



Civil Resolution Tribunal

Date Issued: April 4, 2019

File: SC-2018-007475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vandament v. Zamalynski*, 2019 BCCRT 423

B E T W E E N :

Terry Vandament

APPLICANT

A N D :

John Zamalynski

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about the private sale of a used pickup truck.
2. The applicant, Terry Vandament, bought a 1991 Ford Explorer (truck) from the respondent, John Zamalynski. The applicant says the truck's starter failed the day

after he bought it, and the truck had more mechanical problems 2 days after that. The applicant says the respondent later tried to repair the truck, but damaged it further. The applicant says the respondent then offered full reimbursement for the purchase price and parts the applicant purchased, but has since refused to pay.

3. The applicant says the truck remains on the respondent's property, and the applicant has cancelled the insurance and delivered a signed transfer form to the respondent to relinquish ownership. The applicant seeks \$800 for the truck's purchase price, \$275 for starter repairs, \$145 for motor oil and parts, and \$18 for proof of registration.
4. The respondent says the truck had no warranty, and was sold "as is". The respondent says the applicant knew it was 26 years old when he bought it, and the applicant drove it for a long time before he complained about its condition. The respondent denies damaging the truck and says it developed an oil gasket leak while the applicant drove it, so the respondent is not responsible. The respondent also says the applicant refused his offer to help sell the truck for parts.
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* (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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. 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. 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. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to any refund for the truck or reimbursement of repair costs.

EVIDENCE AND ANALYSIS

10. 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.
11. The parties agree the applicant bought the truck from the respondent on May 16, 2017, for \$800. The parties knew each other before the sale, and the respondent had worked on the applicant's vehicles in the past.

12. The applicant says the truck's starter failed the next day, and the truck had further problems 2 days later, so he notified the respondent. The applicant says the respondent promised to fix the truck, but instead damaged the engine block beyond repair.
13. Based on the evidence before me, I find the applicant has not met the burden of proving his claims.
14. In general, used vehicle purchases are governed by the principle of "buyer beware". The exception to this is that under section 18(c) of the *Sale of Goods Act*, (SGA) there is an implied condition that goods 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..."
15. In this case, the applicant agrees he bought the truck "as is". This is confirmed by the evidence of the respondent and witness HH. For that reason, I find the implied warranty in in section 18(c) of the SGA does not apply. Thus, the applicant is not entitled to any refund of the purchase price, parts, or repairs on that basis. Also, I note that while the applicant says he only drove the truck 62 kilometers while he owned it, he provided no evidence to support that assertion, such as photos of the odometer at the time he delivered the truck to the respondent's property.
16. The applicant says that around August 2017, the respondent unsuccessfully tried to repair the truck, and in doing so irreparably damaged it. The applicant says the respondent told him on the telephone that he broke the receiver end on the block for the oil filter, and would take the truck to a friend's shop to try to fix it. The applicant says the respondent later told him the truck was unrepairable, and the respondent offered to refund the purchase price and the repair costs. The applicant says that about a week later, the respondent offered to swap the truck's engine with an engine from a Ford van, but the applicant refused. The applicant says the respondent has since refused to refund any money.

17. The respondent disputes the applicant's evidence. He says the applicant drove the truck for a couple of months and then called him and asked for a tune-up. The respondent says he did the tune-up but the truck was still not running well, so he had it towed to a friend's shop where there was a computer to run diagnostic tests. He says his friend ran the tests, and said there was a "running oil leak". The respondent says the engine was seizing, and nothing could be done. The respondent says the truck ran fine when the applicant bought it, so the applicant must have run the motor without oil.
18. The respondent says when he told the applicant the truck was unfixable, the applicant asked for his money back, and the respondent refused. The respondent says he offered to help the applicant recoup his loss by assisting him to sell the truck for parts, but the applicant refused and instead abandoned the truck on the respondent's property. The respondent says that after about a year, the applicant refused to move the truck so he had it towed as a derelict vehicle.
19. The applicant says he is entitled to compensation because the respondent negligently damaged the truck while working on it, and then breached his verbal promise to refund the purchase price and repair costs.
20. I find the applicant has not proven these claims. First, I find there is no evidence to support the applicant's assertion that the respondent damaged the truck. While the applicant says the respondent told him he broke the oil filter block, the respondent denies doing or saying that. There is no evidence from a mechanic or other expert to confirm the truck had a broken oil filter block, or that the respondent broke it. The applicant admits he never inspected the truck after the respondent worked on it.
21. Second, I find there is no evidence to support the applicant's assertion that the respondent promised to refund his money for the truck and repairs. The respondent denies this, and there is no other evidence in the form of a written agreement or witness statement to support this assertion. Again, the applicant bears the burden of proving his claims, and I find he has not proven that the respondent promised to refund his money.

22. Also, based on the applicant's admission that he bought the truck "as is", I find he is not entitled to any reimbursement for starter repairs. Based on the applicant's evidence, the starter broke and was repaired by another party months before the respondent worked on the truck and allegedly damaged it. The applicant did not provide any evidence that the respondent promised to pay for these repairs, which For this reason, I dismiss the applicant's claim for \$275 for starter repairs and starter parts.
23. For the same reasons, I also dismiss the applicant's claim for \$145 for engine oil and parts. The applicant also provided no receipt for the oil, and the receipt for \$117 from Bumper to Bumper does not indicate what was purchased.
24. Finally, I find the applicant is not entitled to any refund for the truck. The evidence shows that he abandoned it at the respondent's property, without any attempt to re-sell it for the value of its parts. Because of this, because the truck was purchased "as is", and because there is no evidence confirming that the respondent promised a refund, I find the applicant is not entitled to any reimbursement.
25. I also dismiss the applicant's claim for tribunal fees and the \$18 cost of obtaining a proof of registration document from the Insurance Corporation of British Columbia. I find that cost was a dispute-related expense. 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 order no reimbursement. The respondent did not claim any tribunal fees or dispute-related expenses, so I order none.

ORDER

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

Kate Campbell, Tribunal Member