



# Civil Resolution Tribunal

Date Issued: June 10, 2019

File: SC-2019-001530

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brett v. Mehrabi*, 2019 BCCRT 708

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

**KENNETH BRETT**

**APPLICANT**

**A N D :**

**MOHAMMAD MEHRABI**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. This dispute is about a used car sale. On February 17, 2019, the applicant, Mr. Brett, bought a 2004 Toyota Echo from the respondent, Mr. Mehrabi for \$2,000.00. The applicant took the car to a mechanic later in February 2019 and learned of several issues with the car.

2. The applicant says the respondent misrepresented the condition of the car and requests that the respondent either take the car back and provide a refund, or, reimburse him \$1,500.00 for the cost associated with repair or purchase of another vehicle.
3. The respondent denies misrepresenting the condition of the car and says that the applicant was aware the car needed repairs and that he sold it for less than market value due to this fact. Both 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. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 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**

8. The issue in this dispute is whether the respondent misrepresented the condition of the car he sold to the applicant, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. The respondent advertised the car for sale on Craigslist for \$2,000.00, which, as noted, the applicant bought on February 17, 2019. The applicant states that the car was advertised as in good working condition and would only require some minor work. The respondent submits that he did not make any false claims when advertising the car and that he advertised the car for 50% less than others selling

the same make and model of the car, which in itself indicated that the car needed work.

12. Neither party provided the Craigslist advertisement.
13. The applicant also says that the respondent verbally misrepresented the condition of the car when they met. He says that the respondent said that the engine and the brakes were in good condition and that the car had regular oil changes. The applicant states that the respondent said that the only problems with the car were a broken window mechanism, a loose starter wire connector and worn front tires. The applicant took the car for a test drive before purchasing it, but he did not get an inspection.
14. After the applicant purchased the car for \$2,000.00, he states he took it to a mechanic who found numerous things wrong with the car including, but not limited to, completely worn out and unsafe front and back brakes, a leaking radiator, worn out engine belts, exhaust leaks and holes in the muffler, problems with the suspension, worn spark plugs, and low levels of dirty transmission fluid and engine oil. According to the applicant, the mechanic estimated that the total repair cost of the safety items alone were in excess of \$3,000.00.
15. The applicant submits that the car was declared unsafe to drive and it has been parked at the mechanic's garage since the February 19, 2019 date of inspection.
16. In reviewing the evidence, I note that there is a receipt for an oil change and an inspection dated February 28, 2019 which states the inspection took place on February 26, 2019, not February 19, 2019.
17. There is then a separate page which details an inspection but the page is undated so I am unable to tell whether this was the result of the February 26, 2019 inspection. In any event, the report details several issues with the car including stating that the engine was making noise, but it does not say specifically that the car could not be driven. The applicant has not explained why he would pay for an oil change for a car which he could not drive.

18. The other evidence submitted indicates that the car was actually found to be undriveable in April of 2019. The April 5, 2019 Ministry of Transportation and Infrastructure Private Vehicle Report indicated that the car failed the inspection due to several issues including the exhaust system and the catalytic convertor, as well as the brakes.
19. The April 5, 2019 quote to repair the vehicle was \$3,163.79. The quote refers to several issues with the car, including the brakes, but it does not indicate that anything specific is wrong with the engine. Rather, it quotes a cost for diagnostic tests to determine why the check engine light was on. The quote indicated that there was a problem with the camshaft sensor, which could be replaced for a minimal cost of approximately \$135.00.

### ***Fraudulent misrepresentation claim***

20. The applicant submits that the respondent made false statements about the condition of the car and the extent of the repairs exceeds the description of minor work. He says that there are issues with the brakes and the engine and that the respondent significantly misrepresented the car's mechanical condition.
21. The respondent submits that the applicant took the car for test drive and there was no mention of there being any issue with the heat not working or the brakes being worn out. He states that he is not a mechanic but told the applicant to the best of his knowledge what was wrong with the car. He also submits that the applicant should have had the car inspected before the purchase and not after the sale was completed,
22. Case law indicates that due to the associated stigma, an allegation of fraud requires "clear and convincing proof." I find the applicant has not met this burden.
23. 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 a contract.

