



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-004751

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West v. Thompson*, 2018 BCCRT 914

B E T W E E N :

William A West

APPLICANT

A N D :

Curtis Clayton Thompson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. This dispute is about the private sale of a used car.
2. The applicant, William A West, says that the respondent, Curtis Clayton Thompson, misrepresented the condition of the car and claims \$3,416.18 for the estimated cost of making repairs.

3. Mr. Thompson denies misrepresenting the condition of the car and says that Mr. West was aware that the car required repairs.
4. Both parties are self-represented.
5. For the reasons that follow, I find that the applicant has not proven his claim and that the claim should be dismissed.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 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. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. 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.
8. 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.
9. Under tribunal rule 121, 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; or

- c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

10. The issues in this dispute are: a) did the respondent misrepresent the condition of the car he sold to the applicant; and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
12. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Evidence

13. The car at issue is a 2007 Volvo (car).
14. Mr. Thompson advertised the car for sale on Kijiji for \$5,999. The advertisement noted that he was the second owner, the vehicle had 182,000km but "feels brand new". The advertisement also highlighted recent repairs to the car, including new brakes and rotors, new battery and alternator, new spark plugs, and timing belt done 20,000 km ago.
15. Mr. Thompson says that he only owned the car for a very short time.
16. On June 10, 2018 Mr. West responded to the advertisement and asked whether the timing belt had been done. Mr. Thompson said that the car was available and the timing belt had been done recently. There is no further written correspondence between the parties.
17. Mr. West went to view the car on June 10, 2018. The parties have very different accounts of what happened next. I summarize each in turn below.

18. Mr. West says that Mr. Thompson assured him verbally on multiple occasions that the advertisement was correct. He states that Mr. Thompson did not qualify any of his answers or say that he was relying on information from the car's first owner. Mr. West asked where the car had been serviced, and says he attempted to verify the car's service history - but it was not available. It is not disputed that Mr. West did not have the car inspected before purchasing it. Mr. West says he relied on Mr. Thompson's assurances that the advertisement was correct to purchase the vehicle for \$5,600.
19. Mr. West says he paid a \$200 cash deposit and also paid the balance in cash at the time of the sale. Mr. West says his wife witnessed the transaction, but did not introduce any evidence from her. Nor did he provide banking documents to confirm his claim that he withdrew \$5,600 in cash to pay for the vehicle. Mr. West puts a handwritten receipt into evidence that he says both parties signed, and confirms the sale price. However, the receipt contradicts itself in that it initially states the sale price is \$5,600 – and then later states the sale price is \$5,700. This is also at odds with the provincial transfer tax form (form) signed by both parties.
20. The form lists the price of the car as \$3,200 and states that the purchase price is below market value. Immediately below in the comments section is a handwritten note that reads "Repairs Needed – Timing Belt, Brakes, Starter". Mr. West says Mr. Thompson wrote these things down and that he did not notice this until after the sale completed. However, I have difficulty accepting this since that Mr. West signed the form. The text immediately above Mr. West's signature states that by signing the form, the purchaser declares the information included in the form to be true.
21. Mr. West says that after he purchased the car he "reconnected with the previous service firm" and was "shocked" to learn that various statements in the advertisement were not true. Mr. West later wrote to Mr. Thompson, accused him of misrepresentation and claimed that he had an inspection from a service shop to prove it. No inspection report or other independent evidence about the condition of the vehicle was put into evidence. Mr. West claims \$3,416.18 for the cost of repairs

and submitted several invoices in support of this claim. It is not clear from the invoices how this figure is arrived at. I do note, however, that a number of these items are items listed on the form under the comment regarding “Repairs”.

22. By contrast, Mr. Thompson says when Mr. West came to see the car, he started to tell Mr. Thompson about all the things that were wrong with it. Mr. Thompson says he gave Mr. West the name of the service firm the previous owner had used and suggested that Mr. West have the vehicle inspected. Mr. Thompson says he was motivated to sell the car because he had purchased a new vehicle and no longer had space for it. As a result, Mr. Thompson says he agreed to sell the car for almost half of the asking price - \$3,200 to reflect the work Mr. West said needed to be done.
23. Mr. Thompson agrees that Mr. West paid him a \$200 cash deposit, but maintains that the balance of the purchase price was \$3,000. Mr. Thompson says that he did not sign the handwritten receipt for \$5,600 and alleges the document is a fraud. Neither party offered evidence from a handwriting expert.
24. Mr. Thompson says that the parties went to an ICBC agent to finalize the sale. This point was not disputed by Mr. West. Mr. Thompson says that the agent asked him to provide his name and contact information first, and then asked Mr. West for the sale price and other details. Mr. Thompson says Mr. West advised the agent of the \$3,200 sale price and that there were several items in need of repair, such as the timing belt, brakes and a new starter.
25. Mr. West acknowledges that his copy of the form is illegible. Mr. Thompson’s copy of the form is clear. All of the handwritten entries (except the signatures) appear to be in the same handwriting, which I find to be that of the agent. Neither party put forward evidence from the agent.

