Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2017-002662

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parnell v. Lordache*, 2018 BCCRT 360

B E T W E E N :

Leslie Parnell

APPLICANT

A N D :

Michelle Laura Lordache

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a used 2007 Dodge Magnum the applicant, Leslie Parnell, bought from the respondent Michelle Laura Lordache[1] for $4,999 on May 12,

[1] The applicant named the respondent in her application as Michelle Laura lordache, and I infer the failure to capitalize the respondent's last name was a typographical error. I have corrected the style of cause accordingly.

2017. The applicant says she and her son were told the vehicle had no liens when it did. The car was repossessed 2 weeks after purchase. The applicant wants the $3,550 she paid to discharge the lien and get the car back. The lien was registered after the auto-loan company loaned the respondent money in November 2016.

2. The respondent says the car was purchased "as is where is", and the applicant's son was "fully aware of all circumstances". The respondent says the car was in excellent operational and cosmetic order with "thousands of fresh upgrades". The respondent says the car was sold under market value to include the cost of the lien value.

3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.

5. 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 while there are inconsistencies in the parties' evidence as to what was said about the car, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.

6. 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.

7. 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 the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are a) did the respondent misrepresent the car's lien status when she sold it to the applicant, and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. 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.

10. Two weeks after the applicant bought the car from the respondent, on June 3, 2017 a bailiff came to the applicant's house to repossess the vehicle. The repossession was due to the respondent's non-payment to an auto-loan company who had on November 12, 2016 registered security against the car under the *Personal Property Security Act* after loaning money to the respondent. The applicant bought the car without doing a lien search, which would have disclosed the auto-loan company's lien. The auto-loan company's statement in evidence is that the respondent's loan was due in full on May 12, 2017, which was the same date the respondent sold the car to the applicant.

11. On July 28, 2017, the applicant paid the auto-loan company $3,500 as full settlement of the respondent's loan, in order to get the car back.

12. Section 16 of the *Sale of Goods Act* (SGA) says that in a contract of sale, unless the contract's circumstances show a different intention, there is an implied warranty that the goods are free from any charge (such as a lien) in favour of any

third party not declared or known to the buyer at the time the contract was made. Further, a buyer has recourse if there is misrepresentation.

13. In *Clayton v. North Shore Driving School et al*., 2017 BCPC 198, the court found at paragraph 79 that there is no reverse onus under the SGA. In other words, the claimant must establish not only the alleged breach of a warranty or condition under the *SGA,* he or she must also establish the existence of an implied warranty and that it was breached.

14. Here, there was no written contract between the parties nor any emails or other documentation about the agreement to buy the car. As noted, the respondent says she disclosed the lien status. On the other hand, the applicant is adamant that the respondent said there were no liens on the car. For reasons discussed further below, I find the evidence does not support a conclusion that the respondent failed to disclose the lien status.

15. In her application for dispute resolution, the applicant said her son went to see the vehicle several times, and that "he was assured" there were no liens on it. In her later submissions before me, the applicant says she asked the respondent directly if there was a lien on the vehicle and the respondent said no. In these later submissions, the applicant makes no reference about her son. The applicant has provided no explanation for the inconsistency about who was told there were no liens, the applicant or her son. Notably, there is no evidence before me from the applicant's son.

16. In the respondent's Dispute Response, she said the applicant's son was "fully aware of all circumstances", and that the car was bought "as is where is". She wrote that the purchase price was reduced by $2,500 off the asking price. The applicant has not provided any information about the car's market value as compared to the $4,999 that she paid for it.

17. As noted above, the applicant bears the burden of proof. I find she has not proved the respondent misrepresented the vehicle's lien status. If the applicant was

concerned enough about whether the car had liens against it, such that she would ask the respondent directly about it, I would expect the applicant would reasonably take the step to do a lien search. I do not accept that the applicant asked the respondent herself about liens or that the respondent ever told her that there were no liens on the car. Based on the evidence before me, I find the most likely scenario is that the respondent did disclose the car's lien status to the applicant's son, who I accept acted as the applicant's agent in the purchase of the car. I find the applicant has not proved the respondent failed to disclose the lien status of the car.

18. Given my conclusions above, I dismiss the applicant's claim. As the applicant was unsuccessful, I find she is not entitled to the $50 in tribunal fees that she paid.

ORDER

19. I order that the applicant's claim, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair