



Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-005471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singh v. Judge*, 2019 BCCRT 243

B E T W E E N :

Manmik Singh

APPLICANT

A N D :

Sukhwinder Judge

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about the private sale of a used car.
2. In April 2018, the applicant, Manmik Singh, bought a 2007 Jeep Patriot (car) from the respondent, Sukhwinder Judge. The applicant says he later learned that the

car's odometer had been rolled back. The applicant seeks payment of \$2,900, plus an order that the respondent fix the odometer.

3. The respondent denies the applicant's claims. He says he did not tamper with the odometer, and was unaware of any tampering that may have occurred before he bought the car used in February 2018. He says he sold the car "as is", with no warranty.
4. The applicant is self-represented. The respondent is also self-represented, with assistance from his daughter.

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 118 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. 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.
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. The issue in this dispute is whether the respondent misrepresented the car's mileage, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. 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 arguments to the extent necessary to explain my decision.
11. The parties agree that the respondent advertised the car on Craigslist, and the respondent responded to the advertisement and bought the car on April 9, 2018. Neither party provided a copy of the Craigslist advertisement.
12. There was no written sale contract. The British Columbia Transfer/Tax form (transfer form) signed by both parties indicates that the applicant paid \$1,500. The transfer form says the car's odometer reading at the time of the sale was 130,000. The box asking the seller to indicate whether the odometer was broken or replaced was left empty, indicating no problems with the odometer.
13. The applicant says that about 3 months after he bought the car, he moved out of BC and had the car inspected for the purpose of re-registration in Alberta. He says the inspector told him the car's odometer had been rolled back.
14. I find that the odometer rollback is proven, based on the "Carproof" vehicle history report provided by the applicant. The Carproof report shows that while the Alberta

inspector documented that the car's odometer reading was 139,000 kilometers on July 10, 2018, it read 160,000 on August 8, 2013. Similar (slightly lower) odometer readings had been documented by repair facilities earlier in 2012 and 2013. Based on this evidence, which the respondent does not dispute, I accept that the car's odometer was rolled back at some point after August 2013.

15. The respondent says he did not roll back the odometer, and was not aware that it had been done. Another transfer form provided by the respondent shows that he bought the car from another person for \$1,200 on February 21, 2018. This is consistent with the Carproof report, which shows the registration of a new owner on February 24, 2018.
16. The February 21, 2018 transfer form also shows that the car's odometer reading was 130,000 kilometers. The respondent also provided an undated photo of an odometer, with a reading of 130,974. The applicant says these 2 pieces of evidence prove that the respondent committed fraud. He argues that the 2 transfer forms show the same odometer reading, which must be false since the respondent owned the car for 2 months and must have driven it at least a small distance. The applicant also argues that the 130,974 odometer reading in the photo proves fraud, because it must have been taken before the sale, and the transfer from indicates a lower reading of 130,000.
17. In response, the respondent says he did not drive the car much while he owned it, and that the odometer reading was 130,000 when he purchased it. He says that if the odometer was rolled back, this was done by a previous owner.

Fraud

18. For the reasons that follow, I find the applicant has not met the burden of proving fraud by the respondent.
19. Generally, private sales of used cars are governed by the principle of "buyer beware", subject to some limits set out in section 18(c) of the *Sale of Goods Act*

(SGA) that I will address later. However, buyer beware is set aside where a buyer is induced to buy the car based on the seller's fraud: *Nixon v. MacIver*, 2016 BCCA 8, *Nevmerjitski v Ratinov*, 2018 BCCRT 293.

20. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (CanLII), the judge said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element (intention). The 4 elements of civil fraud, also known as fraudulent misrepresentation, are as follows, as set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21:

- a. A false representation made by the respondent;
- b. Some level of knowledge of the falsehood of the representation on the part of the respondent (whether through knowledge or recklessness);
- c. The false representation caused the applicant to act; and
- d. The applicant's actions resulted in a loss.

