



Civil Resolution Tribunal

Date Issued: August 23, 2018

File: SC-2017-004476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Samzadeh v. Bain*, 2018 BCCRT 475

B E T W E E N :

Mehrdad Samzadeh

APPLICANT

A N D :

Charles Sanders Bain

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a used 2005 Pontiac Sunfire the applicant, Mehrdad Samzadeh, bought from the respondent, Charles Sanders Bain, for \$3,000 (the vehicle). The applicant says the respondent seller misrepresented the vehicle, which the applicant says he later realized had various defects. The applicant also says while he bought the

vehicle through Craigslist as a private sale, he suspects the respondent is in the business of buying and selling goods, through Craigslist. The applicant wants the \$3,000 refunded.

2. The respondent denies any misrepresentation and says he was “totally up front” and honest about all the details of the vehicle’s sale. The respondent acknowledges he received other calls during the test drive about other Craigslist ads he had, but they were not for vehicles and the respondent denies being in the business of buying and selling cars. The 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* (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. 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 is a dispute about what was said, I find I can fairly resolve the dispute based on the documentary evidence and submissions 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.
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. 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.
7. I acknowledge the applicant had an issue with serving the respondent with the Dispute Notice and there were also some issues on the tribunal's part in respect of the applicant proceeding in default. I understand that there was an error and the respondent had been given an extension of time to provide a Dispute Response, but that the extension was not communicated to the applicant and the tribunal in error permitted the applicant to obtain a default judgment. That default judgment has been set aside, and the substance of the applicant's dispute is now before me for decision. While those circumstances about service and the default are unfortunate, they are not relevant to the issues before me for decision. The issues presently before me are limited to whether the respondent misrepresented the vehicle such that the applicant is entitled to a refund and payment of tribunal fees and dispute-related expenses. I will therefore not comment further upon the service or default concerns.

ISSUES

8. The issues in this dispute are a) did the respondent misrepresent the vehicle when he 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. Contrary to the applicant's apparent suggestion, the respondent does not have any burden to prove he had not engaged in any alleged "cover-up". I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. At the outset, I find the applicant has not proved the respondent is in the business of buying and selling cars, such that the implied warranty provision in section 18 of the *Sale of Goods Act* (SGA) would apply (see *Grundy v. Ji*, 2018 BCCRT 38, and *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198). Simply because the applicant

had the “impression” the respondent was in the business is insufficient. The respondent acknowledged that he took 2 calls about other ads during the parties’ drive, but that these ads were for other items he was selling, not cars. The fact that the respondent sold the vehicle to the applicant 3 weeks after he bought it is not determinative. I find the vehicle’s sale to the applicant was a private sale.

11. My conclusion above that the implied warranty provision in the SGA does not apply means the applicant’s purchase of the vehicle was ‘buyer beware’. Buyer beware means that a buyer must assess the condition of the item before buying it (see also *Smith v. Wild Grizzly Transport LTD*, 2018 BCCRT 203). In the case of a used vehicle, this typically includes a pre-purchase inspection by a mechanic, and there is no implied or legislated warranty. The applicant chose not to do a pre-purchase inspection by a mechanic, which as discussed below I find would have revealed all of the alleged defects. Further, when it comes to used vehicles, the expectations of what is reasonable are not the same as in the case of new vehicles (see *Brar v. Sunrise Toyota*, 2013 BCPC 317 (CanLII)).
12. The law in private vehicle sales is that a buyer’s recourse is only if there is non-innocent misrepresentation (see *Grundy and Nevmerjitski v. Ratinov*, 2018 BCCRT 293). As referenced above, there is a high onus on a buyer to inspect a used vehicle and discover patent defects, which are those that can be discovered by conducting a reasonable inspection, which could include inspection by a qualified expert (see *Girodat v. Quackenbush*, 2018 BCCRT 361). At the same time, there is no obligation on a private car seller to disclose patent defects, although a seller must not actively conceal them. For the reasons that follow I find the respondent has not established non-innocent misrepresentation based on the evidence before me.
13. The respondent bought the vehicle on July 5, 2017. He says the vehicle was local and was in “perfect running condition” the 3 weeks he owned it, and as far as he was concerned the body was “very nice” and was the newest car he had ever owned and the nicest he had ever driven. The respondent says he told the applicant as much on the day the applicant bought the car. The respondent sold the car because he bought it as a

temporary means of transportation, until he found a suitable car that was more roomy, bearing in mind he is a “big guy”. While the applicant says it would not make sense for the respondent to buy the car at his size, the reality is that he did so. I do not accept the applicant’s suggestion that this proves the respondent was in the business of selling cars.

