



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-008161

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sosa v. Reg Midgley Motors Ltd.*, 2019 BCCRT 487

B E T W E E N :

Fabricio Sosa Y Sosa

APPLICANT

A N D :

Reg Midgley Motors Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Fabricio Sosa Y Sosa, bought a used car from the respondent, Reg Midgley Motors Ltd. The applicant says the respondent included an extended warranty in the purchase price without telling him and overcharged him for the documentation fee. He also says the car has had multiple mechanical issues ever since he bought it. The applicant wants the respondent to pay him \$600 for the

estimated cost of repairing the steering wheel, refund him \$542.52 for the cost of repairing the transmission, refund him \$500 for the documentation fee, and refund him \$2,100 for the extended warranty.

2. The respondent says the parties negotiated the terms of the sale and they clearly presented all costs to the applicant. They say they can either refund the applicant's extended warranty or cover the cost of repairs, but not both.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's

process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.
7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Is the respondent required to refund the applicant \$2,100 for the extended warranty?
 - b. Is the respondent required to reimburse the applicant \$542.52 for the cost of repairing the transmission?
 - c. Is the respondent required to pay the applicant \$600 towards the cost of replacing the power steering rack?
 - d. Is the respondent required to refund the applicant \$500 for the documentation fee?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.

10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. On September 11, 2018 the applicant traded in his 2016 Toyota Corolla to the respondent for a 2013 Hyundai Tucson (car). The Vehicle Purchase Agreement (agreement) in evidence clearly shows a documentation fee of \$995 and an extended warranty for \$2,100 included in the purchase price. Both parties signed this agreement.
12. The applicant says ever since he bought the car the steering wheel has made a noise when turning it, and within a few days of buying the car there was a problem with the transmission.
13. On September 18, 2018 the applicant went to the respondent's business to cancel the extended warranty for the car, which had a 10-day cancellation grace period, but he says the respondent refused to cancel it. The applicant says he also informed the respondent that day about their overcharge of the documentation fee and the mechanical problems with the car but was ignored.
14. The applicant says on September 18, 2018 he phoned Global Warranty, the company providing the extended warranty, and a representative confirmed that he had the right to cancel it, but that it had to be cancelled through the dealer who sold him the car. The applicant submitted an email he received from Global Warranty on October 15, 2018 confirming that he spoke to them on September 18, 2018 about cancelling his warranty, which at that point was within the 10-day cancellation grace period.
15. On October 3, 2018 the applicant paid a Hyundai mechanic \$542.52 to repair the car's transmission. The applicant says the same mechanic told him that to repair the steering wheel noise the power steering rack would need to be replaced at an estimated cost of \$1,611.24. The applicant has not yet replaced this part.

Is the respondent required to refund the applicant \$2,100 for the extended warranty?

16. The applicant says the respondent included the extended warranty in the agreement without asking him. However, the extended warranty is clearly indicated on the agreement and the applicant does not deny signing it. I find it was the applicant's responsibility to review the agreement before signing it, and if he did not want the extended warranty included in the agreement he could have refused to sign the agreement, which he did not do.
17. The uncontested evidence is that the applicant's extended warranty had a 10-day grace period for cancellation, and that the applicant asked the respondent to cancel the warranty within that 10-day grace period, but the respondent refused to do so. The warranty agreement in evidence clearly states that if the warranty is cancelled within the 10-day grace period the customer receives a full refund less a \$100 administration fee.
18. The respondent does not explain why they refused to cancel the applicant's warranty. They say some of the malfunctioning parts of the applicant's car are covered under the extended warranty, so the respondent can either refund the extended warranty or pay for the applicant's mechanical work, but not both.
19. Given the respondent's position and the evidence before me, I find the respondent must refund the applicant the full amount of the extended warranty less the \$100 administration fee for a total of \$2,000. The applicant is entitled to pre-judgment interest of \$20.42 on this amount under the *Court Order Interest Act (COIA)*, calculated from September 18, 2018, which is the day the applicant tried to cancel the warranty.

Is the respondent required to reimburse the applicant \$542.52 for the cost of repairing the transmission?

