Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bonneteau v. Dhatt*, 2019 BCCRT 1423

B E T W E E N :

SHAWN BONNETEAU and HELENA BONNETEAU

APPLICANTS

A N D :

RICK DHATT and MANPREET DHATT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about the private sale of a used car.

2. The applicants, Shawn Bonneteau and Helena Bonneteau, purchased a 2009 Nissan Rogue sport utility vehicle (SUV) from the respondents, Rick Dhatt and Manpreet Dhatt.

3. The applicants say that the respondents misrepresented the SUV's condition, number of previous owners, and accident history. The applicants request an order that the respondents pay $3,500 for present and future repair costs, plus $1,500 for diminished value.

4. Mr. Dhatt says that the respondents are not responsible for the repairs because Mr. Dhatt disclosed all known issues. He says the accidents were minor, and the vehicle's history was unknown to Mr. Dhatt when he negotiated with Mr. Bonneteau.

5. The applicants are represented by Mr. Bonneteau. Mr. Dhatt is self-represented. Mrs. Dhatt did not provide a dispute response, evidence or submissions.

JURISDICTION AND PROCEDURE

6. 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.

7. 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, both parties in this dispute call into question each other's credibility. 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, 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.

ISSUES

10. The issues in this dispute are:

    a. Did the respondents misrepresent the SUV's condition, number of previous owners, or accident history?

    b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

12. The applicants were renting the respondents' basement suite when they discovered that the SUV was for sale. In October 2018, Mr. Bonneteau texted Mr. Dhatt to inquire about the SUV. Mr. Dhatt said the SUV was a 2009 all-wheel drive model and had 231,000 kms. He said the respondents had put on new tires, "did brakes" and put in a new battery that year. He said Mrs. Dhatt bought it "brand new in 2009 and [it] doesn't have any accidents." The original asking price was $7,000. It hadn't been driven since August 2018.

13. The applicants paid the respondents the final $6,250 purchase price on or about November 1, 2018. They did not drive the SUV until early December 2018.

14. The Vehicle Transfer/Tax Form identifies the SUV's seller as Manjit Gill. The relationship of Manjit Gill and Mrs. Dhatt was not explained, although Mr. Dhatt said that Mrs. Dhatt's father bought her the SUV. In any event, there is no dispute that Mrs. Dhatt validly sold the SUV to the applicants.

15. The applicants say that after buying the SUV they discovered that Mr. Dhatt had made misrepresentations about the condition of various SUV components, including the oil system, the brakes, the air conditioner, and the battery.

16. In January 2019, Mr. Bonneteau asked Mr. Dhatt to confirm the original purchase date for the purpose of extended warranty coverage. Mr. Dhatt then informed the applicants that Mrs. Dhatt did not buy the SUV new from the dealership. He said that he thought she did, but it was actually a year old when she purchased it.

17. In March 2019, the applicants took the SUV to Kumar Auto, a licensed mechanic for a full tune-up and inspection. They say that the mechanic advised that the front and rear brake pads, all 4 rotors, the 2 rear calipers, both control arms, and the cabin air filter were in urgent need of repair. This is consistent with Kumar Auto's March 6, 2019 invoice, totaling $2,911.49, which the applicants paid. Kumar Auto also provided a quote for an air conditioner compressor installation for $1,170.

18. At some point after the purchase, the applicants obtained an ICBC claims history report for the SUV. The claims history report shows 2 claims for collisions and 2 for

vandalism. The collision claims, from 2011 and 2013, are for approximately $1,100 each and affected the rear of the SUV. The vandalism claims are from 2013 and 2014 and total approximately $3200.

19. The applicants refer to the *Sale of Goods Act* (SGA) and say the SUV was not "as described" and was not durable for a reasonable period of time. Section 17 of the SGA says that when goods are sold by description, there is an implied condition that the goods must correspond with the description. Courts have interpreted the word 'description' in section 17 of the SGA to mean factors relevant to the definition or identification of the goods, rather than the attributes of the goods (see *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198). There is no dispute that the vehicle the respondents sold to the applicants was the SUV described or identified in Mr. Dhatt's text messages – the 2009 Nissan Rogue. That some components needed repair or that the SUV had been in an accident did not change the identity of the SUV being purchased. I find no breach of section 17 of the SGA.