14. I turn then to the applicant’s specific allegations of misrepresentation.

The vehicle was not local

15. First, the applicant says the vehicle was not local, because the “Vehicle Claims History” report from the Insurance Corporation of BC (ICBC) shows the vehicle’s status as being Canadian but imported from outside BC. Yet, the respondent stated it was a local vehicle on the Tax/Transfer form. The respondent says he believed the vehicle was local, as he bought it in Chilliwack from a woman who lived there (providing her name and address with his submission). The respondent says the vehicle was registered in B.C. and was insured with BC plates when he test drove the vehicle, when he bought it about 3 weeks before he sold it to the applicant. The respondent says the car was local based on all of the paperwork he saw from the woman who sold him the car. The respondent says he never felt it was necessary to obtain the Vehicle Claims History report.
16. I find the applicant has not proved the respondent knowingly misrepresented the vehicle’s status as being local when it was not. As noted above, the burden of proof is on the applicant and he must establish non-innocent misrepresentation in this private car sale. I find the respondent’s explanation reasonable, and there is no evidence before me that the respondent had the ICBC Vehicle claims history report or any other information that would show the vehicle was not local. The applicant could have easily discovered the ICBC Vehicle Claims History report before purchasing the vehicle, which is a typical step in a private “buyer beware” sale of a car.

Odometer reading

17. The applicant says the vehicle's mileage differed between the advertisement (68,000 km), the tax/transfer form (69,000 km), and the actual odometer (69,930 km).
18. The respondent says the mileage was "very slightly off", and that when the applicant was viewing the vehicle the applicant noted this and the respondent told him he placed the ad from memory only. The respondent says the applicant was "ok" with the mileage before he bought the vehicle. The respondent also says that some kilometers were put on the car after he placed the Craigslist ad, which I consider reasonable. As for the tax/transfer form, the respondent says he filled that out with the applicant and neither could remember the exact mileage that time. The respondent says both knew it was "69k plus" and the respondent says the Autoplan agent said 69,000 kilometers would be close enough.
19. While the applicant disputes some of the respondent's details, I find nothing turns on the odometer advertisement, which I agree with the respondent was not substantially different than advertised for the 2005 vehicle. The mileage was around 69,000 kilometers and being 1,000 to 2,000 kilometers off is not material. Significantly, the applicant had a clear opportunity to look at the odometer when he bought the vehicle in this 'buyer beware' transaction. Therefore, I find nothing turns on what the applicant said about the odometer elsewhere.

Vehicle problems

20. The applicant said the vehicle had several problems: the air conditioner and/or a noise that could not be heard when the air conditioner was on, the odometer light, the ignition, rust under the vehicle, rust on the body and rust in the brake line, which the applicant alleges the respondent tried to cover up by stating the vehicle's condition was "excellent" in the Craigslist advertisement.
21. The respondent denies being aware of any of these issues during the time he owned the car or on the day he sold it to the applicant. The respondent says the car's body was in excellent condition to his standards for a 12-year old vehicle, It is undisputed the

respondent advised the applicant about a dent on the vehicle's door before the sale completed. Based on the photos of the vehicle's exterior provided by the respondent, I agree his belief was reasonable. The respondent denies attempting any cover-up, and denies knowing about any material rust, any ignition problem, or any problems with the air conditioner or the odometer light. I find the applicant has not proven otherwise.

22. The respondent also says actual mileage at the time the applicant took possession was 69,930. The applicant's evidence of mileage at the time he discovered the ignition problem was 71,612 kilometers. The respondent questions how the applicant drove the vehicle 1,682 kilometers if there was an ignition problem at the time of purchase. This was not satisfactorily explained by the applicant.
23. The applicant says the problems became apparent in a short time. I find this fact supports the conclusion that the alleged defects were patent and readily discoverable upon a reasonable inspection before the purchase.
24. I have reviewed the photos in evidence. I find that for a 12-year old car, the vehicle appeared to be in excellent condition, in that there was no apparent rust. The fact that there was touch-up paint on rust under the car does not prove the respondent did the touch-up or that he was actively trying to conceal defects. The applicant says he observed the bottom of the vehicle and "saw rust all over", which would have been apparent to him had he done an inspection before agreeing to buy the vehicle. I accept for the purposes of this decision that the rust under the vehicle is due to salt damage that in turn relates to the vehicle being from another province. But that fact does not prove the respondent knowingly misrepresented the vehicle's condition.
25. In summary, the applicant has not proved, as he is required to do in this proceeding, that the respondent knew about the alleged problems and tried to cover them up. There is simply insufficient evidence to support this allegation. All of the problems appear to be of the sort that would have been identified had the applicant chosen to have the vehicle inspected, but he chose not to do that. Again, this transaction was 'buyer beware'. Further, none of the problems seem particularly surprising for a 12 year old car, and it is

relevant to take into account the car's age and the relatively low \$3,000 price when assessing the respondent's statement the vehicle was in excellent condition.

26. On balance I find that the applicant has not proven on a balance of probabilities that the respondent misrepresented the vehicle's condition. Therefore, the respondent is not responsible to provide the applicant with the requested \$3,000 refund.
27. Given my conclusions above, I dismiss the applicant's claims. As the applicant was unsuccessful in this dispute, in accordance with the Act and the tribunal's rules I find he is therefore not entitled to reimbursement of tribunal fees. I say the same about the applicant's claimed \$813.23 in dispute-related expenses.

ORDER

28. I order that the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair