



Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2018-000284

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Girodat v. Quackenbush*, 2018 BCCRT 361

BETWEEN:

Dennis Girodat

APPLICANT

AND:

David Quackenbush

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Dennis Girodat, purchased a used pickup truck from the respondent, David Quackenbush. The applicant says the respondent misrepresented the condition of the truck. He seeks an order that the respondent

refund the \$4,000 purchase cost of the truck. The applicant also seeks \$750 in interest and damages.

2. The respondent says he disclosed any issues with the truck that he was aware of, and the applicant bought the truck “as is”.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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 I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
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 issue in this dispute is whether the respondent misrepresented the condition of the truck, and 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.

Truck Purchase

10. The applicant purchased the 2003 Ford Ranger pickup truck from the respondent in December 2017. He paid \$4,000.
11. Private used vehicle sales like the one in this dispute 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, 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.
12. The applicant bought the truck after responding to the respondent’s advertisement on the website Kijiji. He says the respondent misrepresented the condition of the truck, both in the Kijiji ad and in person.
13. The applicant provided a copy of a December 15, 2017 post-purchase inspection report from a mechanic. The mechanic wrote that the truck had the following problems:
 - All ball joints, rear brakes, and right front wheel bearing need replacement
 - Wheel cylinders full of rusty material

- Left axle seal leaking
 - Left front wheel speed sensor faulty
 - Box cross-members and box support mounts on frame are both “rusted out”
 - Box missing bolts
 - Rare spare tire carrier and carbon canister “rusted out”
 - Frame cross-member behind cab “rusted out” on passenger side
14. The respondent has not disputed the problems identified by the mechanic, and has not provided contrary evidence. Based on the mechanic’s report and the photographs provided by the applicant, I accept that the truck had the identified problems at the time of purchase.
15. However, I find that the applicant has not established that the respondent misrepresented the condition of the truck. While he says the respondent’s Kijiji ad said the truck was in good condition, he has not provided a copy of the ad and has not provided any explanation for not doing so. For that reason, I place no weight on his hearsay evidence about the content of the ad.
16. The applicant also says the respondent told him the truck was in good condition. In contrast, the respondent says he told the applicant about the issues he knew about, which were that the automatic braking system light was on, and there was a noise from the front end.
17. The respondent says, and the applicant does not dispute, that the applicant saw the truck and test drove it before purchase, and chose not to have a pre-purchase inspection.
18. The somewhat unfocused photographs provided by the applicant show that some parts of the truck’s undercarriage were held together with straps, presumably due

to the rust identified by the mechanic. Other photographs show rust on various parts of the truck.

19. I find that despite this rust, and the problems identified by the mechanic, the respondent did not misrepresent the condition of the truck. “Good condition” for a 14-year-old pickup truck used for work is not the same as “good condition” for a late model car. There is no suggestion that the respondent said the truck was not rusty. Most significantly, I find that many of the problems identified by the mechanic, such as the surface rust and the straps used to hold together some parts, would have been clearly visible on a cursory look at the undercarriage, even if the person looking was not trained in mechanics.
20. The applicant has cited the BC Supreme Court’s decision in *Wang v. Shao*, 2018 BCSC 377 as authority for the principle that even in the context of “buyer beware”, a seller has a duty to honesty and accurately represent the condition of an article being sold. However, as stated in paragraph 141 of *Wang*, the judge’s reasoning and summary of the case law addressed buyer beware in the specific context of real estate transactions, rather than used cars. Also, the court noted in paragraph 143 the distinction between disclosure of patent (obvious) and latent (hidden) defects. The court quoted paragraph 122 of *Cardwell v. Perthen*, 2006 BCSC 333 (CanLII), which says that under the doctrine of buyer beware, there is a fairly high onus on the purchaser to inspect and discover patent defects, which are those that can be discovered by conducting a reasonable inspection, which may include inspection by a qualified expert.
21. For all of these reasons, I find that the respondent did not misrepresent the condition of the truck. Most of the truck’s defects were patent, in that they were readily apparent upon inspection by the mechanic without dismantling the truck. The onus of “buyer beware” was on the applicant, and he is not entitled to a remedy for the truck’s deficiencies.

22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was not successful, so I find he is not entitled to reimbursement of tribunal fees or expenses.

ORDER

23. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member