



Civil Resolution Tribunal

Date Issued: August 8, 2019

File: SC-2019-000795

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hangad v. Her*, 2019 BCCRT 951

BETWEEN:

SHAQUELLE HANGAD

APPLICANT

AND:

RYU HER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a used car sale. Around January 11, 2019, the applicant, Shaquelle Hangad, bought a 2006 manual transmission Honda Civic (car) from the respondent, Ryu Her. The applicant says the respondent lied about the car's condition, and that immediately after the purchase he discovered significant

mechanical problems with it, including a damaged transmission. The applicant seeks \$4,553 in damages, made up of a refund of the car's purchase price, plus the cost of repairs and new tires.

2. The respondent denies the applicant's claims. He says he did not misrepresent the car's condition, and he has repair receipts. The respondent also says that since it was a private sale, the car was sold "as is" and the applicant had a duty to have it inspected to see if it met his criteria before purchasing it.
3. The parties are both 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* (CRTA). 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, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. 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, where permitted under section 118 of the CRTA:
 - 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 applicant is entitled to \$4,553 in damages arising from the used car purchase.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. For the following reasons, I find the applicant has not proven his claim.
11. The evidence shows that the respondent advertised the car on Facebook. The applicant provided a copy of the advertisement, which says the car has a "clean status", which I infer refers to the car's title. The advertisement also says "no leaks", and says the car had new brakes, brake cylinders, clutch, flywheel, front bumper, and spare tire. It says the car had 275,000 kilometers on the odometer.

12. The applicant also provided a screenshot of a second Facebook advertisement which appears to have been posted later on the same day (January 11). That advertisement has some slightly different wording, and in particular says that the heater worked but the air conditioning did not. The second advertisement also says the passenger window “sometimes works”.
13. The applicant submits that the Facebook advertisement says the car had no mechanical problems. I do not agree, as that it is not stated in either version of the advertisement. However, I agree that both advertisements said “No leaks”.
14. The evidence before me does not establish exactly when the purchase occurred, or how much the applicant paid. I infer from the text messages in evidence that it was around \$3,000.
15. The applicant says that within hours after he brought the car home, problems became apparent, including a significant transmission leak. The applicant says he immediately sent a Facebook message to the respondent asking for a refund. The applicant did not provide a copy of this correspondence, but the respondent provided a partial copy. It confirms that the applicant complained that the window on the passenger side did not work properly. He wrote that the car had a “bunch” of problems, but did not specify what they were.
16. The applicant provided a copy of an invoice from a Honda dealership. It shows that he took the car in for repairs on January 15, 2019, due to a “rattling/thumping” noise coming from the engine. A mechanic inspected the car and wrote on the invoice the transmission was leaking, and there was “lots of clutch material” inside the bell housing. The invoice also says the transmission fluid was very dirty, and that the clutch was contaminated with transmission fluid. According to the invoice, the mechanic recommended some repairs and some precautionary inspections and work. The full list of this work is partially illegible, as the copy provided by the applicant is cut off on one side.

17. I note that parties to a dispute are instructed to provide copies of all relevant evidence. Since I cannot read the list of repairs, I place limited weight on it.
18. I have considered whether to request clearer copies of the invoice, but I find this is not necessary in the circumstances because it would not change my decision. While I agree that the invoice does prove that the car had a transmission leak, the applicant has not proven his claimed damages. He seeks a refund for the car, but he has provided no evidence to establish what he paid for it or when he bought it. For these reasons, I would not order any refund for the car in any event.
19. Also, the respondent argues that the applicant did not know how to drive a manual transmission, and damaged the transmission after he bought the car. Since there is no mention of transmission problems in the text messages from immediately after the purchase, and since the Honda invoice is dated several days after the sale, I find the applicant has not proven that the transmission was already damaged when he purchased the car.
20. For these reasons, I dismiss the applicant's claim.
21. The applicant says some unspecified portion of the \$4,553 sought is for car repairs. However, the documents in evidence do not prove that he had the car repaired, or how much he paid. While the dealership's invoice sets out a price of \$1,254, it does not specify what work was performed, if any. Rather, based on wording of the invoice, I find it actually sets out an estimated price, and is not a bill for completed work. Also, some of the recommended work was indicated to be precautionary. The respondent would not be liable for precautionary work to prevent damage that had not yet occurred, but the invoice does not say how much the precautionary work was estimated to cost, and how much was related to tasks such as fixing the transmission leak.
22. In the Dispute Notice and in his submissions, the applicant indicated that another part of the claimed \$4,553 relates to tires. I find that the evidence before me does not establish a problem with the tires, that the applicant replaced them, or the cost.

The invoice simply recommends checking the tires, and there is no further evidence about them.

23. I therefore conclude that the applicant has not established his entitlement to any of his claimed damages for the cost of the car, repairs, or tires.

Sale of Goods Act

24. Section 18(c) of the *Sale of Goods Act* applies to private sales of used cars, and says that a 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. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied section 18(c), and said there were 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. 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.

25. I find that the facts before me are similar to *Sugiyama*. The car was old, had a high odometer reading, and a relatively low cash value. Also, the applicant chose not to have the vehicle inspected before purchasing it. With the exception of the implied warranty for durability under the *Sale of Goods Act*, private sales of used vehicles are “buyer beware”. This means the buyer must assess the condition of the vehicle before purchasing it, such as by obtaining a pre-purchase inspection: *Smith v. Wild Grizzly Transport LTD*, 2018 BCCRT 203.

26. 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.

Misrepresentation

27. The applicant says the respondent misrepresented the car's condition.
28. If a seller misrepresents a vehicle prior to sale, the buyer may be entitled to compensation. A misrepresentation is a false statement of fact that would induce a reasonable person to enter into a contract. However, a seller does not have to tell the buyer about defects that the buyer could discover by reasonably inspecting the vehicle: *Birge v. Lake*, 2018 BCCRT 800.
29. 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.
30. 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.
31. The respondent says that at the time he sold the car all known defects were disclosed. I find that the transmission problem was either a patent defect, in which case the applicant could have discovered it through a professional inspection, or, it was a latent defect that the respondent did not know about. There is nothing in the evidence that establishes that the respondent knew about the transmission leak at the time of the sale.
32. I find, based on the evidence before me, that the applicant has not proven that the respondent misrepresented the car's condition.

33. For all of these reasons, I dismiss the applicant's claims.

34. The applicant was unsuccessful. In accordance with the CRTA and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

35. The applicant's claims, and this dispute, are dismissed.

Kate Campbell, Tribunal Member