20. Private car sales are 'buyer beware', meaning that the buyer is expected to assess the condition of the vehicle before purchasing it and there is no implied or legislated warranty. However, the buyer beware principle is qualified by the implied durability warranty in section 18(c) of the SGA.

21. Whether the SUV was reasonably durable as required by the SGA involves an assessment of the facts to determine what is reasonably durable in the circumstances. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court noted several factors to consider 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 relatively low price of about $5,000.

22. Here, the applicants chose to buy the SUV having seen it and taken it for a test drive. They could have had a mechanic inspect the SUV but did not. They could have requested inspection and maintenance records but did not. The SUV had 231,000 kms on it, which is on the higher end. The SUV sat undriven for 4 months from August until December 2019. Moreover, the SUV did not break down. Rather, specific components required maintenance and repairs, which I find was consistent with its mileage. Accordingly, I find that the SUV was reasonably durable in the circumstance. I find there was no breach of the implied warranty in section 18(c) of the SGA.

23. Absent a breach of the SGA, a buyer may still be entitled to compensation for losses arising from a seller's misrepresentation. A misrepresentation is an untrue statement of fact, made in the course of negotiations or in an advertisement, that is material and was relied on by the purchaser when entering into the contract (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308).

24. The requirements of materiality and reliance are closely related. What constitutes a material representation depends on the context.

25. There is no dispute that Mr. Dhatt made the following initial representations:

    a) "We just put on new tires, did brakes and put in new battery this year."

    b) "[Mrs. Dhatt] bought it brand new in 2009 and [it] doesn't have any accidents. There are a few scratches but nothing major."

    c) "Oil is good… it's supposed to be checked [when] engine is cold first thing in morning."

26. The applicants say that when Mr. Dhatt said he "did brakes", they trusted that the full braking system was "done or checked and had no issues". There is no dispute that Mr. Dhatt only had the front brake pads changed in early 2018. I accept, based on the Kumar Auto invoice and statement, that the brake pads, calipers, rotors and

control arms required repair or replacement due to wear. Mr. Dhatt points out that the applicants drove the SUV for 3 months before complaining about the brakes.

27. On balance, I find there was no misrepresentation about the brakes. I find that the statement that he "did" the brakes was true because the front brake pads were changed in 2018. I find that Mr. Dhatt did not represent that either the front or rear braking systems were overhauled, repaired, or inspected.

28. The applicants say they discovered an oil leak after the first oil change, but they do not say when they had the oil changed. A March 7, 2019 quote from Kumar Auto confirms that the oil pan gasket should be repaired. The applicants say this repair was not done at the time because it was not as urgent as the other repairs. Mr. Dhatt says the oil never leaked when it belonged to Mrs. Dhatt, and says it is possible something was damaged when the applicants had the oil changed.

29. There is no evidence of a pre-existing oil leak that the respondents were aware of when they sold the SUV. The SUV sat undriven for 4 months, and there is no evidence that the applicants discovered the leak before March 7, 2019, after driving the car for 3 months and changing the oil. For those reasons, the applicants have not established on a balance of probabilities that the statement that the oil was "good" was untrue when Mr. Dhatt made it.

30. The applicants were aware before the purchase that the air conditioning system did not work. Their argument is that Mr. Dhatt misrepresented how costly it would be to repair the air conditioning system. The parties' text messages show that Mr. Dhatt said the air conditioner may need a refill or a new motor. He said he knew a mechanic who could do the repairs if Mr. Bonneteau liked for $250-$300.

31. The applicants were quoted $1,170 to replace the air compressor and repair the air conditioning system. Mr. Dhatt submitted an eBay link showing what appears to be a similar air compressor for $120. I find it is not necessary to determine whether the applicants paid too much, because Mr. Dhatt's representation was only that his mechanic could replace the air conditioner compressor for $250-$300. Mr.