24. 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 representation must reasonably induce the purchaser to buy the item.
25. Therefore, the question is whether the applicant has proved that the respondent misrepresented the car and the applicant reasonably relied on such misrepresentation, and, whether the applicant has proved the respondent breached any applicable warranty.
26. Because the Craigslist advertisement was not provided in evidence, I am unable to determine how the car was represented in print before the sale.
27. The respondent submits that the fact he sold the car for half of its market value indicates that the car needed work. The applicant says that cost of the car was approximately the correct market value. Neither party provided evidence regarding the market value of a similar make and model of car. Therefore, I do not base any finding on this line of argument.
28. The applicant submits that the respondent must have known about the issues with the car because they became obvious after driving it for one day. I have already noted that the evidence does not support that the car was inspected on February 19, 2019. Instead, it was inspected 9 days after purchase. Therefore, I do not accept the applicant's position.
29. Further, the applicant took the car for a test drive before purchasing the vehicle. The applicant states that the test drive was too short to reveal any deficiencies. However, he did not note during that drive any issues with the brakes and he does not allege that the check engine light was on. These issues would have been apparent even on a short test drive.

30. The respondent says that when he sold the car he was honest that the car needed work and that he was unaware of the state of the car beyond what he disclosed. I find that the applicant has not established that at the time of the sale the respondent misrepresented the car's condition. The evidence does not establish that the respondent knew that the brakes were failing at the time of the test drive or that there were any issues with the engine. I find the same is true of the multiple other issues the mechanic identified as being wrong with the car in late February 2019.
31. I find that the problems with the car were either patent defects which the applicant could have discovered on a professional inspection before he bought the car or were latent defects that the applicant has not established the respondent knew about and misrepresented.
32. On balance, I find the applicant has not proved the respondent misrepresented the car's condition, fraudulently or otherwise.

### ***Warranties under the Sales of Goods Act (SGA)***

33. The applicant argues that the car is unusable and was not durable for a reasonable period of time, under section 18(c) of the SGA.
34. The respondent submits that the mechanic is overestimating the work that needs to be done on the car and that it is not unusable as he saw the applicant's wife driving it after the sale.
35. In a private 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.
36. 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. The question is whether the car was durable for a reasonable period in all the circumstances.

37. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the Court considered the implied warranties in section 18 of the SGA and noted that 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.
38. In *Sugiyama* the car at issue had 140,000 kilometers on the odometer and broke down after the claimant had driven it only 616 kilometers. The Court found 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 it was durable for a reasonable time.
39. In this dispute, the car was 15 years old and the evidence indicates that the odometer reading at the time of inspection was 237,347 kilometers. It is unclear how many kilometers were put on the car after the February 17, 2019 sale and before the inspection on February 26, 2019, but the evidence clearly establishes that this car had high mileage on it when the applicant purchased it. The applicant chose not to have a professional inspection done at the time of sale which may have revealed issues with the car which would lead to its breakdown.
40. As in *Sugiyama*, the car appears to have become undriveable after relatively little driving. Although, I again note that on the evidence it is only established that the car was undriveable as of April 2019 with the evidence relating to the February 2019 oil change and inspection being unclear. The evidence also shows that the odometer reading at the April inspection is the same as the reading at the February inspection, which suggests that the applicant did not drive the car during this time frame.
41. Regardless, the car was roadworthy and could be safely driven when the applicant purchased it. The applicant test drove the car and was satisfied with it after the test drive. The evidence does not establish that the respondent knew that the car was going to become undriveable in the near future or that the deterioration of the car was not a result of normal aging.



42. I find that the respondent did not breach the implied warranty of durability. My conclusion is in keeping with the court's decision in *Wanless v. Graham*, 2009 BCSC 578, which endorsed the statement that people who buy used cars with high mileage "must expect defects in such cars will come to light at any time." My finding is also consistent with a decision of this tribunal *Penny v. Earthy*, 2018 BCCRT 851, where a 1999 truck's engine seized after the 303--kilometer drive home. I am not bound by that decision but find its reasoning persuasive and apply it here. Given my conclusions above, I find that the applicant has not proven that the car was not reasonably durable.
43. In summary, the applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims.
44. 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. As the applicant was unsuccessful in its claim he is not entitled to have its tribunal fees or expenses reimbursed.

## **ORDER**

45. I dismiss the applicant's claim and this dispute.

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Kathleen Mell, Tribunal Member