



# Civil Resolution Tribunal

Date Issued: April 26, 2019

File: SC-2018-007076

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Willet et al v. Gowling*, 2019 BCCRT 508

**B E T W E E N :**

Stefania Willet and Shane Willet

**APPLICANT**

**A N D :**

Christopher Gowling

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about a motor home. The applicants Stefania Willet and Shane Willet paid the respondent Christopher Gowling a \$3,000 deposit to buy a 1993 Fleetwood Flair motor home. The applicants say the respondent misrepresented the condition of the motor home, and that it leaked water, was uninhabitable, and

caused damage to their belongings. They want the respondent to return their \$3,000 deposit and pay them \$1,155 in damages.

2. The respondent says the motor home was sold as is and that he told the applicants about all known problems with it before he sold it to them.
3. All parties are self-represented.

## **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 "they said, he 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 reimburse the applicants' \$3,000 deposit?
  - b. Is the respondent required to pay the applicants \$1,155 in damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities. This means I must find it is more likely than not that the applicants' 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. In June 2018 the applicants responded to the respondent's advertisement selling his motor home. The respondent says on June 19, 2018 he advised them by email of the age and condition of the motor home and stated, "the unit is in good repair, however everything gets old, at this point there are no issues, but I am selling as is." The respondent says he submitted this email as evidence, but it is not included in the evidence before me. He says he made no other verbal or written promises to the applicants about the condition of the motor home.

12. On June 29, 2018 the applicants viewed the motor home. They say it was a quick inspection because the respondent was in a rush, and that he told them the motor home was a “great deal no repairs.” The respondent denies this and says that during this inspection he discussed with the applicants the damaged floor next to the bathtub, and that one of the applicants said they could repair it. He says he notified the applicants of the water stains in the bathroom and the kitchen cupboard, and that those stains were there when he bought the motor home 2 years prior. The applicants say the respondent failed to disclose the water damage to them, which they say he covered up in the bedroom using a mat on the floor. They say the respondent told them he had sealed the roof the previous spring.
13. The applicants say the respondent told them he had lived in the motor home for 1.5 years to save money. In an October 15, 2018 letter a representative of the campground said the respondent had previously rented from them for approximately 2 years. The applicants say this is proof the respondent lived in the motor home, and that he would have known of its condition.
14. The respondent says motor homes are not built to be lived in year-round because the walls have very little insulation and the windows are single-pane with aluminum frames. He says that in cool and damp conditions condensation forms and collects on the window sills and runs down the walls. He says if the ceiling vents are not insulated the condensation collects in the dome and drips down. The respondent says he has personally experienced this problem. The applicants say the respondent knew they were planning to live in the motor home long term, and that he should not have sold it to them if he knew it was unsuitable for that purpose.
15. Within a few days of viewing the motor home the applicants decided to buy it from the respondent and on July 2, 2018 the parties signed a contract. The contract states that the applicants would to buy the motor home from the respondent for \$10,000 by paying a down payment of \$3,000 by August 19, 2018 and paying the remaining balance of \$7,000 in monthly installments of \$1,000 until paid in full, at which point ownership would be transferred to the applicants.

16. The parties submitted slightly different versions of the contract. On the applicants' version the VIN number is blank, and an email address for the respondent is handwritten at the bottom of the document. On the respondent's version of the contract the VIN is handwritten at the top of the document and there is no email address handwritten at the bottom. The applicants are concerned about the discrepancies between the 2 versions of the contract, however I find the discrepancies are minor, and the substantive terms of the agreement and signatures are identical in both versions.
17. The applicants say they tried to back out of the contract twice, but it is unclear what exactly they mean by this or when they say this occurred.
18. The applicants say they had trouble securing a campground because of the age of the motor home and the respondent arranged for them to stay at Brannen Lake Campground (campground).
19. On August 4, 2018 the applicants paid the respondent the \$3,000 down payment and on August 15, 2018 the respondent delivered the motor home to the campground.
20. On August 19, 2018 the applicants gained access to the motor home. They say the respondent did not properly level the motor home when he set it up that day such that it was dangerous to enter, and they say he rushed away when they arrived at the campground. They submitted photographs they say they took that day showing the motorhome was not level. However, I cannot tell from these photographs whether or not the motor home was level, and I find there is no evidence to indicate that the respondent was required to level the motor home for the applicants when he sold it to them.
21. The applicants submitted other photographs they say they took on August 19, 2018 which they say show no signs of leaking or a caving floor, and which they say show that the wood trim had not yet popped off.