20. The applicant says within a few days of buying the car the transmission started to shift roughly when shifting from first to second gear, and that “it felt like the vehicle did not want to move forward.” He says sometimes when shifting from first to second gear he had to pull over to let other cars pass him and that the car was unsafe to drive. He says he took the car to the respondent’s recommended mechanic, but they told him they did not repair transmissions.
21. The respondent in this case is in the business of selling cars, and therefore the sale was not subject to the principle of “buyer beware.” Rather, under section 18 of the *Sale of Goods Act* (SGA) there were 2 implied warranties on the sale. The first was that the car was in the condition described and was of saleable quality, and the second was that the car would be durable for a reasonable period of time when put to normal use and considering all the surrounding circumstances of the sale. The fact that the applicant bought an extended warranty with the car does not automatically relieve the respondent of these responsibilities under section 18 of the SGA.
22. The respondent says they put all their vehicles through a safety inspection and they are confident the applicant’s car was safe at the time they sold it, although they have not submitted any evidence to show that the applicant’s car was put through a safety inspection.
23. The applicant’s evidence is that the problem with the transmission did not arise until a few days after buying the car, but that once the problem arose it prevented him from driving safely on the road. The respondent does not specifically dispute this. At the time of the sale the car was 5 years old and had 106,371 kilometers on the odometer. Considering the nature of the problem with the transmission, the immediacy of the safety risk it posed, how quickly it arose after the sale, and the age and mileage of the car, I find that in the circumstances of the sale the car was

not durable for a reasonable period of time. Therefore, I find the respondent breached the implied warranty under section 18 of the SGA.

24. The respondent says any repair work under the extended warranty should have been completed at a mechanic of their choosing, not the applicant's. However, the applicant's uncontested evidence is that they initially took the car to the mechanic the respondent recommended but they were unable to repair the transmission.
25. The applicant submitted an invoice showing he paid a mechanic \$542.52 on October 3, 2018 to repair the transmission. I find the respondent must reimburse the applicant for these repairs. However, \$28 of the labour on this invoice is related to the issue with the car's steering wheel. Therefore, I find the respondent must pay the applicant the amount of the invoice less \$28 plus tax, for a total of \$511.16. The applicant is entitled to pre-judgment interest of \$5.21 on this amount under the COIA, calculated from September 18, 2018, which is the day the applicant tried to cancel the warranty.

Is the respondent required to pay the applicant \$600 towards the cost of replacing the power steering rack?

26. The applicant says the problem with the steering wheel existed when he bought the car and that when he took it to the respondent's recommended mechanic they could not diagnose the problem. The applicant's October 3, 2018 invoice for the repair of the transmission states that the mechanic could not confirm the applicant's complaint about a clicking noise when turning the wheel. Given this evidence, I am not satisfied that the applicant has established that such an issue existed. If it did exist, it was evidently not prevalent enough to be detected by a mechanic. Therefore, in all the circumstances, I find the applicant has not established that the respondent breached the implied warranties under section 18 of the SGA.
27. I also note the applicant is claiming only \$600 for this amount despite the fact he says it will cost \$1,611.24 to replace the power steering rack, though he has not

explained why he is claiming a lower amount. I find the applicant has not established this claim and I dismiss it.

Is the respondent required to refund the applicant \$500 for the documentation fee?

28. The applicant says the respondent advertised its documentation fee on its website as being \$495 but charged him \$995. However, the applicant submitted only an advertisement for a different car showing that fee, not the advertisement for the car he bought. The applicant did not submit any screenshots of the respondent's website. I find the applicant has not established that the respondent misrepresented the documentation fee for the sale of the applicant's car.
29. The applicant also says the respondent misled him by telling him the bank's fees for the credit agreement were included in the \$995 documentation fee, but that in fact they were not. The applicant submitted his credit agreement with the bank which shows the bank charged him \$625.77 for registration and administration fees. However, I find that "bank fees" is a vague term which is not necessarily limited to administration or registration fees.
30. The respondent says they presented all costs and fees to the applicant clearly and transparently, the parties negotiated a deal, and the applicant was aware of all costs, fees and monthly payments at the time he signed the agreement.
31. Like the extended warranty, the documentation fee is clearly indicated on the agreement and the applicant does not deny signing it. I find it was the applicant's responsibility to review the agreement before signing it, and if he was dissatisfied with the documentation fee he could have refused to sign the agreement, which he did not do. I find the applicant has not established that the respondent misrepresented the documentation fee or misled him about the fee, and I dismiss this claim.

32. Under section 49 of the Act, and tribunal rules, as the applicant was generally successful I find he is entitled to reimbursement of \$175 in tribunal fees. He has not claimed any dispute-related expenses.

ORDERS

33. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,711.79, broken down as follows:

- a. \$2,511.16 as refund of the warranty and reimbursement for the transmission repairs,
- b. \$25.63 in pre-judgment interest under the COIA, and
- c. \$175 in tribunal fees.

34. The applicant is entitled to post-judgment interest, as applicable.

35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member