



Civil Resolution Tribunal

Date Issued: September 19, 2019

File: SC-2019-004251

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Poesiat v. Lapp*, 2019 BCCRT 1108

B E T W E E N :

ADRIAN POESIAT

APPLICANT

A N D :

SHANE LAPP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the private sale of a used truck.
2. The applicant Adrian Poesiat says he bought a 1999 Ford Ranger pick-up truck from the respondent Shane Lapp. The applicant says the respondent

misrepresented the truck's condition by telling him it was mechanically sound. After the applicant drove the truck 36 kilometers, he says it broke down. The applicant claims a refund of the \$1,300 purchase price.

3. The respondent says he is not responsible for the truck's condition after the applicant bought it from him. The respondent asks that the dispute be dismissed.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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 decided to hear this dispute through written submissions.

8. 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.
9. 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

10. The issue in this dispute is whether the respondent must refund the applicant the \$1,300 he paid for the truck.

EVIDENCE AND ANALYSIS

11. 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 as I find necessary to explain my decision.
12. In fall 2018, the respondent advertised the truck for sale online for \$1,458.00. Neither party filed a copy of the full advertisement in evidence.
13. The parties then exchanged Facebook messages. During that exchange the respondent wrote that the “Clutch is good, slave cylinder leaks though”.
14. On November 12, 2018, the applicant test drove the truck. The applicant says that, that day, the respondent assured him the truck was in satisfactory mechanical condition. The respondent agrees that the truck operated well until he sold it to the applicant, except for the issue with the leaking slave cylinder and one other issue

that he disclosed to the respondent. Based on these submissions, I find that the respondent told the applicant the truck had operated well and had a leak in the slave cylinder and one other problem. In this proceeding, neither party explained what the second problem was. The applicant bought it for an agreed price of \$1,300.

15. The applicant paid the respondent a \$100 deposit. The respondent wrote up an agreement to hold the truck until December 13, 2018 for the applicant to pay the balance of the \$1,300 purchase price.
16. The written purchase agreement says that the applicant agreed to buy "Ford Ranger standard 1999" for \$1,300, with a deposit of \$100 and the balance due by December 12, 2018. The agreement does not say anything about the truck's condition.
17. The parties agree, and I find, that on December 7, 2018, the applicant paid the respondent the \$1,200 balance by e-transfer.
18. Despite having paid in full, I find that the applicant did not pick up the truck until over a month later.
19. On January 19, 2019, the applicant picked up the truck from the respondent's parents' house, where it had been parked for the past two months. At first, the applicant messaged the respondent saying the "truck runs fine" except for the stereo. However, within the hour the truck started to show battery indicator and other gauge indicator lights, began "shaking" in fifth gear and broke down.
20. The applicant suggested the truck's problem might be the alternator but did not provide mechanic evidence diagnosing the problem.
21. When the applicant reported these problems to the respondent by text, the respondent replied by writing "Well it sat for a very long time since you bought it."
22. The applicant had the truck towed back to the respondent's parents' home.

23. On January 25, 2019, the respondent had the truck towed by Georgia Straight Towing, to whom he gave the applicant's contact details. Because payment for this tow is not part of the claim, I make no finding about it.
24. The truck is currently being stored, at the applicant's expense.
25. The respondent submits that he did not misrepresent the truck's condition at the time of purchase. Based on the written agreement and the fact that the respondent disclosed two problems with the truck to the applicant, I find that he did not misrepresent the truck's condition to the applicant at the time of sale.
26. The respondent takes the position that leaving the truck to sit, over a month after payment and over two months in total, may have caused problems.
27. I agree. The text messages show that the applicant was slow to pick up the truck after he bought it.
28. Section 25 of the *Sale of Goods Act* (SGA) says that the risks transfer to the buyer when the property in them is transferred to the buyer, whether or not delivery has been made. Given that the applicant had, by then, paid for the truck and was its registered owner, he was responsible to pick it up and, if necessary, keep it running regularly. The applicant failed to do so.
29. A purchaser is expected to reasonably assess the vehicle's condition before purchasing it. Unless the seller commits fraud or conceals defects, in a private sale the purchaser assumes the risk for any defects in the condition or quality of the vehicle. This principle is referred to as the doctrine of *caveat emptor* or "buyer beware". See *Rusak v. Henneken*, [1986] B.C.J. No. 3072 (S.C.); *Smith v. Wild Grizzly Transport Ltd.*, 2018 BCCRT 203. "Buyer beware" applies to private car sales but is qualified by the implied durability warranty in section 18(c) of the SGA.
30. I have found that the respondent did not misrepresent the truck's condition. There is no evidence that he concealed the truck's defects. On the contrary, he disclosed the fact of its leaky slave cylinder openly.

31. Turning to the implied condition of durability, section 18(c) of the SGA says that goods must be “durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale ...”.
32. Whether or not the truck was reasonably durable as required by the SGA involves an assessment of the facts in context to determine what is reasonably durable in the circumstances. See: *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII), *James v. Mountain Equipment Co-operative*, 2018 BCCRT 521; *Penny v. Earthy*, 2018 BCCRT 851.
33. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court noted that several 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 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 of about \$5,000.
34. Here, the applicant chose to buy the truck having seen it and taken it for a test drive. He could have had a mechanic inspect the truck but did not. The truck was over 18 years old and was known to need some repairs. The purchase price was \$1,300, at the low end for a running vehicle. Neither party provided evidence about the truck’s mileage. I accept that the purchase price was negotiated in part based on the need for repairs. Given the known issues about the truck, and the fact that the applicant chose to let it sit for over a month before picking it up, I find it was reasonably durable in the circumstance. I find there was no breach of the implied warranty in section 18(c) of the SGA.
35. For these reasons, I dismiss the applicant’s claims.

36. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the respondent did not pay tribunal fees nor claim dispute-related expenses, I make no order for them.

ORDER

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

Julie K. Gibson, Tribunal Member