



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-002586

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liivamagi v. Irlam*, 2018 BCCRT 919

BETWEEN:

Triatan Liivamagi

APPLICANT

AND:

Christi Irlam

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. This dispute is about the private sale of a used car.
2. The applicant, Triatan Liivamagi, says that the respondent, Christi Irlam, sold him a car that was “not fit for purpose” because a wheel came off shortly after purchasing

the car and caused damage in an accident. The applicant claims \$1,058.70 for the costs he incurred as a result of the accident. The respondent denies liability.

3. Both parties were self-represented.
4. 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

5. 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.
6. 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.
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 make one or more of the following orders:
 - a. order a party to do something;
 - b. order a party to refrain from doing something;

- c. order a party to pay money.

ISSUES

9. The issues in this dispute are: a) was the car either not fit for purpose, or not reasonably durable; and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
11. 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.
12. The car at issue is a 2004 Honda Civic (car). The respondent listed the car for sale on Craigslist for \$3,700. The ad noted that the car had been lowered after market and that it was in need of repairs.
13. The applicant bought the car from the respondent on December 3, 2016 for \$2,000. The car had approximately 244,000 kilometers on the odometer.
14. It is not disputed that the applicant test drove the car and decided to purchase it the same day without an inspection. On his drive home, the front left wheel came off. The applicant was able to pull over and stop the vehicle, but in the process he says the car sustained damage. The applicant claims the car was not fit for its purpose and seeks the cost of repairs and other related expenses totaling \$1,058.70.
15. The respondent says that she told the applicant about a knocking noise coming from the front fender and that the car would require repairs. Based on her experience with a previous Honda Civic, the respondent thought the noise was due to a suspension issue and told the applicant she believed it would cost

approximately \$1,600 to fix it. She had not, however, had a mechanic assess the problem.

16. The respondent says the applicant acknowledged he heard the noise himself when he test drove the car and chose to buy it anyway without an inspection. The applicant does not dispute this, and I accept the respondent's evidence. The respondent says that the purchase price was discounted to reflect the fact that the car required repairs. The respondent also says she should not be held responsible given the applicant could have discovered and dealt with the problem by simply having the car inspected by a mechanic. There is no evidence that the respondent knew the wheel was about to come off, or that she had anything to do with installing the wheel or tire.
17. The basis of the applicant's claim is that he says the car was not fit for its purpose because the wheel was not properly put on. I infer that the applicant is referring to section 18(a) of the *Sale of Goods Act* (SGA). This section states that if a seller is in the business of selling certain goods, and the buyer tells the seller that the goods are required for a particular purpose, then there is an implied condition that the goods are "reasonably fit for that purpose". However, in a private sale (as in this case), there is no implied warranty that a car be fit for purpose. 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. I also find that the applicant has not proven the respondent gave him any warranty as to the condition of the vehicle.
18. A purchaser is expected to reasonably assess the vehicle's condition before purchasing it. 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.

19. The SGA does, however, contain a provision that is applicable to private sales (as well as commercial sales). Section 18(c) of the SGA 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 ...”. I find that the dispute comes down to whether the car was “reasonably durable” in the context of this private sale. This involves an assessment of all of the facts in context to determine what is reasonably durable in the circumstances of any given case. See: *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII), *James v. Mountain Equipment Co-operative*, 2018 BCCRT 521; *Penny v. Earthy*, 2018 BCCRT 851.
20. The applicant chose to buy the car without an inspection. The car was nearly 13 years old, had approximately 244,000 kilometers and was obviously in need of repairs. I accept that the purchase price was discounted to reflect the fact that the car was in need of repairs. I also find that there was a loud knocking noise coming from the front fender area of the car, and that the applicant was aware of the issue. This is consistent with the wheel not being properly in place, and there was no evidence to suggest otherwise. In the circumstances, I find the applicant has not proven that the known loud knocking noise was unrelated to the wheel coming off.
21. I find the applicant has failed to prove that the car was not reasonably durable. I therefore dismiss the applicant’s claim.
22. Given the applicant was not successful, I find that he is not entitled to be reimbursed for tribunal fees or dispute-related expenses.

ORDER

23. I order that the applicants' claim and this dispute is dismissed.

Jordanna Cytrynbaum, Tribunal Member