Bonneteau did not take him up on this offer and instead went to his own mechanic. Accordingly, the applicants have not established an untrue statement.

32. The applicants submitted a photo of the SUV's battery with a sticker reading October 2015, making it approximately 3 years old, The respondents did not dispute the battery's age, so I find that Mr. Dhatt made an untrue statement when he said the battery was new in 2018. However, I find that the statement was not material. The battery worked, it was just farther along in its lifespan than the applicants were told, and so will need to be replaced sooner. The applicants say that a new battery installed costs $200-$300. In the context of a $6,250 used car purchase, I find that the applicants did not rely on the statement that the battery was new.

Ownership and accident history

33. Mr. Dhatt says he did not know when he sold the SUV that it had been in 2 accidents, which he describes as minor fender benders where someone hit the vehicle from behind. He says he asked Mrs. Dhatt if the SUV had been in any accidents and she assumed he was asking about major damage. He also says he did not realize that Mrs. Dhatt purchased the vehicle second-hand rather than new from the dealership.

34. 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 whether it was true or false, and the buyer is induced by the false representation to buy the item. I find that Mr. Dhatt recklessly said that the SUV had been in no accidents without confirming or clarifying Mrs. Dhatt's understanding. He also recklessly said Mrs. Dhatt bought it "brand new".

35. A misrepresentation made by an agent of the seller is just as effective as a representation made by the seller herself: *Weibelzahl v. Symbaluk*, 1963 CanLII 462 (BC CA). I find that Mr. Dhatt acted as Mrs. Dhatt's agent in the sale. Accordingly, Mrs. Dhatt is deemed to have made the same representations as Mr.

Dhatt. Given that she knew the accident and purchase history, I find that she made, through Mr. Dhatt, untrue statements about the SUV.

36. Although the applicants could have obtained an ICBC claims history report before purchase, this is not a case where the respondent made no representations about the ownership or accident history and left it to the applicant to inquire. An assertion of fact made by a seller can be taken at face value (see *Mason v. King,* 2011 BCPC 169). As noted in *Redgrave v. Hurd (1881) 20 Ch. D. 1(C.A.)* at 13, cited in *Mason*:

> If a man is induced to enter into a contract by a false representation it is not sufficient to answer him to say "If you had used due diligence you would have found out that the statement was untrue. You had the means afforded you of discovering its falsity, and did not choose to avail yourself of them.

37. In other words, a lack of due diligence by the buyer does not benefit a seller who makes a false statement, particularly when the statement is made fraudulently or negligently.

38. I find that there is a material difference between a first-owner, accident-free vehicle and a second-owner vehicle that has suffered at least 2 minor accidents and 2 vandalism incidents. I find that the applicants, who said safety and reliability were their main concerns, relied on these misrepresentations.

39. If a seller misrepresents the condition of a vehicle, the buyer may be entitled to compensation for losses arising from that misrepresentation. The applicants claim $1,500 for diminished value, relying in part on an online 'diminished value calculator' on the website 'wikiHow'. Although the formula on that website is not directly applicable given the SUV's mileage, the respondents did not challenge the applicants' estimate of losses. I find that $1,500 is a reasonable estimate of the diminished value given that the applicants purchased a second-owner vehicle with an accident history rather than a first-owner, accident-free vehicle. I find the respondents must pay $1,500.

40. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgment interest on the $1,500 from November 1, 2018, the date of the purchase, to the date of this decision. This equals $31.70.

41. 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 applicants were partially successful, I find that they are entitled to reimbursement of half their $175 tribunal fees, or $87.50. Neither party claimed any dispute-related expenses.

ORDERS

42. Within 14 days of the date of this order, I order the respondents to pay the applicants a total of $1,619.20, broken down as follows:

    a. $1,500.00 in damages,

    b. $31.70 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 for tribunal fees.

43. The applicants are entitled to post-judgment interest, as applicable.

44. 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.

45. 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.

Micah Carmody, Tribunal Member