



Civil Resolution Tribunal

Date Issued: August 15, 2019

File: SC-2018-007210

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gatto v. Fuel Motorsports Ltd. et al.*, 2019 BCCRT 977

B E T W E E N :

Matthew Gatto

APPLICANT

A N D :

Fuel Motorsports Ltd. and Thomas Richard Findlay

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who should pay for the repairs of an ATV. The applicant, Matthew Gatto, says that he purchased the ATV in August 2018. It was advertised through the respondent, Fuel Motorsports Ltd. (FM), and was previously owned by the other respondent, Thomas Richard Findlay. The applicant says that the ATV's

condition was misrepresented by both of the respondents as it required extensive repairs. FM says that this was a private sale between the applicant and the ATV's previous owner, Mr. Findlay, and any issues regarding the ATV's condition should be taken up with Mr. Findlay. Although served with a Dispute Notice, Mr. Findlay did not provide a Dispute Response.

2. The applicant is self-represented. FM is represented by Marnie Apsouris, whom I infer is a principal or employee.

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* (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.
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, 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

- 7. The issue in this dispute is whether FM or Mr. Findlay owe the applicant for repairs to his ATV.

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 addressed the evidence and arguments to the extent necessary to explain my decision.
- 9. As noted above, the applicant purchased the ATV in August 2018. The applicant says that he purchased the ATV from FM, but FM says that this was a private sale between the applicant and Mr. Findlay, and FM's role was limited to facilitator. For the reasons that follow, I find the evidence supports FM's submission that it acted only as a facilitator in the ATV's sale.
- 10. The applicant did not provide any evidence of any written agreement between himself and FM. He provided a photo of part of a standard transfer/tax form provided by the Insurance Corporation of British Columbia. This form is used normally to register a transfer of vehicle ownership. Mr. Findlay partially completed the form and signed it.
- 11. The vehicle description section of the form describes the ATV at issue, including its make, model, and vehicle identification number. In the seller information and vehicle declaration section, Mr. Findlay certifies that, at the time of sale, he was the registered owner of the ATV and entitled to sell it.
- 12. Consistent with the above, the applicant provided notes from an April 16, 2019 call with Mr. Findlay. According to the applicant's notes, Mr. Findlay said that that sale

of his ATV was by consignment and that FM was to note this in its online ads. Mr. Findlay also said that he provided his ATV to FM for a consignment sale and that at the time the ATV had no damage or other issues. He noted he had no previous, direct interactions with the applicant.

13. I am satisfied from the evidence that FM did not sell the ATV at issue. The evidence supports the conclusion that Mr. Findlay owned it. As a result, I dismiss the applicant's claims against FM. I shall next consider the applicant's claims against Mr. Findlay.
14. As noted in *Hangad v. Her*, 2019 BCCRT 951, which is not binding on me but I find persuasive, private car sales are generally governed by the principle of "buyer beware", subject to some limits set out in section 18(c) of the *Sale of Goods Act*. Section 18(c) says that the goods 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.
15. In *Hangad*, the tribunal referred to the case of *Sugiyama v. Pilsen*, 2006 BCPC 265. In *Sugiyama* the court noted that a number of factors are considered when determining whether a vehicle is durable for a reasonable period of time, including age, mileage, price, the use of the vehicle, the reason for the breakdown, and expectations of the parties as shown by any express warranties. In *Sugiyama* the claimant purchased a car that broke down after driving it for only 616 kilometers. The court determined that the car was still durable for a reasonable time because one had to consider its age (8 years old), mileage (over 140,000 kilometers), and price.
16. The applicant did not expressly discuss the *Sale of Goods Act* in his submissions. However, he submits that Mr. Findlay should be held responsible for repairs to the vehicle as he misrepresented the degree of damage on the transfer/tax form as not being over \$2,000. Mr. Findlay has not provided a Dispute Response, but I will proceed to consider this claim under the *Sale of Goods Act* as I am satisfied that he received notice of the applicant's claim against him for the cost of repairs.

17. The applicant says that he used the ATV for the first time on September 2, 2018, two weeks after purchasing it. He says, “All was well at first”. However, the ATV’s brakes partially failed while being driven down a hill. Fortunately, the brakes were still sufficient to slow the ATV down without any collisions. The applicant brought the ATV to a mechanic on September 5, 2018. The mechanic advised that that ATV required a number of repairs and provided a list of deficiencies. The mechanic also noted that it appeared the ATV had previously been involved a rollover accident. The applicant paid for repairs totaling \$3,614.70, as documented in an invoice. The mechanic also recommended work on the wheel alignment and replacing the handlebar. The applicant claims for these expected repairs as well, estimated at \$737.89.
18. Ultimately, I find that the ATV was not durable for a reasonable period of time. Its brakes broke down the first time it was driven down a hill. There is no evidence that the applicant drove the ATV in an unreasonable manner and his mechanic found that the ATV needed “major safety repair work”. I have also considered the ATV’s price and the amount it was previously driven. The applicant provided the online ad from FM for the ATV that shows he paid approximately \$7,999. The online ad also states that it was used for only 113 hours. I infer this latter information was provided by Mr. Findlay. These factors suggest that the applicant’s time with the ATV before its breakdown was unreasonably short.
19. I acknowledge that the ATV was a used 2013 model, was likely driven in rough terrain before being purchased, and had not been inspected by the applicant in advance. There is also no specific evidence as to how long the ATV might reasonably be expected to last. These factors shorten what I would consider as durable for a reasonable period of time. Further, I am mindful that the general rule in private sales is “buyer beware”.
20. However, section 18(c) of the *Sale of Goods Act* provides an express exception to this general rule. The ATV could not be safely driven when it was purchased. It was durable for little or no time at all, given the mechanic’s comments that it was unsafe.

In my view that is a key point that distinguishes this dispute from the facts in *Sugiyama*, where the car at issue was at least roadworthy for a short period of time.

21. Having found that the respondent breached the implied warranty of durability, I must consider the appropriate remedy. The applicant provided an invoice for repairs totaling \$3,613.70, marked paid. The listed repairs included replacement of the ATV's master cylinder, engine parts, and brake components. I find that the applicant is entitled to this invoiced amount as the mechanic described these repairs as necessary for safe operation in their note to the applicant. I find the applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from the invoice date of September 26, 2018.
22. The applicant also claims for further anticipated work of the wheel alignment with tie rod replacement and upper handle bar replacement. I decline to order payment for these amounts as the mechanic did not describe them as necessary to getting the ATV into working order. The applicant purchased a used ATV and in my view some deficiencies (short of the ones noted above) are to be expected. The applicant also has yet to pay for these repairs.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

23. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
24. The applicant was successful in this dispute. I award him reimbursement for tribunal fees of \$175. The applicant did not claim for dispute related-expenses.

ORDER

25. Within 30 days of this decision, I order Mr. Findlay to pay the applicant a total of \$3,846.47, broken down as follows:

- a. \$3,613.70 in damages,
 - b. \$57.77 in pre-judgment interest under the COIA from September 26, 2018,
and
 - c. \$175.00 as reimbursement of tribunal fees.
26. The applicant is entitled to post-judgment interest under the COIA.
27. The applicant's remaining claims against Mr. Findlay and FM are dismissed.
28. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
29. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member