22. The applicants say they moved into the motor home on September 1, 2018, and within weeks of moving in water was leaking through the floors, ceiling and windows all over the interior including the closets. They say this damaged their belongings, including their speakers, vacuum, food and clothing and they had to keep their belongings in bags to prevent further damage. They say they had to put some of their belongings in storage and give away a lot of their furniture. They also say the plumbing was leaking, the floors were caving in, the gauges did not work, and most cupboards were unusable. The applicants say some of the motor home's interior wood trim popped off from moisture. The applicants submitted many photographs which they say show this damage. However, it is unclear from these photographs the extent or cause of any damage, and I cannot determine if that damage was present before the applicants bought the motor home.
23. The respondent says on September 19, 2018 one of the applicants told him about the leaking in the motor home. The respondent emailed one of the applicants on September 21, 2018 offering a \$2,000 credit for the monthly payments for September and October and offering to repair the window seals and vents the following week when the weather forecast was better. The respondent says the applicants refused this offer, but the applicants say the respondent ceased communicating with them after this email.
24. On September 21, 2018 the applicants sent emails to the respondent demanding he repay them \$2,800, which is the amount of the deposit less a \$200 campground fee for September. The email alleges that the respondent knew about the problems with the motor home but failed to inform the applicants before they agreed to buy it.
25. At some point in late September or early October 2018 the applicants abandoned the motor home at the campground and moved into a different home.
26. In October 2018 the campground contacted the respondent because the applicants had abandoned the motor home without paying the campground fee. The respondent says that on October 15, 2018 he paid the campground \$349.13 for the applicants' unpaid campground and storage fees for October 1 – 15, 2018. The

respondent has not specifically claimed recovery of this amount, and there is no counterclaim before me. He says he moved the motor home to a storage space at the same campground.

27. The respondent says that after the applicants abandoned the motor home he found no evidence of leakage, and he submitted many photographs he says he took on October 15, 2018 to support this claim. The applicants say these photographs do not show the locations where leaking occurred. They say one of these photographs shows mould, but I cannot see mould in that photograph. The respondent says the applicants caused \$2,000 in damage to the motor home, but the applicants deny these allegations. The respondent provided insufficient evidence to support this claim and there is no counterclaim before me, and therefore I decline to address these allegations further in this decision.

***Is the respondent required to reimburse the applicant's \$3,000 deposit?***

28. Contracts of purchase and sale between private individuals are subject to section 18 (c) of the *Sale of Goods Act* (SGA) which says there is an implied warranty that the item sold will be durable for a reasonable period of time when put to normal use and considering the surrounding circumstances of the sale. Factors to consider are the age of the motor home, the nature of use before and after purchase, the price paid, the reasons for any defects and the expectations of the parties as determined by express warranties (see *Sugiyama v. Pilsen*, 2006 BCPC 0265).
29. It is uncontested that the motor home was 25 years old when the respondent sold it to the applicants for \$10,000. The applicants say they had trouble finding a place to keep the motor home because of its age. The parties provided conflicting evidence about whether the respondent lived in the motor home before selling it to the applicants, whether he knew the applicants were planning to live in it, and whether he sold it to them "as is." However, based on the age of the motor home and the price the applicants paid, I find the implied warranty of durability in this case was extremely limited. The applicants' evidence is that when they first moved into the motor home they lived in it for at least a couple weeks without incident before the

problems started to occur, which indicates that it was durable for some period of time.

