



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-007239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singh v. Janzen*, 2019 BCCRT 335

B E T W E E N :

Jismanjeet Singh

APPLICANT

A N D :

Adam Janzen

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about the purchase of a 2004 Ford F150 (truck). The applicant, Jismanjeet Singh, alleges that the respondent, Adam Janzen, misrepresented the condition of the truck, which broke down shortly after the applicant purchased it. The applicant requests an order that the respondent buy the truck back and pay

Singh \$4,990.24, the cost of the truck and other expenses the applicant has incurred. The respondent denies misrepresenting the condition of the truck.

2. Each of the parties is 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. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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 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

7. The issues in this dispute are:
 - a. Did the respondent misrepresent the condition of the truck when selling it to the applicant?
 - b. Did the respondent breach the implied warranty of durability?
 - c. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision. I have also read all of the cases that the parties referred me to, even though I do not mention all of them.
9. The respondent advertised the truck online. The advertisement says that the truck was "recently serviced and has had all major repair work done". The advertisement also said that there were 2 known issues with the truck: an engine rattle on cold starts and a faulty sensor that made an engine light come on.
10. The parties met on September 14, 2018. The applicant took the truck for a test drive with the respondent. The applicant says that the respondent told him that the truck

did not need any repairs in the foreseeable future. The respondent told the applicant that the truck had had major repairs in February 2018. The respondent gave the applicant 2 years of repair and maintenance records, including the invoice for the February 2018 repairs. The respondent says that he told the applicant that he was not sure if previous repairs had fully fixed the truck.

11. During the test drive, the parties called the respondent's mechanic and spoke to him on speakerphone. The respondent's mechanic told the applicant that the truck was in good running condition and that it required no major repairs.
12. The applicant purchased the truck from the respondent on September 14, 2018. The applicant paid \$4,000 plus tax for the truck, for a total of \$4,480. The odometer reading listed on the Transfer/Tax Form was 296,000 kilometres.
13. The applicant took the truck for an oil change on September 22, 2018. After the oil change, the truck would not start. The applicant immediately texted the respondent and asked him to buy the truck back. At this point, the odometer reading was 297,544 kilometres.
14. The applicant had the truck towed to the respondent's mechanic. On September 24, 2018, the applicant spoke with the respondent's mechanic. The applicant says that the respondent's mechanic told him that the truck needed a major oil pump repair. The applicant says that the respondent's mechanic also told the applicant that he had told the respondent that he needed to immediately repair the oil pump, but the respondent refused to get it done.

Did the respondent misrepresent the condition of the truck?

15. If a seller misrepresents the condition of a vehicle, the buyer may be entitled to compensation for losses arising from that misrepresentation. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract.

16. Fraudulent misrepresentation occurs when a seller makes a false representation of fact and the seller knew it was false or recklessly made it without knowing it was true or false. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the purchaser to buy the item.
17. The applicant says that the respondent misrepresented the condition of the truck's engine by failing to disclose that the oil pump needed repair. Based on his submissions, I find that he claims both fraudulent and negligent misrepresentations, although he does not explicitly refer to negligence.
18. The respondent denies that he misrepresented anything about the truck. He says that his advertisement listed the truck's known mechanical issues. He says that he was candid with the applicant that the truck had broken down and that he was not convinced that the engine repairs had solved all the truck's problems. The respondent says that he told the applicant that he was not aware of any "current problems" with the truck.
19. In particular, the respondent denies being aware that the oil pump needed repair. He says that when the respondent's mechanic repaired the truck's engine in February 2018, the respondent asked if the oil pump needed to be replaced. He says that his mechanic told him that the oil pump did not need to be replaced. The respondent says that there was nothing about the oil pump to disclose because he believed that it was in good repair.
20. The applicant's claim rests on his assertion that the respondent's mechanic told the respondent that the oil pump needed repair in February 2018. The applicant says that the respondent's mechanic admitted this to him on September 24, 2018. As part of this submission, the applicant alleges that the respondent and his mechanic both lied to cover up that the oil pump needed repair when they spoke to the applicant on September 22, 2018, before the applicant bought the truck.

21. I find that the applicant has not proven that the respondent's mechanic recommended to the respondent that he repair the oil pump in February 2018. None of the respondent's mechanic's invoices mention the oil pump. I find that if the respondent's mechanic had specifically recommended that the oil pump needed to be repaired and the respondent refused to follow his advice, the respondent's mechanic would likely have made a note to protect itself against future allegations. There is no direct evidence from the respondent's mechanic to support this claim.
22. I also find that the applicant's allegation that the respondent tried to hide problems with the truck is inconsistent with the rest of the respondent's behaviour during the negotiation and sale of the truck. The respondent provided the applicant with 2 years of mechanic receipts. The respondent allowed the applicant a 15 kilometre test drive. I find that if the respondent was trying to defraud a purchaser, he would not have disclosed the prior repairs or allowed a lengthy test drive, especially if he believed that the truck could break down at any moment. In addition, I find that the respondent would not telephone his mechanic if the mechanic had recommended a repair.
23. To account for this evidence, the applicant suggests that the respondent and the respondent's mechanic conspired to lie about the need for an oil pump repair. I reject this suggestion. I find that if the respondent's mechanic was part of a conspiracy to lie to the applicant, then he would not have told the applicant that the respondent knew about the oil pump when they spoke on September 24, 2018. By doing so, the respondent's mechanic would have effectively admitted to the conspiracy. Furthermore, if the respondent and his mechanic were trying to sell the truck while hiding the fact that the oil pump needed to be "immediately" replaced, then the respondent would not have waited 6 months after the repair to sell the truck because the truck could have broken down at any time.
24. Therefore, I find that the evidence is more consistent with the respondent's explanation that his mechanic had told him that replacing the oil pump was not necessary. I find that the respondent did not know that the oil pump needed repair

when he sold the vehicle. Therefore, I find that the respondent did not misrepresent the condition of the truck.

Did the respondent breach the implied warranty of durability?

25. The applicant relies on *Sugiyama v. Pilsen*, 2006 BCPC 265. In *Sugiyama*, the Court considered the implied warranties in section 18 of the *Sale of Goods Act*. In the context of private used vehicle sales, section 18(c) of the *Sale of Goods Act* implies a condition that the vehicle 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.”
26. There are a number of factors to consider when determining whether a vehicle is durable for a reasonable period of time, including the age, mileage, price, the use of the vehicle, and the reason for the breakdown.
27. The facts in *Sugiyama* are somewhat similar to the facts of this dispute. In *Pilsen*, the claimant bought an 8 year old car with over 140,000 kilometers on the odometer. After driving it for only 616 kilometers, the car broke down. The Court determined that the car was roadworthy and could be safely driven when it was purchased. There were no apparent defects in the car. Therefore, even though the car broke down after very little driving, the Court found that it was durable for a reasonable time.
28. I find that the same reasoning applies to this dispute. The truck had very high mileage and no apparent significant issues when the applicant purchased it. Like in *Sugiyama*, the truck broke down after relatively little driving, but it was roadworthy and could be safely driven when the applicant purchased it. In these circumstances, I find that the respondent did not breach the implied warranty of durability.
29. The applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant’s claims.

30. 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. I dismiss the applicant's claim for reimbursement of his tribunal fees. Neither party claimed any dispute-related expenses.

ORDER

31. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member