



Civil Resolution Tribunal

Date Issued: June 12, 2019

File: SC-2019-000533

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parlee v. Green*, 2019 BCCRT 720

BETWEEN:

TAMMY PARLEE

APPLICANT

AND:

JOHN GREEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a used car sale. On December 29, 2018, the applicant, Tammy Parlee, through her representative, bought a 2007 Pontiac G5 (car) from the respondent, John Green, for \$900.00. The car broke down on January 10, 2019.

2. The applicant says the respondent misrepresented the condition of the car and requests that the respondent reimburse her the \$900.00 cost of the car and \$134.40 for a repair invoice. The applicant is represented by her brother C, who also represented her during the sale.
3. The respondent denies ever dealing with the applicant or telling her anything. He states that he only dealt with the applicant's representative throughout the sale. The respondent also denies misrepresenting the condition of the car and says that the applicant was aware the car was an old car and that was why he was selling it for only \$900.00. The respondent is represented by a family member.

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 "she said, he said" scenario with both sides calling into question the credibility of the other. 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 her claim. She 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.

Fraudulent misrepresentation claim

11. The respondent advertised the car for sale for \$990.00, which, as noted, the applicant bought for \$900.00 on December 29, 2018. The advertisement stated that the car was a 2005 Pontiac G5, but the respondent has produced evidence indicating this was incorrect and the vehicle is actually a 2007. The advertisement said that the car was a good everyday "driver". The advertisement stated that the car had fresh oil and that the transmission fluid had been changed. It does not say

that it was the respondent who performed this oil and transmission fluid change. The car was listed as having 200,261 kms on it.

12. The applicant submits that the respondent made false statements about the condition of the car. She says that the respondent told C that he recently bought the car from his neighbour who was a government motor vehicle inspector and that his neighbour would not have sold him a vehicle unless it was in top shape. The respondent denies making this statement. C says that he relied on the respondent's representations and therefore did not get an inspection of the vehicle.
13. Both parties refer to the fact that the car was sold for well under market value. The applicant says that this shows that the respondent was misrepresenting the car as in good condition while the sale price acknowledged it was not and the respondent knew that. The respondent claims that the fact that he sold it at a low cost meant that he was being honest about the fact that this was an old car.
14. I am not persuaded by the applicant's position on this point. The fact that the respondent was selling the car for such a low price leads me more to the conclusion that he was not misrepresenting the vehicle as being in great condition. It also suggests that the applicant should have been alerted to the condition of the car based on the low price.
15. The applicant also stated that the respondent told C that he had taken the car into a service station to get the oil and transmission fluids changed. The applicant stresses this point because she says the mechanic at the repair shop where the car broke down stated that an oil additive was used to cover bearing noises from the engine and that if the respondent got the oil changed, then he was the one that used the additive to hide the condition of the engine and not the previous owner. The applicant submits that this proves that the respondent was deceptive. She also submits that when the repair shop mechanic took the oil drain pan off it was full of metal shavings.

16. The applicant provided an invoice from the repair shop which stated that the mechanic noted that the oil was full and that when he removed the oil cap there was a very thick molasses-like fluid around the oil cap that looked like an oil additive. The mechanic said that this was **possibly** used to take up excess bearing clearances in the engine (emphasis mine). When he drained the oil he found metal shavings. He recommended replacing the engine. The applicant has also submitted a video of what she claims shows the additive oil residue.
17. I find that the invoice's statement that the oil additive was to cover up the state of the engine unconvincing as the mechanic only said it was a possibility. Further, the evidence does not establish that the respondent put in the additive. His statement that the oil was changed does not mean that he did it himself, or that he put in the additive, or that he instructed somebody else to do so. I also note that there are other reasons to use an oil additive other than the one suggested in the invoice.
18. The invoice is dated January 11, 2019 and states that the car was just purchased the day prior. This information is incorrect as there is no dispute that the applicant bought the car on December 29, 2018. I also note that the odometer reading showed 200,498 kms which indicates that 237 kms had been put on the car since the respondent posted the advertisement. Neither party disputes that these are the accurate odometer readings and I find them to be so.
19. The applicant said C called the respondent after the car broke down and reminded him that the respondent sold them the car representing it as in a "good condition" and not an "as in" condition and that he stated that the car did not need anything done to it. The applicant says that the respondent indicated that C should go talk to his neighbour who sold it to him and also revealed that the neighbour was a bouncer. The applicant took this as another sign of the respondent's deception. The respondent denies making either statement.
20. The respondent also submits that C took the car for a lengthy test drive. When C returned, C asked about the condition of the car and the respondent says he told him that he only had the car for short time but disclosed what he knew to be wrong

with the car. The respondent also says that he told C that the car was old and he was only selling it for \$900.00. He told them that what you see is what you get for the price and that it was not a new Cadillac.

21. 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.
22. 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.
23. 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.
24. 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.
25. As noted, the respondent says that when he sold the car he was honest that this was an old car and sold it for a low price because of this fact. He says 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 there were any issues with the engine.
26. I find that the problems with the car were either patent (obvious on reasonable inspection) defects which the applicant could have discovered on a professional inspection before she bought the car or were latent defects (hidden) that the applicant has not established the respondent knew about and misrepresented.

27. 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)

28. The applicant argues that the car is unusable and was not durable for a reasonable period of time. 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.

29. 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 it 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.

30. 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.

31. 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.

32. In this dispute, the car was approximately 12 years old at the time of sale and had over 200,000 kilometers on the odometer. The applicant put approximately 237 kms on it and drove it for 12 days. The evidence 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 related to its later breakdown.

33. As in *Sugiyama*, the car appears to have become undriveable after relatively little driving. Regardless, the car was roadworthy and could be safely driven when the applicant purchased it. C test drove the car and was satisfied with it after the test drive. The evidence does not establish that the respondent knew that there was a problem with the engine or that the deterioration of the car was not a result of normal aging.
34. 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 as required by the SGA.
35. In summary, the applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims for a refund of the car's purchase price and the repair shop invoice.
36. 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 her claim she is not entitled to have her tribunal fees or expenses reimbursed.

ORDER

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

Kathleen Mell, Tribunal Member