30. I also find the applicants' allegations about the leaking and other issues with the motor home are not substantiated by the evidence. The applicants did not submit the original advertisement, and there is only one photograph of the motor home before they bought it which is taken from the outside which is unhelpful in determining the condition of the interior at that time. While some of the photographs in evidence certainly show some stains and minor damage inside the motor home, on the evidence before me I cannot determine when or how that damage occurred. The applicants say leaking water caused most of the damage, but they submitted only 2 photographs showing water on the floor, and it is impossible to determine the source of the water from these photographs. They also submitted several photographs showing condensation on the windows, but the quality of the photographs is so poor that I cannot tell if the condensation is inside or outside the motor home, or whether the condensation caused any damage to the motor home.
31. The applicants say they lived in the motor home for at least a few weeks before the problems arose, and it is possible that one or both applicants' acts or omissions during that time caused some of the damage. The applicants did not submit any evidence from a third party or a person with experience working on motor homes to support their claims. The respondent says when he regained possession of the motor home after the applicants abandoned it there was no evidence of leakage. On the evidence before me I find the applicants have not established that the respondent breached the implied warranty of durability under section 18 (c) of the SGA.
32. Having found no breach of the implied warranty for durability under the SGA, the sale of the motor home is governed by the principle of "buyer beware." This means it was the applicants' responsibility to assess the condition of the motor home before buying it, and the respondent was not required to tell them about any defects they could have discovered by reasonably inspecting the motor home. However, if



the respondent misrepresented the condition of the motor home the applicants may be entitled to compensation. A misrepresentation is a false statement that induces a reasonable person to enter into a contract.

33. The applicants say the respondent misrepresented the condition of the motor home by saying it was in good condition and there was no need for any repairs. The problem for the applicants is that, aside from their allegations, there is no documentary evidence to support their claims. The respondent denies these claims, and says he sold the motor home “as is” and told the applicants about the caving floor and water damage. The applicants say the respondent hid the water damage on the floor with a mat, but it was their responsibility to reasonably inspect the motor home, and I find the described damage would have been discoverable on a reasonable inspection. On balance, I find the applicants have not established that the respondent misrepresented the condition of the motor home.
34. Having found no breach of the implied warranty of durability under the SGA and insufficient evidence to establish the respondent misrepresented the condition of the motor home, I find the applicants breached the contract by abandoning the motor home. The applicants say the contract was frustrated and incapable of being performed because of unforeseeable events that radically changed the circumstances such that fulfillment of the contract was no longer possible. However, a contract is only frustrated when it is truly impossible to continue fulfilling its terms, not just inconvenient, undesirable or uncomfortable. The evidence does not establish that it was impossible for the applicants to fulfil their obligations under the contract, and therefore I find the contract was not frustrated.
35. For all of these reasons, I find the applicants have not established that they are entitled to reimbursement of their \$3,000 deposit, and I dismiss this claim.

***Is the respondent required to pay the applicants \$1,155 in damages?***

36. The applicants claim \$1,155 in damages, and while they say many of their belongings were damaged by the leaks in the motor home, they do not specifically

state which of their belongings were damaged or how they calculated the value of that damage.

37. The applicants say they paid \$120 for upholstery and carpet cleaning on August 19, 2018 but they submitted no evidence they incurred this cost and there is no indication it was the respondent's responsibility to have this service completed. I find there is no basis for the applicants to recover this amount from the respondent.
38. The applicants submitted a receipt from Slegg Building Materials dated August 24, 2018 in the amount of \$71.21 for 4 concrete blocks, a safety vest, wood sheathing and a level. They say they used the blocks and level to level the motor home and used the wood to support the bed. However, based on my findings above, I find there is no legal basis for the applicants to recover this amount from the respondent.
39. The applicants submitted a U-Haul receipt dated October 1, 2018 for a U-Haul rental on September 30, 2018 for \$78.26. Presumably they used this U-Haul to move out of the motor home. However, having found above that the applicants breached the contract by abandoning the motor home, I find they are not entitled to reimbursement of their moving expenses.
40. The applicants submitted 2 pawn shop loan receipts and statements from several people who gave them loans or provided other forms of financial assistance to show they experienced financial difficulties in the fall of 2018 after moving out of the motor home. However, I find that none of this evidence establishes that the respondent was responsible for those financial difficulties.
41. I find the applicants have not established that they incurred \$1,155 in damages caused by any act or omission of the respondent, and I dismiss this claim.
42. 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. Since the applicants were unsuccessful I find they are not entitled to

reimbursement of their tribunal fees. They have not claimed any dispute-related expenses.

## **ORDER**

43. I dismiss the applicants' claims and this dispute.

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Sarah Orr, Tribunal Member