23. I find that Mr. Bonnett did not act reasonably when he failed to have a 15-year-old vehicle professionally inspected, especially with the knowledge that the clutch needed adjustment.
24. Similarly, I find Mr. Bonnett is not responsible for the Mr. Tolsma's complaints. There is no evidence that he misrepresented the components or condition of the motorcycle. Rather, I find that Mr. Tolsma failed to take the necessary steps to determine the value of the 18-year-old motorcycle in advance of the exchange. Mr. Tolsma must bear the responsibility for failing to do so.
25. Based on the facts of this case, I find the parties both unfortunately suffer from buyer's remorse with which the law cannot assist.

ORDERS

26. I dismiss both claims. Neither party is entitled to recover the tribunal fees incurred to bring their claims.

Michael Kleisinger, Tribunal Member