



Civil Resolution Tribunal

Date Issued: April 16, 2019

File: SC-2018-007087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamm v. Otte*, 2019 BCCRT 467

BETWEEN:

George Hamm

APPLICANT

AND:

Dieter Otte

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, George Hamm, purchased a used truck from the respondent, Dieter Otte. The truck broke down the day after the applicant purchased it. The applicant claims \$1,431.56, which was the cost to repair the truck, plus \$400 in lost wages for him and his wife.

2. The parties are each 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, she 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.
9. The online advertisement for the truck said that it was a 2001 Ford F350 with 237,000 kilometers. The advertisement said that it had a "rebuilt transmission". The truck was advertised for \$4,150 or best offer.
10. In early September, 2018, the applicant visited the respondent to view the truck. The exact date is not in evidence. It is undisputed that the respondent told him that the transmission had been recently professionally rebuilt. The respondent says that he also told the applicant about a noise coming from under the vehicle and offered a significant price reduction. The respondent says that the applicant took the truck on a short test drive to hear the noise.

11. After the test drive, the applicant purchased the truck. The price is not in evidence. The applicant drove the truck home, which was about 200 kilometers away, apparently without incident. However, the next day the truck broke down.
12. The applicant provided an invoice from the mechanic who fixed the truck, dated September 12, 2018. The mechanic noted that there were mistakes with the transmission installation. The main cost of the repair was a new flex plate. The mechanic stated that the broken flex plate was most likely due to stress during previous installation.

Did the respondent misrepresent the condition of the truck?

13. 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.
14. 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.
15. The applicant believes that the respondent lied about the transmission being professionally rebuilt and installed. He believes that the respondent did the repairs himself. The respondent says that the repairs were done by a “mobile garage” in 2017.
16. I accept the respondent’s evidence that a professional mechanic installed the transmission. The applicant’s assertion to the contrary is not supported by any objective evidence and is simply speculation. In particular, the applicant’s mechanic did not provide a report or statement to support the applicant’s belief that the respondent repaired the transmission himself.

17. In addition, I accept the respondent's evidence that the transmission was rebuilt in 2017. There is no evidence to the contrary. In the context of an 18-year old vehicle, I find that it is not a misrepresentation to say that the transmission was "recently" rebuilt. The advertisement says that the transmission was rebuilt, not new, and there is no evidence that the statement was not true.
18. I find that the applicant has failed to prove that the respondent misrepresented the state of the vehicle.

Did the respondent breach the implied warranty of durability?

19. 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".
20. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the Court considered this implied warranty. In *Pilsen*, the claimant bought an 8-year old car with over 140,000 kilometers. After driving it for only 616 kilometers, the car broke down.
21. The Court said that 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. The Court concluded that the car was roadworthy and could be safely driven when it was purchased. Therefore, even though the car broke down after very little driving, the Court found that it was durable for a reasonable time.
22. I find that the same reasoning applies to this dispute. At the time of purchase, the truck was almost 20 years old and had about 267,000 kilometers. Vehicles that are that old are at risk of breaking down and requiring repairs. The truck was roadworthy and could be safely driven when the respondent sold it.
23. In addition, the applicant does not deny that the respondent told him that there was a noise coming from the truck. The applicant chose not to investigate by having the

truck inspected prior to purchasing it. Therefore, the applicant accepted the risk that the noise indicated that there was a problem that would require repair.

24. I find that the respondent did not breach the implied warranty in the *Sale of Goods Act*. I dismiss the applicant's claim for the repair costs.
25. The applicant also claims his and his wife's lost wages for the time spent dealing with this dispute. Generally, claims for time spent on a dispute are not allowed, which is consistent with the Act's general requirement for self-representation and the tribunal's practice not to reimburse legal fees except in extraordinary circumstances. This is not an extraordinary case. In addition, the applicant's wife is not a party and the applicant cannot bring a claim on her behalf. Therefore, even if the applicant had been successful, I would have dismissed his claim for reimbursement for his and his wife's wages.
26. 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. The applicant was not successful so I dismiss his claim for tribunal fees and dispute-related expenses.

ORDER

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

Eric Regehr, Tribunal Member