Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-008163

Type: Small Claims

Civil Resolution Tribunal

Indexed as*: McVean v. Lunan,* 2019 BCCRT 586

B E T W E E N :

Hannah McVean

APPLICANT

A N D :

Kayleen Lunan

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a used car sale. On October 7, 2018, the applicant, Hannah McVean, bought a 1998 or 1999 Toyota Rav4 from the respondent, Kayleen Lunan, for $2,500. The car broke down on the day the applicant bought it and the applicant says it needs a new engine. The applicant wants a refund of the $2,500 purchase price, plus $376.48 for additional costs to register, insure, and transfer the car.

2. The respondent denies liability and says she never misrepresented the car and the engine's failure is not her responsibility, given the car's age, mileage, and known oil leak problem. 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* (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. 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.

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: 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

7. The issue is whether the respondent seller is responsible for the car's engine failure, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. 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. I have no placed any weight on the parties' efforts to settle the matter, given the dispute proceeded for adjudication and this decision.

9. The respondent's Craigslist ad listed the car for $2,800 and that it had 260,000 kilometers. The respondent described how the timing belt had been "done" at 250,000 kilometers, "runs and drives great", and that the car had just had new spark plugs and leads. The respondent noted the car needed tires soon. It is uncontested the respondent reduced the price to $2,500 to account for the need for new tires and that the car "burns a bit of oil".

10. On October 8, 2018, the day the applicant picked up the car and drove it from Mission, BC back to Squamish, BC, the car made a "deafening knocking noise", stalled, and was difficult to re-start. I accept this evidence, which is not particularly disputed.

11. The applicant had the car towed to Good 2 Go Tirecraft in Squamish (Tirecraft), who the applicant says told her the car needed a new engine. The applicant says Tirecraft told her it could not locate a replacement engine, but that it would cost more than $2,500. However, the applicant did not provide evidence from Tirecraft to this effect.

12. The applicant texted the respondent right after the car stalled on her way home, after driving it for 2 hours. She texted again after she spoke to Tirecraft. The respondent texted back that she had no idea that the motor was bad and would never have sold it knowing that. The respondent wrote the car was "running great

when you left" and that she was very confused because she had no issues with the car.

Fraudulent misrepresentation claim

13. While the applicant alleges the respondent fraudulently misrepresented the car, I find she has not proved this. The case law is clear that due to the associated stigma, an allegation of fraud requires "clear and convincing proof".

14. If a seller misrepresents the condition of a vehicle, 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.

15. 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 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.

16. As discussed below, what matters is whether the applicant has proved that the respondent misrepresented the vehicle and the applicant reasonably relied on such misrepresentation, and, whether the applicant has proved the respondent breached any applicable warranty.

17. The respondent says that at the time she sold the applicant the car the ad's statements were true to the best of her knowledge. The respondent says all known defects were disclosed.

18. The applicant argues the respondent must have known about the engine issue. I find this is not established. Even if the respondent had said the noise was "probably the tailpipe", that does not prove the respondent knew the engine was about to fail. There is simply no evidence before me to support a conclusion the respondent knew the engine was faulty.

19. The respondent says during the parties' test drive there was no knocking or stalling. The applicant says there was a sort of knocking noise and the respondent said it was probably the tailpipe, which the respondent disputes. Nothing turns on this, because there is no suggestion the respondent was mechanically knowledgeable or that the applicant ever believed her to be. By the applicant's own evidence, she heard knocking during the test drive and chose to buy the car anyway, without a professional inspection.

20. The respondent provided a November 16, 2018 email from Tirecraft that she obtained. Tirecraft stated the problem was "catastrophic failure of the engine", due to metallic particles in the oil. I accept this undisputed evidence.

21. I agree with the respondent that either the engine problem was a patent defect, in which case the applicant could have discovered it on a professional inspection, or, it was a latent defect that the respondent did not know about. There is nothing in Tirecraft's message to the respondent that would suggest the engine problem was knowable to a lay driver like the respondent.