21. I find the applicant has not proven these 4 elements of fraud. I accept that the odometer reading is a representation about the vehicle's history. However, I find the applicant has not proven that the respondent rolled back the odometer, or that he knew or ought to have known it had been rolled back.

22. In making these findings, I place significant weight on the fact that the February 21, 2018 transfer form, from the time the respondent bought the car, indicates that the odometer read 130,000. This document, combined with the Carproof report showing no odometer readings between August 2013 and July 2018, supports the respondent's evidence that the odometer read around 130,000 when he bought the car. While it is unlikely that the exact reading was 130,000, there is no evidence before me to establish that the reading on February 21, 2018 transfer form was higher than 130,000.

23. It is similarly unlikely that the odometer reading was exactly 130,000 when the second transfer form was completed on April 8, 2018. The evidence shows that this number was not precise, as a photo taken sometime between February 21 and April 8 shows a reading of 130,974. However, I do not find that this establishes intentional fraud by the respondent. I find that the odometer entries of 130,000 on both the February 21 and April 8 transfer forms are reasonably rounded rather than precise figures. This accounts for the slightly higher amount shown on the photo.
24. I accept the respondent's evidence that he did not drive the car much while he owned it, as there is no contrary evidence before me, and he owned it for less than 3 months.
25. I also place significant weight on the fact that the applicant had the opportunity to examine the car and its odometer before he signed the transfer form on April 8. If the odometer had shown a significantly different reading from the 130,000 written on the transfer form, I find the applicant would have noticed it and either changed the form or refused to sign it.
26. Based on these forms, I find the odometer was not rolled back while the respondent owned the car. There is also insufficient evidence before me to prove that the respondent knew that the odometer had been rolled back previously.
27. For these reasons, I find the applicant has not provided clear and convincing proof of fraud.

Breach of Warranty

28. The applicant also says he is entitled to compensation because the car is at the end of its useful life, and he cannot register it or sell it.
29. The respondent says he sold the car "as is" and without warranty. I do not entirely agree. There is no documentation indicating that the car was sold on an "as is", basis, and no evidence of a verbal agreement to that effect. Section 18(c) of the SGA applies to private sales of used cars. This provision says goods sold must 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...”

30. While I accept that the applicant is extremely frustrated to have purchased a car with a rolled-back odometer, he has not provided evidence to establish that the car runs poorly, or that it has mechanical or structural problems. I find he has therefore not proved his assertion that the car is at the end of its life. For these reasons, I find the applicant has not proven a breach the implied warranty set out in section 18(c).
31. I have also considered the applicant’s statement that he cannot register or sell the car. However, he provided no proof to support these assertions. He provided no evidence showing that the Alberta government refused to register the car, or that he attempted to sell it. I therefore find the applicant is not entitled to any remedy on that basis.
32. I accept that the price the applicant paid for the car was in part based on the false odometer reading. Since I have concluded that the applicant has not established that the respondent knew or ought to have known about the odometer rollback, I find that the respondent is not liable for any difference between the purchase price and the car’s true value. While it is unfortunate that the applicant purchased a car that did not meet his expectations, he failed to have the car inspected or to obtain the vehicle history report before the purchase, even though this report would have revealed the odometer issue. Thus, the applicant is not entitled to retroactive compensation for what he now knows was a bad bargain.
33. For all of these reasons, I dismiss the applicant’s claims.

Fees and Expenses

34. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent, who was successful in this dispute, paid a \$25 tribunal fee, for which I

order reimbursement. The respondent also claims a dispute-related expense of \$10 for faxing his dispute response form and evidence to the tribunal. While the respondent did not provide a receipt, I find that this expense is reasonable in the circumstances and I order reimbursement.

ORDERS

35. I dismiss the applicant's claims and this dispute.
36. I order that within 30 days of the date of this decision, the applicant must pay the respondent a total of \$35 as reimbursement for tribunal fees and dispute-related expenses.
37. 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.
38. 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.

Kate Campbell, Tribunal Member