



# Civil Resolution Tribunal

Date Issued: March 5, 2019

File: SC-2018-006085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Insley v. Makan-Mahr*, 2019 BCCRT 264

**B E T W E E N :**

David Insley

**APPLICANT**

**A N D :**

Caspian Makan-Mehr

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant David Insley bought a 2002 BMW 745i (car) from the respondent Caspian Makan-Mehr<sup>1</sup> . The applicant's Dispute Notice said that he paid \$10,000

---

<sup>1</sup> The Dispute Notice identified the respondent as Caspien Makan-Mahr. In the Dispute Response, the respondent used the spelling Caspian Makan-Mehr for his name, which I infer is the correct spelling. I have amended the style of cause accordingly.

for the car, but in submissions said he paid \$8,200. The applicant says the respondent fraudulently misrepresented the car's brakes as "new" and otherwise represented the car to be in better shape than it was. The applicant claims \$5,000, a partial refund of the purchase price, because he says the car needed over \$5,000 in work almost immediately.

2. The respondent says the applicant purchased the car "as is". He says he was not paid \$10,000 or \$8,200 for the car. He asks that the dispute be dismissed.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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*. 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.
5. 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 "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. 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 the 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.

6. 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.
7. 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 or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are (a) whether the respondent misrepresented the car when he sold it to the applicant and, if so, (b) what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. This is a civil claim where the applicant bears the burden of proving his claim, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The law in private vehicle sales places a high onus on a buyer to inspect a used vehicle and discover patent defects, which are those that can be discovered by conducting a reasonable inspection, which could include inspection by a qualified expert (see *Girodat v. Quackenbush*, 2018 BCCRT 361).
11. Having said that, Section 18(c) of the *Sale of Goods Act (SGA)* applies to private sales of used cars. The section implies a warranty that the car must be durable for a

reasonable period of time having regard to the use to which it would normally be put, and the surrounding circumstances (see *Singh v. Judge*, 2019 BCCRT 243)

12. For the reasons that follow I find the respondent has not established non-innocent misrepresentation based on the evidence before me. As well, I find that the SGA implied condition of durability has not been breached, given the age of the car and the surrounding circumstances.
13. In May 2018, a friend of the respondent, MN, advertised the car for sale, at his request. She provided a statement explaining that the applicant came to see the car 3 times. Each time, he checked the car in detail and took it for a drive in the area. MN says she discussed the engine light and the ABS light with the applicant.
14. The parties disagree about whether the applicant knew that the car was being sold “as is” and had mechanical issues. The applicant says the respondent told him:
  - a. The car was in “good condition”,
  - b. The car had new brakes.
  - c. The oil had been changed regularly.
  - d. The car’s tires were new.
15. The respondent says the applicant checked the car several occasions, and test drove it several times. He says he offered for the applicant to take the car to a mechanic to have it checked, but the applicant opted not to do so. The check engine light and the ABS brake lights were on and the respondent says he mentioned them to the applicant. His evidence is consistent with the statement from MN.
16. The applicant says he bought the car either for \$10,000 or \$8,200. The respondent says he was not paid \$10,000 or \$8,200 for the car.
17. The ICBC vehicle transfer/tax form records the sale of the car from the respondent to the applicant, on May 30, 2018, for \$2,200. The form is signed by both parties,

and records that the purchase price is below market value because the car has a “Mechanical Issue”.

18. I find that the respondent’s account of what happened is more consistent with the documentary evidence than the applicant’s account. The ICBC vehicle transfer/tax form was submitted by both parties. It was prepared around the time of the transaction, showing the car was sold below market value. Based on that form, I find that the applicant bought the car for \$2,200, below market value, because of declared mechanical issues. The applicant circled several different cash withdrawals on his bank account statement to provide what he says is evidence that he paid \$8,200 for the car. This is not sufficient evidence to establish the purchase price he said he paid. I do not accept that he paid either \$10,000 or \$8,200 for the car.
19. I find that the respondent and his friend MN both told the applicant about the ABS brake and engine lights. I find that the applicant was aware that the vehicle had mechanical issues, even though it was running at the time. I accept the respondent’s evidence that the car was being sold “as is” and at a discount that reflected the car’s reported condition.
20. On June 11, 2018, A Plus Automotive Ltd. inspected the car at the applicant’s request. A Plus recommended replacing or rebuilding the car’s transmission, and identified some inner edge wear on the tires, and that the rear tires were winter tires.
21. The applicant filed in evidence an invoice from A Plus Automotive for \$5,672.99 in work on the car, including brakes and transmission work.
22. The applicant says the brakes had been painted silver to “appear new” and that the brake sensor had been detached so that no brake error would show on the car’s dashboard. The applicant provided a photograph of the car’s undercarriage. The applicant did not provide any evidence from a mechanic to explain what the

photograph might show. The applicant did not provide a mechanic's opinion that the brake sensor had been detached.

23. While I accept that the applicant had work done on the car after he bought it, at considerable expense, the evidence does not establish that the applicant was misled about the car's condition. The applicant did not provide independent evidence on this point, only invoices for the work that was done after the sale. As well, the applicant filed the ICBC transfer/tax form in evidence but did not provide an explanation for why it listed mechanical issues, nor why the price was so much lower than what he claimed.
24. I find the applicant has not met the burden of proving his claim on a balance of probabilities.
25. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the respondent paid no tribunal fees, I make no order in this regard.

## **ORDER**

26. I dismiss the applicant's claims and the dispute.

---

Julie K. Gibson, Tribunal Member