22. Next, the respondent had said she had the car mechanically tested in the months prior to selling it. The evidence shows when the applicant texted her after the car broke down the respondent indicated the number for the mechanic was in the glove box. The applicant says that number was incorrect. Nothing turns on this, as there is no evidence that the prior mechanical work was about the engine or that the respondent ever suggested it was. I say the same about the respondent's alleged references to the car's prior owner being "lady driven" and the applicant's assertion the prior owner was male. In other words, even if the respondent did misrepresent the car's driver history or misled the applicant about the mechanic's information (which I find the applicant has not proved in either case), neither were reasonably relied on by the applicant in causing her to buy the car. To the extent the applicant asserts the respondent was trying to conceal the car's mechanical history, the context of her offering the mechanic's contact information in the glove box simply does not support such a conclusion.

23. On balance, I find the applicant has not proved the respondent misrepresented the car's condition, fraudulently or otherwise.

Warranties under the Sale of Goods Act (SGA)

24. In a used car sale, where there has been no misrepresentation, the principle of 'buyer beware' largely applies. This means that the implied warranties of fitness for purpose and saleability under section 18 of the SGA do not apply.

25. However, the implied warranty for durability in section 18(c) does apply to private car sales. In particular, the car must be durable for a reasonable period of time having regard to the use to which they would normally be put and considering all the surrounding circumstances of the sale.

26. The parties dispute what the respondent said about how much she drove the car. I accept the respondent mostly drove relatively short distances of around 40 kilometers per trip. Contrary to the respondent's assertion, the shorter-distance of her regular driving is not the proper measure of "the use to which the car would normally be put". I find that would put too fine a point on the analysis. Driving the car on a highway for 2 hours and around 130 kilometers, as the applicant did, falls within 'normal use'.

27. However, it may be that the longer drive contributed to the engine failure happening at that time, but I have no mechanic's evidence about that and so this is speculation. Nothing turns on it. The real question is whether the car was durable for a reasonable period in all the circumstances.

28. Like the applicant in *Singh v. Janzen*, 2019 BCCRT 335, the respondent here relies on *Sugiyama v. Pilsen*, 2006 BCPC 265 as well as several prior tribunal decisions, such as *Samzadeh v. Bain*, 2018 BCCRT 475. In *Sugiyama*, the Court considered the implied warranties in section 18 of the SGA. There are a number of factors to consider when determining whether a vehicle is durable for a reasonable period of

time, including the age, mileage, price, the use of the vehicle, and the reason for the breakdown.

29. As in *Singh*, the facts in *Sugiyama* are somewhat similar to the facts of this dispute. In *Sugiyama*, the claimant bought an 8 year old car with over 140,000 kilometers on the odometer. After driving it for only 616 kilometers, the car broke down. The Court determined that the car was roadworthy and could be safely driven when it was purchased. There were no apparent defects in the car. Therefore, even though the car broke down after very little driving, the Court found that it was durable for a reasonable time.

30. I find that the same reasoning applies to this dispute. The 1998 or 1999 car, almost 20 years old, had very high mileage at 260,000 kilometers and no apparent significant issues when the applicant purchased it, apart from burning oil. I find it is unknown whether that known oil issue was related to the engine breakdown. The applicant chose not to have a professional inspection done, which as noted above may have revealed an engine problem.

31. Like in *Sugiyama*, the car broke down after relatively little driving, but it was roadworthy and could be safely driven when the applicant purchased it. In particular, the applicant test drove the car and while there is a dispute about whether the respondent said knocking was “probably the tailpipe”, it is undisputed the applicant was satisfied with the car after the test drive. There is simply no evidence the respondent knew the car’s engine was going to break down and no evidence that the engine breakdown was not a result of normal aging. In all of these circumstances, I find that the respondent did not breach the implied warranty of durability. This conclusion is consistent with the court’s decision in *Wanless v. Graham*, 2009 BCSC 578, which as noted by the respondent endorsed the statement that people who buy old used cars with high mileage “must expect defects in such cars will come to light at any time”. That quote came from a 2004 New Brunswick decision *Dunham v. Lewis*, [2004] N.B.J. No. 310, where the 1996 car bought for $4,200 broke down within 2 days of purchase and would not start.

32. The conclusion is also consistent with a recent tribunal decision in *Penny v. Earthy*, 2018 BCCRT 851, where a 1999 truck, bought for $2,500, had its engine seize after a 303 kilometer drive home. While I am not bound by that decision, I agree with its conclusion and apply it to this case: The applicant has not proved the vehicle was not reasonably durable, in all of the above circumstances.

33. In summary, the applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims.

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

ORDER

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

Shelley Lopez, Vice Chair