



Civil Resolution Tribunal

Date Issued: December 4, 2018

File: SC-2018-001063

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Birge v. Lake*, 2018 BCCRT 800

B E T W E E N :

William Birge

APPLICANT

A N D :

Damion Andrew Lake

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, William Birge, bought a 1985 Audi GT Coupe from the respondent, Damion Andrew Lake, for \$2,100. The applicant believes that the respondent misrepresented the condition of the car and seeks a refund. The respondent asks that I dismiss the dispute.

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* (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 I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 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

7. The issues in this dispute are:

- a. Did the respondent misrepresent the condition of the vehicle to the applicant?
- b. If so, how much, if any, compensation should the respondent pay to the applicant?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities.
9. On January 20, 2018, the applicant contacted the respondent about purchasing the car over Facebook. The advertisement for the car is also not in evidence. The respondent says that the advertisement said that the car “had some quirks”. The applicant does not dispute the respondent’s description of the advertisement.
10. The applicant met the respondent on January 21, 2018. The applicant test drove the car and decided to purchase it. The odometer read 365,000 kilometers. The applicant paid \$2,100 for the car.
11. On January 27, 2018, the applicant messaged the respondent that he had taken the car to a friend, who is an Audi mechanic. The friend told the applicant that the car required a lot of work and was only worth \$500. The applicant had also noticed that the odometer was not moving. The applicant demanded that the respondent either take the car back and give him a refund or give him \$1,600.
12. The respondent replied that the car was 33 years old with over 300,000 kilometers and was in good shape for a car that age. The respondent said that the applicant could have had the car inspected by decided not to. In his submissions, the respondent says that he was not aware of any serious issues with the car.
13. The applicant has provided no objective evidence about the repairs that he says the car needs or any objective evidence about the market value of the car. In particular, there is no evidence from the Audi mechanic who allegedly inspected the car.

14. The applicant provides no explanation as to why he did not have the car inspected prior to purchasing it.
15. There is no evidence that the car has broken down since the applicant purchased it. There is therefore no evidence to suggest that the respondent breached the implied condition in section 18(c) of the *Sale of Goods Act* that goods be durable for a reasonable period of time.
16. Absent the application of an implied warranty under the *Sale of Goods Act*, sales of used vehicles like this one are governed by the principle of “buyer beware”. This means that the buyer must assess the condition of the vehicle before purchasing it. However, if a seller misrepresents the vehicle during negotiations, the buyer may be entitled to compensation. A misrepresentation is a false statement of fact that would induce a reasonable person to enter into the contract. A seller does not have to tell the buyer about defects that the buyer could discover by reasonably inspecting the vehicle.
17. The applicant submits that the respondent’s failure to tell the applicant that the odometer was broken was fraud. The applicant relies on the vehicle transfer form, which has a box to tick if the odometer is broken. The respondent did not tick that box. The applicant also relies on the services records for the vehicle from 2014, which show that the odometer reading was always the same. The applicant submits that the respondent had an obligation to tell the applicant about the broken odometer. I disagree.
18. The applicant test drove the car. It cannot be said that the respondent misrepresented the mileage on the vehicle when the broken odometer was there for the applicant to see. It is not the respondent’s fault that the applicant did not notice the defect. If the respondent knew about the broken odometer, which he denies, he had no obligation to tell the applicant about it.
19. There is no evidence that the respondent made any misrepresentations about the condition of the car. The only evidence about the advertisement for the car is that it

had some quirks, which should have put the applicant on notice that there may be issues with the car. This is especially so given that the car had at least 365,000 kilometers on it. A reasonable buyer would expect that a car with that many kilometers might have potential problems.

20. The applicant did not take the car to a mechanic for an inspection prior to purchasing it. The applicant accepted the risk that there were problems with the car.
21. I dismiss the applicant's claims.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I decline to award the applicant his tribunal fees. The respondent did not claim any dispute-related expenses.

ORDER

23. I order that the applicant's claims, and this dispute, are dismissed.
24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

Eric Regehr, Tribunal Member