Analysis

26. Mr. West claims that Mr. Thompson knowingly misrepresented the car's condition to him and that he relied on those misrepresentations to purchase the car. Mr. Thompson denies this and says that Mr. West was aware that the car required the repairs and used this to negotiate a much lower sale price.
27. Nearly all of the evidence is in dispute and each party accuses the other of fraud. However, I find that those issues are not determinative.
28. Turning first to the sale price, I do not accept Mr. West's evidence that the sale price was \$5,600. The receipt he relies on refers to two different sale prices. Mr. West provided no explanation for this, and I have difficulty accepting Mr. Thompson would have signed the document with such an obvious contradiction. The receipt is also at odds with the form. I find that the agent completed the form on the basis of instructions of the parties and that the sale price was \$3,200. Further, Mr. West signed the form and declared the information in the form to be true. The form cautions the parties that submitting a form with false statements carries serious consequences. In the circumstances, I find it more likely than not that Mr. West was aware of the need for repairs, and the parties agreed to a reduced sale price to offset the cost of repairs listed on the form.
29. I turn next to deal with the advertisement and the condition of the car.
30. Mr. West claims that Mr. Thompson assured him that the car's condition was as stated in the advertisement. He seems to suggest that Mr. Thompson warranted that the advertisement was true, and also misrepresented the car's condition.
31. Based on my conclusions above (that the car was heavily discounted due to the repairs listed on the form), I find that Mr. Thompson did not give a warranty that the contents of the advertisement were true. Further, in a private sale, there are no implied warranties that goods "necessarily be fit for their purpose" or that they be of "merchantable quality" under the *Sale of Goods Act*. See: *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198 CanLII; *Grundy v. Ji*, 2018 BCCRT 38; *Kuerten v. Markovitch*, 2018 BCCRT 578.

32. In a private used car sale, a purchaser is expected to reasonably assess the vehicle's condition before purchasing it. While a seller is not under any duty to disclose known defects, the seller must not actively conceal them. Unless the seller commits fraud or conceals defects, the purchaser assumes the risk for any defects in the condition or quality of the vehicle. This principle is referred to as the doctrine of *caveat emptor* or "buyer beware". See *Rusak v. Henneken*, [1986] B.C.J. No. 3072 (S.C.); *Smith v. Wild Grizzly Transport Ltd.*, 2018 BCCRT 203.
33. If a vehicle is simply more worn out than the buyer originally thought, or has problems that could have been discovered through an inspection, the buyer is likely not entitled to a remedy. See for example, *Laubscher v. Mansoor et al.*, 2018 BCCRT 59 and *Smith v. Wild Grizzly Transport Ltd.*, *supra*.
34. However, the "buyer beware" principle does not permit a party to misrepresent the condition of a used vehicle. There are 2 types of misrepresentation: negligent and fraudulent misrepresentation. Given Mr. West's allegations, I will deal with both.
35. In order to succeed on a claim for negligent misrepresentation, Mr. West has to establish that:
- (a) Mr. Thompson owed him a duty to provide accurate information;
 - (b) Mr. Thompson made a representation to him;
 - (c) the representation was untrue or misleading;
 - (d) Mr. West reasonably relied on the misrepresentation; and
 - (e) the reliance caused Mr. West's loss.

See: *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110; *Catalyst Pulp and Paper Sales Inc. v. Universal Paper Export Co.*, 2009 BCCA 307 (CanLII)

36. To succeed on a claim for fraudulent misrepresentation Mr. West would have to establish that:
- (a) Mr. Thompson made a representation of fact to him;

(b) the representation was false;

(c) Mr. Thompson knew the representation was false at the time it was made, or made the false representation recklessly, not knowing if it was true or false; and

(d) Mr. West was induced to enter into the contract in reliance upon the false representation and as a result suffered a loss.

See: *Ban v. Keleher*, 2017 BCSC 1132; *Hao Ran Investments Ltd. V. He*, 2016 BCSC 61 (CanLII)

37. In this dispute, Mr. Thompson will have met his disclosure obligations if he honestly believed that the contents of the advertisement were true.
38. Even if Mr. West was able to establish that Mr. Thompson did not have an honest belief about the condition of the car, Mr. West would still have to establish that the alleged misrepresentation caused him loss (discussed further below).
39. Mr. Thompson owned the car for a short period. I find that Mr. Thompson accepted the previous owner's description of the car's service history and believed it to be true. There is no evidence to suggest Mr. Thompson attempt to conceal defects from Mr. West. In particular, I note that he volunteered the name and contact information for the previous service firm and suggested that Mr. West obtain an inspection. In the circumstances, I find that Mr. Thompson did not misrepresent the condition of the car.
40. Further, even if there was a misrepresentation, I find that it was not material to Mr. West's decision to purchase the car, and did not cause his loss. Mr. West could not have reasonably relied on the advertisement where Mr. West signed the form which states the car was in need of repairs, and the sale price of the car appears to have been heavily discounted as a result. In addition, prior to the sale Mr. West attempted to verify the condition of the vehicle from the former service firm, which indicates he was not relying on Mr. Thompson.

41. In the result, I dismiss Mr. West's claim.

42. Given he was not successful, so I find that Mr. West is not entitled to be reimbursed for tribunal fees or dispute-related expenses.

ORDER

43. I order that the applicant's claim is dismissed.

Jordanna Cytrynbaum, Tribunal Member