



Civil Resolution Tribunal

Date Issued: May 1, 2019

File: SC-2018-006860

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cobbett v. Romak*, 2019 BCCRT 518

B E T W E E N :

Spencer Cobbett

APPLICANT

A N D :

Brian Romak

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a private car sale. The applicant, Spencer Cobbett, bought a used car from the respondent, Brian Romak. The applicant says the respondent misrepresented the condition of the car and that it was not roadworthy when he bought it. The applicant wants the respondent to refund him the \$3,696 purchase price, and to reimburse him \$182.23 for the cost of the inspection, for a total of

\$3,878.23. The applicant says he can return the car to the respondent or dispose of the car.

2. The respondent says he did not misrepresent the condition of the car, and that everything he told the applicant about the car he believed to be true at the time.
3. The applicant is represented by his legal representative, Kiran Dhesa. The respondent is represented by his legal representative, Douglas MacAdams.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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), 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 in this dispute is whether the respondent is required to reimburse the applicant \$3,696 for the price of the car and \$182.23 for the cost of the inspection.

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. In the summer of 2018 the respondent posted an advertisement on the website Craigslist selling his 1974 Fiat 124 Spider (car). The advertisement is not in evidence. On August 3, 2018 the applicant responded to the advertisement and asked the respondent if the car ran. It is undisputed the respondent told him by email, "runs good. Fun to drive" and "no major damage. drives great." The respondent says he believed these statements to be true at the time he made them.
12. The applicant viewed the car on August 6, 2018 at which time he says the respondent told him the car was in good shape, that it probably needed an oil change, and that he should check if the alternator needed replacing. The applicant says the respondent told him he was responsible for maintaining his employer's fleet of vehicles, and that the applicant took this to mean the respondent knew more about car maintenance than the average person. The respondent does not deny telling the applicant about his line of work, however he says it is not relevant to the issues in this dispute. If selling or dealing used cars was within the course of the respondent's business, the sale of the car in this case may have been subject to implied warranties of fitness and merchantability under sections 18 (a) and (b) of the *Sale of Goods Act* (SGA). However, based on my findings below, I find it is

unnecessary to determine whether those sections of the SGA apply in this case. Therefore, I find nothing turns on the nature of the respondent's employment.

13. The respondent says he told the applicant the car was in fair shape for its age, and that he had driven the car occasionally over the previous 3 years without any serious problems. He says he also told the applicant he had not done any major mechanical work to the car since he bought it 3 years prior aside from replacing the spark plugs and adjusting the carburetor, and that the car may need a new carburetor rebuild kit.
14. The applicant test drove the car on August 6, 2018 and said he did not notice any issues with it. He bought the car from the respondent that day for \$3,300 and drove the car away from the applicant's home. The purchase price included an unused convertible top which cost the respondent \$275.41 when he bought it in August 2016.
15. On August 10, 2018 the applicant took the car to a mechanic. The mechanic's invoice for \$182.23 is for an inspection, oil change and filter, and installation of a new light switch. The applicant submitted a signed statement from the mechanic which states that when inspecting the car, he found extreme rust damage to its unibody frame supports and rails, and that most of the support steel was gone. It states that there had been "extreme rust repair done to both rocker panels and patches have been riveted into the floor boards on the driver's side." It states that there was extensive rust on the rear floor boards and that they were compromised as a result, and that the car's undercoating had been sprayed, either to hide or slow down the rust damage. It states that the car may hold together under light driving conditions, but that "there is a chance of failure if these components were pushed too hard." It says that as a provincial vehicle inspector, the mechanic would be required to reject the car if it was subject to a formal safety inspection.
16. The applicant says all the damage the mechanic discovered was hidden and he could not have discovered this damage when viewing the car. He suggests that the respondent actively concealed the damage by spray painting the rust or otherwise

hiding the damage. The respondent says he did not know about any of the damage the mechanic discovered. He says during the 3 years he owned the car before selling it he had no reason to have it inspected, he never looked at the support frames or floorboards or lifted the carpet, and he never painted the car. I find there is insufficient evidence to establish that the respondent actively concealed any of the damage to the car.

17. The respondent says all the damage the mechanic described was discoverable through a reasonable inspection by a qualified person, it was the applicant's responsibility to conduct a reasonable inspection of the car before buying it, and he did not do so.
18. The applicant says the mechanic estimated the cost of repairs would exceed \$5,000, but there is no documentary evidence to support this claim. The applicant says aside from the oil change, oil filter and anti-freeze the mechanic installed on August 10, 2018, the car is in the same condition it was in at the time of purchase, and it has not been driven since bringing it home from the mechanic.
19. 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 and mileage of the car, 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).
20. The circumstances of the sale are largely uncontested. The car was over 40 years old when the applicant bought it for \$3,300 and it had 258,000 kilometers on the odometer. It is uncontested that the respondent drove it only occasionally during the 3 years he owned it, and that he knew the applicant planned to drive it on the back roads in the Okanagan. It is uncontested that the respondent told the applicant the car "runs good" and drove "great," and this is further evidence the respondent knew the applicant planned to drive the car after buying it. It is uncontested that within a

few days of buying the car the applicant's mechanic determined the car was unsafe to drive on the road and would not pass a formal safety inspection. There is no suggestion the car was damaged in any way between the time the applicant bought it on August 6, 2018 and brought it to the mechanic on August 10, 2018, and therefore I find the car was not safe to drive on the road at the time the applicant bought it. In these circumstances, despite the age and mileage of the car, I find the car was not durable for a reasonable period of time after the applicant bought it. Therefore, I find the respondent breached the implied warranty of durability under section 18 (c) of the SGA.

21. The parties both made extensive submissions about the law of negligent and fraudulent misrepresentation, and whether the respondent either negligently or fraudulently misrepresented the condition of the car. However, having found the respondent breached section 18 (c) of the SGA I find it is unnecessary to determine whether the respondent misrepresented the condition of the car.
22. The respondent says that if the tribunal finds in favour of the applicant it should award the applicant less than the \$3,696 he is claiming for 2 reasons. First, he says there is no evidence the car is in the same condition it was in when he sold it to the applicant. Second, he says \$3,696 includes both PST and GST, but that there is no GST on the sale of used cars.
23. The applicant says after the mechanic's inspection on August 10, 2018 the car was driven back to his home where it has remained in a locked garage and has not been driven since. I find this to be a reasonable explanation and I have no reason to disbelieve the applicant on this point. I do note the car has not been driven for almost 9 months. However, neither of the parties specifically raise the car's lack of use as an issue that could affect its value, and there is no indication the car has any mechanical problems. Therefore, I find there is no basis on which to reduce the amount the applicant is to be reimbursed below the purchase price.
24. The applicant does not address the question of PST and GST in their submissions. The Transfer/Tax Form in evidence does not indicate any amounts paid for PST or

GST. In the absence of evidence supporting the amount of tax the applicant paid, I find the purchase price was \$3,300, and I find the respondent must reimburse the applicant this amount. The applicant is entitled to pre-judgment interest in the amount of \$40.73 under the *Court Order Interest Act* (COIA) calculated from August 6, 2018, which is the day he bought the car from the respondent.

25. Both parties indicate that if I find in favour of the applicant, they wish the car to be returned to the respondent with the new convertible top. Therefore, I order the applicant to arrange with the respondent for the respondent or his designate to pick up the car and the convertible top from the applicant at a mutually agreeable date and time.
26. The applicant also claims reimbursement of \$182.23 for the cost of the mechanic's inspection. Since I have found the respondent breached the implied warranty of durability, and since the respondent will benefit from the oil and filter change, I find the respondent must reimburse the applicant this amount. The applicant is entitled to pre-judgment interest in the amount of \$2.22 under the COIA calculated from August 10, 2018, which is the date of the mechanic's inspection.
27. Under section 49 of the Act, and tribunal rules, since the applicant was successful he is entitled to reimbursement of his tribunal fees in the amount of \$175 and dispute-related expenses in the amount of \$11.34.

ORDERS

28. Within 45 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,711.52, broken down as follows:
 - a. \$3,482.23 in damages, as reimbursement for the purchase price of the car and the mechanic's inspection,
 - b. \$42.95 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$186.34, for \$175 in tribunal fees and \$11.34 for dispute-related expenses.

29. I also order that within 45 days of the date of this decision, if the respondent has paid the amounts listed above, the applicant must arrange for the car to be available for the respondent or his designate to pick up, at a time and date agreed to in writing that is not later than July 31, 2019, with ownership to be transferred back to the respondent at that time. I order that the respondent is responsible for any filing costs or taxes associated with this transfer of ownership.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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.
32. 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