



Civil Resolution Tribunal

Date Issued: November 28, 2019

File: SC-2019-005811

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burwell v. Balazs*, 2019 BCCRT 1337

B E T W E E N :

SHANNON BURWELL

APPLICANT

A N D :

FRANK BALAZS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over the private sale of a used vehicle.

2. The applicant, Shannon Burwell, bought a 2004 Nissan Murano from the respondent, Frank Balazs. The applicant says the respondent misrepresented the condition of the vehicle's brakes and claims \$1,164.80, which is the cost to replace the brakes. The respondent denies liability.
3. The parties are each 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, email, or a combination of these. Some of the evidence in this dispute amounts to a "she 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.
6. 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.

7. 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.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondent negligently misrepresent the condition of the vehicle's brakes?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities.
11. The parties agree the respondent advertised the 2004 Nissan Murano for an asking price of \$4,500.00 and the ad said, "the brakes were at 90% based upon the opinion of a mechanic who had completed a recent seasonal tire change".
12. It is undisputed that on July 2, 2019 the applicant bought the Murano for \$4,000.00, \$500 less than the advertised price. The applicant says that before the purchase, she test drove the Murano for a "short, 5 minute drive down the road and back". The applicant says she felt the Murano "shimmy" during the test drive. The parties both

say they discussed before the sale that the “shimmy” might be a tie rod or ball joint problem and discussed other potential mechanical issues with the Murano. There is no dispute that the applicant could have had the Murano inspected before the purchase but did not.

13. A week after buying the Murano, the applicant’s mechanic inspected its brake system. According to the mechanic’s statement, the front brake pads were down to about 30% and the rear brake pads to 5-10%. Also, it says the front rotors were “warped” and the rear rotors were “rusty”. The July 8, 2019 invoice in evidence shows the applicant paid \$1,164.80 for a full brake replacement, the amount claimed in this dispute.
14. The parties agree that the respondent relied on a recent opinion of his mechanic about the brakes’ condition when he advertised the Murano. In particular, the respondent’s May 7, 2019 text message from his mechanic states that the brakes were done “a couple years ago” with “premium parts” and the “pads are 80%+”. The applicant therefore argues the respondent’s “90%” advertisement was a direct misrepresentation about the brakes. The applicant says she took the respondent at his word because the Murano was foreign to her and she did not know how it should handle. The applicant argues that if the respondent had not “embellished his ad”, she would have known it was necessary to have the brakes inspected prior to purchase.
15. In a private sale, the *Sale of Goods Act* (SGA) implies a warranty that the items sold will be durable for a reasonable period when put to normal use and considering the surrounding circumstances of the sale. The applicant does not argue that the Murano was not durable for a reasonable period and I have insufficient evidence of a breach of the warranty of durability. The applicant was able to drive the vehicle for several days after purchase, the vehicle was 15 years old with 181,509 km on the odometer, and there is little evidence of the vehicle’s history.
16. Other than the implied warranty of durability, there are no implied warranties about fitness for purpose or saleable quality under the SGA for a private vehicle sale. In

that respect, the private sale is 'buyer beware', which means the purchaser assumes the risk for any defects in the condition or quality of the vehicle. While the purchaser assumes the risk for defects, the "buyer beware" principle does not permit the seller to misrepresent the vehicle's condition. As the respondent points out, the tribunal has published several decisions related to used car sales citing this principle including: *Poesiat v. Lapp*, 2019 BCCRT 1108, *Smith v. Wild Grizzly Transport LTD*, 2018 BCCRT 203, and *Popoff v. Driscoll*, 2018 BCCRT 880. While these decisions are not binding on me, I agree the same legal principles apply here.

17. 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 the contract. To the extent the advertised percentage was not precise, I find it was likely an innocent misrepresentation about the brakes. I say this because I find the difference between "80+" and "90" is slight and the respondent undisputedly disclosed the Murano's other mechanical issues, including potential tie rod or ball joint problems. Even if the statement was a non-innocent misrepresentation, I find it did not lead the applicant to purchase the Murano. I find that advertising the Murano's brakes at "90%" rather than "80%+" made no appreciable difference to the applicant's decision to purchase the Murano. Either percentage would represent near-new brakes. I find the representation did not lead the applicant to complete the sale.
18. Further, the evidence shows that the significantly worn brakes were discovered on inspection by the applicant's mechanic. The law does not require a seller to tell the buyer of patent defects that the buyer could discover by reasonably inspecting the vehicle. There is a high onus on a buyer to inspect a used vehicle and discover patent defects. The respondent just must not actively conceal them. As noted, the parties agree the respondent relied on his own mechanic's opinion, as described above. The applicant chose to purchase the Murano having seen it and taken it for a test drive. Despite the vehicle being "foreign" to her and having identified some mechanical issues, the applicant decided not to have this 15-year-old vehicle

inspected by a mechanic prior to sale. I find the buyer beware principle applies here and none of the exceptions are applicable.

19. Given my conclusions above, I find the applicant is not entitled to reimbursement for the costs of replacing the Murano's brakes.
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. I see no reason in this case not to follow that general rule. As the applicant was unsuccessful, I find she is not entitled to reimbursement of her tribunal fees. The applicant claimed no dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member