



Civil Resolution Tribunal

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File: SC-2018-001976

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Luckham v. Harper*, 2018 BCCRT 813

B E T W E E N :

Peter Luckham

APPLICANT

A N D :

Bonnie Harper

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about the private sale of a used car. The applicant, Peter Luckham, bought the car from the respondent, Bonnie Harper, in January 2018 in response to the respondent's advertisement. The applicant says the car is unsafe and not roadworthy, and that the respondent misrepresented the condition of the car in both the advertisement and in person.

2. The applicant wants the respondent to refund the \$1,200 he paid for the car, to remove the car from his property at the respondent's expense, and to reimburse his dispute-related expenses. In the alternative the applicant wants a 50% refund of the price of the car and reimbursement of 50% of his dispute-related expenses. The applicant also wants the respondent to reimburse his tribunal fees.
3. The respondent says she disclosed all known issues with the car and that the applicant bought the car "as is."
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's

process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. 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

9. Is the applicant entitled to a refund or partial refund of the \$1,200 he paid for the car?

EVIDENCE AND ANALYSIS

10. In civil claims like this one the applicant has the burden of proving their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the reasons that follow, I find the applicant is entitled to a refund for the price of the car.
12. It is undisputed that before the respondent sold the car it was damaged in an accident in November 2018 near Nanaimo, British Columbia, immediately after which the car was driven to the respondent's home in Victoria, British Columbia. Shortly after the accident the respondent advertised the car for sale. The advertisement says, "MAKE ME AN OFFER NOT FREE," and says the car, "Runs and drives with no issues...Back window missing and needs major cosmetic damage repair to trunk door and bumper...Issues are all strictly cosmetic. This car

still drives perfectly fine how it is but definitely needs some work put into it.” The advertisement includes photographs showing damage to the front and back of the car, including a missing rear window and bumper.

13. It is undisputed that on January 10, 2018, in response to the advertisement, the applicant went to the respondent’s home, briefly test drove the car, and bought it. The applicant did not have a mechanic inspect the car before he bought it. The applicant then drove the car to Chemainus, British Columbia and caught a ferry to his home.
14. The applicant says the car wobbled and was unstable when he drove it home on the highway, and the next day he put it on a jack stand and saw there was something “seriously wrong” with one of the rear wheels and the axle alignment. Approximately 2 weeks later the applicant took the car to a mechanic for an inspection. The mechanic’s invoice says, “check rear bent axle, 3 out of 4 rims are bent, lower right rear control arm bent.”
15. The applicant says that before buying the car the respondent told him the car had been driven from the Nanaimo area to Victoria after the accident “with no issues.” The respondent says she told the applicant what she knew about the car to the best of her knowledge, and that she had no idea how the car ran as it had not been driven in the two months since the accident. The respondent says she told the applicant she did not know of any damage to the car other than the cosmetic damage and the visible damage from the accident, but that she had not taken it to a mechanic since the accident.
16. The applicant and the respondent negotiated a price of \$1,200 for the car, which the applicant paid. This is a contract of purchase and sale between private individuals which is subject to section 18 (c) of the *Sale of Goods Act*. According to that section, there is an implied warranty that the car will be durable for a reasonable period of time when putting the car to normal use, and considering all the surrounding circumstances of the sale.

17. In *Sugiyama v. Pilsen*, 2006 BCPC 0265 (*Sugiyama*), the court said some of the relevant factors to consider when determining the extent of this implied warranty are the age of the car, the mileage, the nature of use by the prior owners, the price paid by the buyer, the use made of the car after purchase, the reason for any defective performance or breakdown, and the expectations of the parties as evidenced by any express warranties. A person who sells a used car does not guarantee the car's future performance, and anyone buying a used car knows that some problems will inevitably occur. Depending on the circumstances, an implied warranty for a used car's durability may be limited to the car being safe to drive on the road.
18. When the applicant bought the car, a 1999 Toyota Rav 4, it was approximately 19 years old and had over 194,000 kilometers on the odometer. The respondent says she told the applicant that before the accident the motor was in good working condition and the car had never had any issues aside from regular maintenance. She says she told the respondent that the car was a "rebuild" when she bought it, and on the applicant's transfer form the car is marked as "R" which means it has been rebuilt.
19. The applicant paid \$1,200 for the car, and the respondent says this is well below market value to reflect the car's damage. In support of this position the respondent provided numerous advertisements from the websites "cargurus," "autotrader," and "Kijiji" for Toyota Rav 4s from 1999 to 2001. While many of these cars were made in different years or have much higher or lower mileage, one advertisement shows a 1999 Toyota Rav 4 with 162,000 kilometers selling for \$5,998.
20. With respect to the respondent's intended use of the car, the applicant claims the respondent told her husband he needed a part for his electric Rav 4. However, since the applicant's husband did not give evidence, the respondent's evidence on this point is hearsay, and I give it very little weight. The applicant's evidence is that he bought the car to use for long-distance driving, as he had an electric car to drive for shorter trips.

