



# Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-006358

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Silva v. Klingers*, 2019 BCCRT 281

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

Melissa Silva

**APPLICANT**

**A N D :**

Liza Klingers

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about a private car sale. The applicant, Melissa Silva, bought a used 2010 Kia Forte (car) from the respondent, Liza Klingers. The applicant says the respondent misrepresented the condition of the car, and she wants the respondent to pay her \$796.65 for the cost of repairing the car. The respondent says she did not misrepresent the condition of the car and that it was the applicant's

responsibility to have a mechanic inspect the car before buying it, which she did not do.

2. Both parties are 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 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.
4. 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 a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent 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.
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.

## **ISSUES**

7. The issue in this dispute is whether the respondent must pay the applicant \$796.65 for the cost of repairing the car.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
10. It is undisputed that in August 2018 the respondent posted an online advertisement to sell the car, which had 132,000 kilometers on the odometer. The advertisement states the car "has always been properly maintained and taken goodcare of." (quote reproduced as written).
11. On August 13, 2018 the applicant inspected the car. The respondent says she told the applicant about the problems with the car that she was aware of at the time, which included a cracked windshield and a damaged left tail light. The applicant test drove the car for approximately 20 minutes and the respondent's boyfriend M.S. accompanied the applicant on the test drive. The respondent submitted a statement from M.S. who said the test drive was very thorough and included neighborhood and highway driving, many stop signs, twisty back roads, and uphill and downhill

driving. M.S. said he did not notice anything wrong with the car during the test drive, and there is no evidence the applicant noticed anything wrong with the car during the test drive.

12. Over the course of the next week the parties agreed that the respondent would replace the damaged windshield, which she did. The parties agreed that the cost of replacing the tail light would be deducted from the car's purchase price. The respondent says she suggested to the applicant multiple times that she should have the car inspected before buying it, but the applicant declined to do so.
13. The applicant says the respondent told her the car had been "looked at by a mechanic" before she sold it, however the respondent says the last time she took the car to the mechanic was in April 2018, almost 5 months prior to the sale, which she says she told the applicant. The applicant says the respondent did not tell her the date of the car's most recent inspection until after the applicant bought the car, which is supported by a text messages in evidence. However, this does not mean the respondent did not also tell the applicant this information prior to selling her the car.
14. On August 20, 2018 the applicant bought the car from the respondent in Kelowna. The applicant did not disclose the purchase price in her evidence or submissions. The applicant says after she bought the car she drove to Vernon, and that every time she pressed the brakes she noticed that "something was not right when applying pressure." The following morning the applicant took the car to a mechanic who determined the brake pads were thin and the rotors were "too thin" and rusty. One of the receipts the applicant submitted dated August 22, 2018 says the car "will need front & rear pads & rotors soon." The applicant says the respondent misrepresented the condition of the car.
15. The respondent says the last time she took the car to a mechanic in April 2018 there were no issues with the rotors. The respondent says she was not aware of any problems with the car immediately prior to the sale aside from the damaged windshield and tail light, which she disclosed to the applicant.

16. Contracts of purchase and sale between private individuals are subject to section 18 (c) of the *Sale of Goods Act* which says there is an implied warranty that the car will be durable for a reasonable period of time when putting the car to normal use, and considering all the surrounding circumstances of the sale.
17. In *Sugiyama v. Pilsen*, 2006 BCPC 0265, the court said some of the relevant factors to consider when determining the extent of this implied warranty are the age of the car, the mileage, the nature of use by the prior owners, the price paid by the buyer, the use made of the car after purchase, the reason for any defective performance or breakdown, and the expectations of the parties as evidenced by any express warranties. A person who sells a used car does not guarantee the car's future performance, and anyone buying a used car knows that some problems will inevitably occur. Depending on the circumstances, an implied warranty for a used car's durability may be limited to the car being safe to drive on the road.
18. The car was approximately 8 years old at the time the applicant bought it, and it had 132,000 kilometers on the odometer. As noted, the applicant did not disclose the purchase price. The respondent says she made normal use of the car before selling it, and there is no evidence to suggest otherwise. The respondent says the applicant may have caused the problems with the brake pads and rotors after she bought the car but provided no evidence to support this claim. Although the evidence is unclear on this point, there is nothing to suggest the worn-down brake pads and rotors were caused by anything other than normal wear and tear. Neither the applicant nor M.S. noticed any problems with the car during an extensive test drive. Given that test drive, there is insufficient evidence that the car was not roadworthy when the applicant bought it. In the circumstances I find the respondent did not breach the implied warranty under section 18 (c) of the *Sale of Goods Act*.
19. Having found no breach of the implied warranty for durability in the *Sale of Goods Act*, the sale of the car is governed by the principle of "buyer beware." This means that the buyer must assess the condition of the vehicle before buying it. However, if a seller misrepresents the condition of the vehicle during negotiations, the buyer

may be entitled to compensation. A misrepresentation is a false statement that induces a reasonable person to enter into the contract. A seller does not have to tell the buyer about defects the buyer could discover by reasonably inspecting the vehicle. I am not satisfied the applicant misrepresented the condition of the car. The respondent says she was unaware of issues with the brake pads or rotors before she sold the car, and this is supported by the fact that neither the applicant nor M.S. noticed any issues with the car during the test drive. The respondent's uncontested evidence is that she and M.S. urged the applicant to have the car inspected before buying it, which she declined to do. The evidence before me indicates the applicant could have discovered the issues with the brake pads and rotors through a basic mechanical inspection. I find the applicant has failed to establish that the respondent misrepresented the condition of the car, and I dismiss her claims.

20. Under section 49 of the Act, and tribunal rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees.

## **ORDER**

21. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member