



Civil Resolution Tribunal

Date Issued: March 11, 2019

File: SC-2018-005105

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Limkangwanmongkol v. Yousofi*, 2019 BCCRT 294

B E T W E E N :

Rujira Limkangwanmongkol

APPLICANT

A N D :

Abdul Mateen Yousofi

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the private sale of a used car.
2. In May 2018, the applicant Rujira Limkangwanmongkol bought a 2008 Toyota Yaris (car) from the respondent Abdul Mateen Yousofi. The applicant says she later learned that the car had a significant accident history, contrary to the respondent's

Facebook marketplace advertisement that said it had been in “no accidents”. The applicant says the respondent also denied the car had ever had vehicle damage over \$2,000, on the ICBC Vehicle Transfer/Tax form.

3. The applicant says the respondent misrepresented the car’s accident history with the result that she overpaid him. The applicant claims \$800 in damages.
4. The respondent says he was unaware of the car’s accident history. He says that, when he bought it, the former owner told him the car was accident free. He denies knowingly making any misrepresentations about the car. He suggests that the applicant should have checked the ICBC claims report, before buying the car. He asks that the dispute be dismissed.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

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 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.

ISSUE

10. The issue in this dispute is whether the respondent misrepresented the car's accident history, and if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. 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.
12. The applicant says the respondent advertised the car for sale in the Facebook marketplace. Neither party provided a copy of the Facebook advertisement. The applicant says the car was advertised as having "no accidents". The respondent did not contest this point, and I find that he represented the car as having no accidents.

13. The ICBC Transfer/Tax form (Form) shows that the respondent bought the car from the applicant on May 7, 2018. The selling price was \$4,500, which the parties identified as market value.
14. The Form shows that the respondent represented that the vehicle did not have cumulative vehicle damage over \$2,000.
15. On May 13, 2018, the applicant obtained an ICBC Vehicle Claims History report showing that the car had been in several collisions, with repair costs totaling over \$5,000.
16. Here, the applicant argues that the respondent fraudulently misrepresented the car as being accident free.
17. 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) addressing durability, that are not relevant to this dispute. 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.
18. 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.

19. Here, I find that although the applicant has established that the respondent made a false representation about the car, she has not established his knowledge of the falsehood of that representation. She did not provide independent evidence that the respondent owned the car at the time of the most recent accident. The applicant suggested that the respondent had owned the car for a few months, which could be from March 2018-May 2018 only, and not at the time of the most recent accident.
20. As well, the applicant could have obtained the car's accident history before buying it but chose not to. The applicant said ICBC's computers were down on a specific day when she put some thought to obtaining the report. She could have waited to obtain it, if it was important to her decision to purchase the car.
21. Therefore, I find that the applicant has not met the burden upon her to establish fraudulent representation.
22. 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 applicant was unsuccessful, I find she is not entitled to tribunal fees.

ORDER

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

Julie K. Gibson, Tribunal Member