



Civil Resolution Tribunal

Date Issued: April 25, 2019

File: SC-2018-009174

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Winchester v. Jones*, 2019 BCCRT 498

BETWEEN:

Carl Clinton Winchester

APPLICANT

AND:

Sid Jones

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a private used car sale, specifically a 2009 Mini (car). The applicant, Carl Clinton Winchester, says the respondent, Sid Jones, said the car was in excellent working order but instead it was burning oil. The applicant claims a

total of \$3,126.13, for various expenses related to both the car's purchase and the applicant's re-sale of it back to the respondent.

2. The respondent says he had told the applicant about the car burning oil, and the car's lower than market price reflected this fact. The respondent says the terms of his voluntary buy-back of the vehicle were fair, as discussed below.
3. The parties are each self-represented. For the reasons that follow, I dismiss the applicant's claims.

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* (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. 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.
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 9.3(2) (formerly numbered 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

8. The issue is to what extent, if any, the respondent owes the applicant \$3,126.13 for expenses related to the parties' used car sale.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The applicant bought the car for \$7,350 from the respondent, who had it listed it for \$7,930. The respondent says, and I accept based on the respondent's AutoTrader.ca evidence, that this was below the market value of \$9,214 to \$10,782. The reduced sale price was to reflect the burning oil problem and an A/C problem.
11. The applicant became unhappy with the car due to its burning oil, and then asked the respondent to buy it back, which the respondent did. This dispute is about the extent of the oil problem, and the applicant's expenses dealing with the car.
12. In this dispute, the applicant claims a total of \$3,126.73, for the following:
 - a. \$742.22 for lost wages during weekend the applicant spent travelling to buy the car,
 - b. \$278.33 in lost wages for 9 hours while the applicant returned the car to the respondent,

- c. \$957.86, as representative of the applicant's return airfare after he returned the car, given he used airmiles for the flight that cannot be refunded,
 - d. \$787, the taxes the respondent "withheld" when he bought back the car, which the respondent has said he would provide to the applicant when he receives them back himself,
 - e. \$250.73, in expenses for food (\$133.07) plus gas and oil (\$117.66), (presumably during the applicant's 250 or 320-kilometer drive home after he bought the car, and
 - f. \$109.99, for 1 month of car insurance.
13. The respondent's Craigslist ad for the car listed it in "excellent" condition. The applicant notes the car appeared to be well-kept and in otherwise pristine condition.
14. The applicant says he took the respondent's "word" the car was in excellent condition and bought the car. The applicant then drove the car home about 300 kilometers, and found it needed oil along the way home.
15. To the extent the applicant alleges the respondent misrepresented the car, I reject that submission. I say this because the applicant acknowledges he asked the respondent about whether the car burned oil and that the respondent stated that it needed to be topped up once or twice a month. The applicant has not proved that that was not the respondent's understanding or experience with the car. The fact that the car burned oil as described by the respondent does not mean it is not in excellent condition, and as discussed further below, I find the respondent reasonably disclosed the oil burning issue.
16. The applicant chose not to have the car professionally inspected. The respondent says the applicant said he would have the car inspected on his return home, which I find is consistent with the fact that the applicant flew to get the car and planned to drive back home. There is nothing wrong in the respondent telling the applicant that he did not think the car would show any problems other than the oil burning and the

A/C, the 2 issues known to the respondent. I find the respondent did not refuse an inspection or misrepresent any issues. The applicant chose not to have the inspection after the respondent told him the car burned oil.

17. As referenced above, the applicant's argument focuses on the amount of oil he says the respondent said the car burned versus the amount of oil the applicant found the car burned during his highway trip home. The respondent says the applicant's 300 or so kilometer trip home is significant in that the respondent only used the car as a commuter vehicle. The fact that the respondent drove the car about 60,000 kilometers in 6 years of ownership does not prove the respondent misrepresented the amount of oil he was putting in the car around the time of the car's sale.
18. The applicant alleges the car requires 3 liters of oil a month and that the respondent said he only topped it up once or twice a month. Given the applicant's daily commute is 150 kilometers per day, I find this is sufficiently similar to the respondent's evidence, confirmed by his wife's signed statement (his wife heard the call with the applicant on speaker phone) that the respondent topped up the oil around $\frac{1}{2}$ to $\frac{3}{4}$ of a liter every 2 weeks.
19. In any event, I find the applicant had an opportunity to make appropriate inquiries about the very problem he was told the car had, burning oil, and he chose not to do so. The material point is that the applicant knew there was an oil problem and in context the respondent was not providing a precise figure about how much oil or how often. I find the respondent sufficiently alerted the applicant to the problem.
20. In general, used vehicle purchases through private sales 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..."

21. In other words, there is no implied warranty about the car being in saleable condition or being fit for the applicant's purpose. The fact that the car burns oil does not mean it is not durable.
22. Given my conclusions above, I dismiss all of the applicant's claims for lost wages, car insurance, airfare, food, gas and oil. Apart from the comparison \$957.86 return airfare claim, I note the applicant provided no supporting documentation in support of those claimed amounts, such as receipts and proof of wage loss. I would have therefore dismissed those claims in any event. This leaves only the \$787 claim for the taxes portion of the car sale.
23. The respondent agreed to refund the applicant if he returned the car, which I find is something the respondent was not obliged to do. The respondent refunded the applicant \$6,563 and said he would refund the applicant the \$787 difference which is what the respondent paid in taxes, after he received the \$787 back from the government. The respondent submits he has now received the \$787 back, but has not paid it as the applicant has started this dispute.
24. By starting this tribunal proceeding seeking additional reimbursements, I find the applicant has repudiated or cancelled the agreement about getting the \$787 in taxes back. I find the respondent is no longer bound by that agreement about the \$787. The question is now whether I otherwise ought to order the \$787 reimbursement.
25. The respondent says the applicant put 1,400 kilometres on the car during which time there was a new rock chip in the windshield and numerous new rock chips to the car's front end. By the applicant's own admission, the car was in excellent physical shape when he bought it from the respondent. The applicant has also incurred an additional \$28 fee for re-taking ownership of the car. He has spent time getting the car repaired so that it can be re-sold. Given all of these circumstances, I find the applicant has not proved he should be reimbursed the \$787.

26. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules, I find he is not entitled to reimbursement of tribunal fees.

ORDER

27. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair