



Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2019-000303

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslami v. Michael*, 2019 BCCRT 566

B E T W E E N :

Sameer Aslami

APPLICANT

A N D :

Norman Gaelen Michael

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about a used commercial trailer that the applicant, Sameer Aslami, purchased from the respondent, Norman Gaelen Michael, in a private sale. The applicant says that the trailer is not legally allowed to be on the road in British Columbia. He asks for an order that the respondent pay a partial refund of \$1,900

because the trailer failed an inspection. The respondent says that the applicant had the opportunity to inspect the trailer. He asks that I dismiss the applicant's claim.

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. 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.
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 9.3(2), 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.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to a partial refund from the respondent.

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 trailer is a long, double axle flatbed trailer. The applicant responded to the respondent's ad on Craigslist on December 29, 2018. After exchanging some information about the trailer, the applicant and the respondent met on January 7, 2019, so that the applicant could view it. The applicant decided to buy it and attended an insurance agent to get plates and insurance. The applicant paid \$4,900 cash for the trailer and left with it.
10. On January 10, 2019, the applicant emailed the respondent to tell him that the trailer was "illegal". The applicant said it had failed an inspection. He said that the inspector thought that the initial inspector must not have bothered to do the proper measurements. The applicant demanded a refund. The respondent said that he did not know why the trailer failed an inspection because it had passed an inspection when he imported it to British Columbia.
11. The applicant explained to the respondent that the trailer was 42.5 feet long, which is too long for a trailer without a gooseneck to attach it to the truck. Furthermore, the axles were not in the correct place. The applicant says that modifying the trailer to have it pass an inspection would cost more than the trailer itself. The respondent refused to take the trailer back or provide any refund or discount.
12. On January 10, 2019, the applicant traded the trailer in for a new trailer through a commercial trailer sales company. The trailer was given a trade-in value of \$3,000.

In this dispute, the applicant claims the \$1,900 difference between the purchase price and the trade-in value.

13. The applicant provided an email conversation with his inspector, who explained why the trailer failed the inspection. I accept that the trailer did not pass an inspection because of its overall length and the distance between the back of the trailer frame and the axle. However, just because the trailer did not pass an inspection does not mean that the respondent must give the applicant a refund.
14. The respondent says that he had to go through the inspection process to import the trailer from Alberta, which the trailer had passed. He provided a copy of the final inspection document from the Ministry of Transportation and Infrastructure, dated June 30, 2016. While the applicant suggests that it may be for a different trailer, the Vehicle Identification Number (VIN) on the inspection document matches the VIN on the transfer form that the parties used. I therefore find that the trailer passed the inspection in 2016 as the respondent alleges.
15. The certificate of approval expired on June 30, 2017. The applicant provided a photograph of the decal on the trailer which confirms that it expired on June 30, 2017. The respondent does not deny that he did not renew the certificate of approval after it expired.
16. While the applicant does not use this exact language, I find that his claim is that the respondent misrepresented the condition of the trailer. In particular, he alleges that the respondent misrepresented that the trailer would pass an inspection.
17. If a seller misrepresents the condition of an item, 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.
18. 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 whether 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.

19. The applicant says that the certificate of approval had expired. However, the decal showing that the certificate of approval expired on June 30, 2017, was affixed to the outside of the trailer. Therefore, it was there for the applicant to see when he inspected the trailer. I find that the respondent did not conceal or misrepresent that the trailer did not have an up-to-date certificate of approval.
20. As for the fact that the trailer failed an inspection, neither the applicant nor the respondent seem to know why the trailer passed an inspection in 2016 but failed an inspection in 2019. The respondent says that he did not modify the trailer since importing it and there is no evidence to suggest otherwise. The only available evidence is from the applicant's inspector, who assumes that the initial inspector made an error.
21. There is no evidence that the respondent knew that there may have been an error with the initial inspection or that he knew that the trailer would fail a new inspection.
22. As a general point, the applicant argues that the respondent displayed suspicious behaviour that proves that he knew that there was something wrong with the trailer. He says that the respondent refused to give out his phone number. I disagree that there is anything particularly suspicious about preferring to communicate by email.
23. The applicant also says that the respondent took a video of the applicant leaving his lot, which the respondent provided as evidence in this dispute. He says that there was no reason for the respondent to do this unless he knew that there was something wrong with the trailer that would cause the applicant to demand a refund. The video does not show anything other than the applicant driving away. The applicant does not explain why a video of him driving away would matter in a dispute about the trailer failing an inspection. Therefore, while the respondent does not explain why he took a video of the applicant leaving with the trailer, I find that it does not prove that the respondent had a guilty conscience when he sold the trailer.

24. In summary, I find that the respondent believed that the trailer would pass an inspection and that his belief was reasonable given it had already passed an inspection once.
25. Therefore, I find that the respondent did not make any misrepresentations to the applicant.
26. I have also considered the *Sale of Goods Act* (SGA). Because the respondent is not a commercial seller of trailers, section 18(c) of the SGA says that there are no implied conditions or warranties in the sale of goods except that they be durable for a reasonable period of time. There is no evidence that the trailer was not durable. The only issue the applicant had with the trailer is that it did not pass an inspection because of its size and the placement of the axles. Therefore, I find that the respondent did not breach the implied warranty of durability.
27. It is understandable that the applicant was frustrated that the trailer failed an inspection only 3 days after he purchased it. However, as described above, the law places a strong obligation on buyers to inspect used items prior to purchasing them.
28. I dismiss the applicant's claims.
29. 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

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

Eric Regehr, Tribunal Member