



Civil Resolution Tribunal

Date Issued: December 14, 2018

File: SC-2018-003404

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Penny v. Earthy*, 2018 BCCRT 851

BETWEEN:

Robert Penny

APPLICANT

AND:

Michael Earthy

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a private car sale. The applicant, Robert Penny, says the respondent, Michael Earthy, sold him a vehicle that was not reasonably durable

because after 303 kilometers the vehicle's engine "blew". The applicant claims \$800 for vehicle repairs. The respondent denies liability.

2. The parties are each 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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.

ISSUE

7. The issue in this dispute is whether the respondent sold the applicant a vehicle that was not reasonably durable, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. 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 submissions below as necessary to explain my decision.
9. It is undisputed that on April 16, 2018 the respondent sold the applicant a 1999 Dodge Dakota truck for \$2,500. The applicant says the respondent, who is a retired mechanic, claimed the truck was in good condition with no major issues apart from a minor oil leak, cracked windshield, and some rust.
10. It is also undisputed that the applicant drove the vehicle for 303 kilometers, over about 6 weeks based on the evidence before me. It is further undisputed that while on the highway the vehicle's engine seized or "blew". The applicant bought a used replacement engine in June 2018, and as noted above, claims \$800 reimbursement in this dispute.
11. To the extent the applicant submits the respondent lied about the vehicle's condition or intentionally sold a defective vehicle, I reject that submission. The applicant has not provided any evidence to support such a claim and the parties' message exchange after the engine blew shows the applicant at the time accepted that buying a 19 year old car without an inspection carried that sort of risk.
12. However, the applicant is correct when he refers to the *Sale of Goods Act (SGA)*, which under section 18(c) implies a condition that goods be "durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale..." This provision applies to both commercial and private sales.

13. The applicant says his photos and repair apprentice mechanic's statement show the engine was poorly maintained. Even if that were so, which the respondent denies, there is no remedy for past poor maintenance in this dispute. This is because I find the applicant has not proved the respondent made any warranty about the engine's condition. Further, in a private sale, there are no implied warranties about fitness for purpose or saleable quality under the SGA. In that respect, the private sale is 'buyer beware'. The applicant chose to buy the 1999 truck without an inspection.
14. Thus, this dispute comes down to what is "reasonably durable" in the context of a private sale of 1999 truck with a known oil leak. The respondent says a vehicle of that age can have things go suddenly wrong that cannot be predicted, like "blowing a rod" in the engine, which is what occurred here. I accept this evidence. Again, the applicant drove the vehicle for 303 kilometers without apparent incident.
15. As noted in *James v. Mountain Equipment Co-operative*, 2018 BCCRT 521, in *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII), the BC Provincial Court considered section 18(c) of the SGA. In *Drover*, the court said that one must evaluate all the facts of the sale in order to determine the degree of reasonable fitness or durability. In that case, the claimant bought a 7-year-old pickup truck that required \$5,426 in repairs in the 7 month period after its purchase. The court found that despite the repairs, there was no breach of the implied condition of durability in section 18(c) based on the fact that it was a used vehicle with 161,500 kilometers on it at the time of purchase, and the plaintiff was able to drive it a considerable distance despite the repairs.
16. I come to the same conclusion in this case. While the applicant drove the vehicle for less time, the truck he bought was almost 20 years old and had a known oil leak. At the time the engine seized, the car had high mileage, over 242,000 kilometers. The applicant has also not proved that the known oil leak was not related to the engine problem that occurred. On balance, I find the applicant has not proved the vehicle was not reasonably durable, in all of the circumstances of its sale. I therefore dismiss the applicant's claims.

17. In accordance with the Act and the tribunal's rules, as he was unsuccessful, I find the applicant is not entitled to reimbursement of tribunal fees. The successful respondent did not claim any tribunal fees or dispute-related expenses.

ORDER

18. I order that the applicant's claims and this dispute are dismissed.

Shelley Lopez, Vice Chair