



Civil Resolution Tribunal

Date Issued: March 21, 2019

File: SC-2018-007419

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cerullo v. Michaud*, 2019 BCCRT 355

B E T W E E N :

Gemma Cerullo

APPLICANT

A N D :

Marc Michaud

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a used vehicle that the applicant, Gemma Cerullo, purchased from the respondent, Marc Michaud. The applicant says the respondent misrepresented the status of the vehicle and seeks a refund of the \$2,200 she paid for it. The respondent disagrees with the applicant's position.
2. The 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* (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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to a refund of \$2,200 from the respondent.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.

9. The respondent advertised a 2005 Subaru Outback for sale on a social media platform. The advertised sale price was \$2,800. The applicant responded to the advertisement and met with the respondent to view the vehicle. She says that she was only able to test the vehicle in a parking lot because it was uninsured.
10. The parties exchanged text messages and came to an agreement that the applicant would purchase the vehicle for \$2,200. The applicant made an e-transfer of the funds to the respondent, and later met with him to receive the keys and vehicle.
11. According to the applicant, when she attempted to insure the vehicle, she discovered that she did not have the proper paperwork to get a temporary operating permit. Later, she did manage to get a 4-day temporary operating permit without the completed transfer of ownership documentation.
12. The next day, the applicant had the vehicle inspected and learned that there were problems that needed to be addressed. She says that the mechanic advised her that all repairs need to be performed before an out-of-province vehicle can be insured in British Columbia. The applicant's friend also drove the vehicle, and identified problems with the engine, suspension, and other items. As she had not signed the ownership transfer papers, the applicant decided that she wanted to return the vehicle to the respondent and get her money back. The parties were unable to come to an agreement in this regard.
13. The applicant submits that the respondent misrepresented the state of the vehicle and did not provide her with accurate information about the process for inspecting and insuring an out-of-province vehicle. The applicant's position is, as she has not signed an official transfer of ownership, the respondent remains responsible for the vehicle. The applicant seeks an order that the respondent retrieve his vehicle, refund her money, and pay an unspecified amount she has spent on storage.
14. The respondent says he did not misrepresent the state of the vehicle, and that the applicant did not do her due diligence. He says that he disclosed the mechanical issues that he was aware of, as well as the fact that an out-of-province inspection was required. The respondent says the vehicle was available to be inspected, but the applicant did not do so. According to the respondent, he did not coerce or attempt to trick the applicant. He says that when he became aware that he had not completed the paperwork required to transfer ownership he did so and mailed the document to the applicant.
15. I am satisfied that the basic elements of a contract (offer, acceptance, and consideration) are present here. The circumstances are consistent with a "agreement to sell" as set out in section 6 of the *Sale of Goods Act* (SGA). The fact

that the applicant has chosen not to sign the ownership transfer documentation does not alter my conclusion.

16. Contracts of purchase and sale between private individuals are subject to section 18(c) of the SGA. This section says that 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”.
17. The applicant has not asserted that the vehicle is not functional, but rather that it requires more repairs than she anticipated. I note that the bill of sale specifically stated that the car was sold “as is”, but that this document is not signed by the applicant and it does not appear that she agreed to this term.
18. The evidence before me does not establish that the vehicle was not durable as contemplated by the SGA. Although only driven in a parking lot, the applicant was able to test drive the vehicle. She did not identify any issues with the vehicle at that time. I find that there is insufficient evidence that the car was not roadworthy at that time. I find that the applicant has not proven a breach of the implied warranty in section 18(c) of the SGA.
19. Vehicle sales are made on a “buyer beware” basis, meaning that the buyer must assess the condition of a vehicle before buying it. However, the concept of buyer beware is set aside where a buyer is induced to buy a vehicle based on a seller’s fraud (see, for example, *Nixon v. MacIver*, 2016 BCCA 8).
20. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the court stated that, because fraud is a very serious allegation, it is necessary to have clear and convincing evidence to prove the elements of fraud. I do not find that the available evidence establishes the respondent knowingly made a false representation that caused the applicant to act and suffer a loss.
21. The respondent’s advertisement clearly states that the vehicle was from Alberta and would require an out of province inspection. The advertisement also identified some work that had been done on the vehicle, and other work that remained outstanding. I find that the applicant has not proven that the respondent knew about the other problems identified in the inspection, and that she has failed to establish that the respondent misrepresented the condition of the vehicle.
22. The applicant has not proven that there was a breach of the implied warranty in the SGA or that the respondent engaged in misrepresentation. As the applicant learned of the problems with the vehicle in a post-purchase inspection, I am satisfied that she could have discovered these problems through a mechanical inspection prior to

the sale. Similarly, the applicant could have made inquiries to determine the process required to register and insure an out-of-province vehicle in British Columbia. By choosing not to inspect the vehicle or make these inquiries prior to the purchase, the applicant assumed the risk for any defects in the vehicle or difficulties with registering and insuring it. The respondent does not bear responsibility in this regard. Accordingly, I dismiss the applicant's claims.

23. 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. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member