21. With respect to the reasons for the car's defective performance or breakdown, there was significant visible damage to the rear driver's side of the car before the applicant bought it. The respondent says she told the respondent that on the day of the accident in November 2018 her husband was driving the car near Nanaimo when it hydroplaned, spun around, and hit the median on the highway. The respondent told the applicant that her husband managed to drive the car back to Victoria but that it had been in the respondent's driveway ever since. The damage the applicant is claiming, bent rims and a bent axle, is consistent with the visible damage the car sustained in the November 2018 accident.
22. The parties did not enter into a written contract for purchase and sale, and there was no express warranty which would alter the parties' expectations about the transaction.
23. In all the circumstances of the sale, and considering the factors set out in *Sugiyama*, I find the implied warranty under section 18 (c) of the *Sale of Goods Act* was extremely limited in this case, requiring only that the car was safe to drive on the road. However, despite this very limited warranty, I am not satisfied that the car was roadworthy at the time the applicant bought it.
24. The applicant says when he drove the car on the highway immediately after buying it, it shook severely, experienced "serious wobbling and bouncing," and it was completely unstable above 80 kilometers per hour. The applicant says on his drive home he stopped at a service station to check the tire inflation, but found no visible problems with the tires. The applicant says he immediately tried to contact the respondent without success, so he drove the car home between 30 and 50 kilometers per hour. The applicant says the following day he changed the left rear tire, but it made no difference in how the car handled. Once the respondent put the car up on a jack he noticed a problem with the left rear wheel and axle, and this was confirmed by the mechanic's inspection 2 weeks later.
25. The respondent says the applicant drove to her home in Victoria to buy the car in a different car, and that if the car was truly not roadworthy he could have returned and

driven his other car home instead. She says this shows he is fabricating the condition of the car. She says the fact that the applicant waited two weeks after buying the car to take it to a mechanic shows the condition of the car was not that bad. I disagree. The applicant was under the impression that the car was roadworthy when he bought it, and he managed to drive it home despite its instability. Whatever his plans were with respect to his other car are not relevant to determining whether the respondent breached the implied warranty. The applicant lives on an island, and in the circumstances 2 weeks is not an unreasonable period of time to wait before having the car inspected.

26. The car's visible damage from the accident is significant. The fact that the car was driven from Nanaimo to Victoria immediately after the accident in November 2018 without any issues does not mean the car was safe to drive. The respondent's own evidence is that she had no idea how the car drove as she was not driving it on the day of the accident and she had not driven it or had it inspected since.
27. The applicant says the mechanic found the car to be undrivable, but that is not stated anywhere on the mechanic's invoice. However, the applicant's description of the car's shaking and instability is consistent with the mechanic's report of 3 bent rims and bent axle. I find the car was not roadworthy when the applicant bought it.
28. In all the circumstances of the sale, I find the respondent breached the implied warranty under section 18 (c) of the *Sale of Goods Act* that the car would be durable for a reasonable period of time after the sale. Without evidence about the estimated cost to repair the car, I find the applicant is entitled to a full refund for the price of the car. I find the respondent must be given a reasonable opportunity to retrieve the car. Since I have found the applicant to be successful on this ground, it is unnecessary for me to determine whether the respondent misrepresented the condition of the car.
29. The tribunal's rules provide that the successful party is generally entitled to recover their fees and dispute-related expenses, and I see no reason to depart from the

general rule in this case. The applicant was successful and so I find he is entitled to reimbursement of his tribunal fees.

30. The applicant claims \$274 for dispute-related expenses, including taxes and transfer of ownership, however this amount is not supported by the applicant's evidence. The transfer form in evidence indicates the applicant paid \$144 in sales tax, but there is no indication he paid that amount to the respondent. I find the applicant cannot recover the sales tax in this dispute.
31. The applicant submitted the mechanic's inspection invoice for \$59.87. In the circumstances of this dispute I find it was reasonable for the applicant to have a mechanic inspect the car. I relied on the inspection invoice in coming to my conclusion. The applicant also submitted a receipt for \$10.50 for delivering the dispute notice to the respondent by registered mail. I find this is a reasonable dispute-related expense. In total, I find the applicant is entitled to \$70.37 in dispute-related expenses.

ORDERS

32. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,409.74 broken down as follows:
 - a. \$1,200 as a refund for the car,
 - b. \$14.37 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125.00 in tribunal fees, and
 - d. \$70.37 in dispute-related expenses.
33. I also order that within 14 days of the date of this order, if the respondent has paid the amounts listed above, the applicant arrange for the car to be available for the respondent or her designate to pick up, at a mutually agreeable time, date and location, no later than January 6, 2019, with ownership to be transferred back to the

respondent at that time. I further order that the respondent is responsible for any filing costs or taxes associated with this transfer of ownership.

34. If the respondent makes the payment required, but she or her designate fail to pick up the car by January 6, 2019, the applicant can dispose of it as he sees fit and retain any proceeds from it.
35. The applicant is entitled to post-judgment interest, as applicable.
36. 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 a notice of the tribunal's final decision.
37. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member