



Civil Resolution Tribunal

Date Issued: October 23, 2019

File: SC-2019-004829

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *English v. Richards*, 2019 BCCRT 1212

B E T W E E N :

SEBASTIAN ENGLISH

APPLICANT

A N D :

ROY RICHARDS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about the sale of a used van. The applicant, Sebastian English, says he purchased a 1993 Ford Aerostar van from the respondent, Roy Richards. The applicant says that the respondent misrepresented the condition of the van, which broke down shortly after the purchase and had to be scrapped. The applicant wants

the respondent to pay him \$1,504.66 for a refund of the van's purchase price plus reimbursement of expenses he says he incurred. The respondent denies that he misrepresented the van's condition or that he is responsible for the applicant's claimed damages.

2. The parties are self-represented.

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 the respondent is responsible for the \$1,504.66 in damages claimed by the applicant.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. In the spring of 2019, the respondent advertised the van for sale on a social media platform for \$1,200. He stated that the van had been “sitting for 3 years” but that he started and drove the van “every 4 or 5 months”. The respondent stated that the van was “as is where is” and could be driven away.
10. The applicant responded to the advertisement, and he and the respondent texted about the van. The respondent advised that the van had “old gas” as it had not been driven on roads, but only on private property for 3 years. He indicated that the van had some rust and that it was “not perfect” as it had been used for work purposes.
11. The applicant travelled to the respondent’s location. The parties negotiated a \$500 purchase price and the applicant picked up the van and obtained insurance for it on May 18, 2019. The applicant was happy with the van when he drove it away, but says that the van broke down the next day after only 1 hour of driving and it had to be towed. He says he has documentation from Canadian Tire that the engine and transmission were “beyond repair” and that the exhaust was rusted through. However, the applicant did not provide that documentation.
12. The applicant says the fact that the van broke down so quickly after the purchase makes him believe that the respondent knew the van was not running properly. The applicant says that the respondent misrepresented the vehicle by telling him that it “ran fine”. The applicant says that the respondent violated the *Sale of Goods Act*

(SGA) by selling him a vehicle that was not durable for a reasonable period of time. The applicant asks for an order that the respondent return the \$500 purchase price and pay for vehicle-related expenses, travel expenses, and time lost from work while dealing with the scrapping of the vehicle, for a total of \$1,504.66.

13. The respondent says that he is not responsible for the problems the applicant had with the van or any of the damages he claims. The respondent says that the van was “in good running condition” prior to the purchase and was “running fine” when the applicant bought it. According to the respondent, he had put \$2,000 of parts in the van as he intended to use the vehicle for travel purposes, but decided to sell it when his plans changed. The respondent denies that he put any kind of warranty on the van and does not believe that the van broke down after only 1 hour on the road.
14. I am satisfied that the basic elements of a contract (offer, acceptance, and consideration) are present here. Contracts of purchase and sale between private individuals are subject to section 18(c) of the SGA. This section says that goods sold 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”.
15. The applicant’s submission is that the Canadian Tire inspection showed problems with the engine, transmission and exhaust system. The evidence before me contains a May 19, 2019 receipt for towing services and a Canadian Tire receipt for purchases of \$13.42 but, as noted above, no report about the van’s condition. There is no documentation from a mechanic or other technician as to the reason for the towing service, the status of the van, or the need for it to be scrapped. In the absence of this information, I cannot conclude that there was a breach of the implied warranty in the SGA.
16. Private vehicle sales are made on a “buyer beware” basis, meaning that the buyer must assess the condition of a vehicle before buying it. However, the concept of buyer beware is set aside where a buyer is induced to buy a vehicle based on a seller’s fraud (see, for example, *Nixon v. MacIver*, 2016 BCCA 8).

17. The parties disagree as to whether the applicant provided the respondent with the opportunity to inspect the van after the applicant took possession of it. However, I do not find this to be determinative. Of more importance is the absence of a pre-purchase inspection. There is no indication that the applicant inspected the van or was somehow prevented from inspecting it prior to the purchase. By choosing not to inspect the vehicle prior to the purchase, I find that the applicant assumed the risk for any defects in the vehicle, which was specifically advertised as “as is where is”.
18. As noted above, the concept of buyer beware can be set aside if there is fraud on the part of the seller. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the court stated that, because fraud is a very serious allegation, it is necessary to have clear and convincing evidence to prove the elements of fraud. I do not find that the available evidence establishes the respondent knowingly made a false representation about the van that caused the applicant to act and suffer a loss.
19. I find that the applicant has not proven that there was a breach of the implied warranty in the SGA or that the respondent engaged in misrepresentation. Accordingly, the purchase of the van was made on a “buyer beware” basis and the respondent is not responsible for the damages claimed by the applicant. I dismiss the applicant’s claims.
20. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member