Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Oakside Ventures Ltd v. D & D Vehicle Sales Inc.*,

2019 BCCRT 1441

B E T W E E N :

OAKSIDE VENTURES LTD

APPLICANT

A N D :

D & D VEHICLE SALES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. This is a dispute about the sale of 2 used trucks. The applicant, Oakside Ventures Ltd., bought a used 2018 Ford F-150 and a used 2019 Ford F-350 from the respondent, D & D Vehicle Sales Inc. The applicant says the respondent misrepresented the trucks' condition, and that they both have defects the

respondent failed to disclose before the applicant bought them. The applicant wants the respondent to reimburse it $2,520 for the cost of repairing the alleged truck damage, plus contractual interest.

2. The respondent says neither of the trucks had been in an accident or had any significant repairs done before it sold them to the applicant. It says any problems with the trucks should have been covered under the manufacturer's warranties. The respondent also says it agreed to reimburse the applicant for any repair costs related to alignment or re-programming the windshields that were not covered by warranty, but the applicant failed to provide it with any proof that it incurred such costs.

3. Each party is represented by an employee or principal.

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 "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.

7. 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

8. The issue in this dispute is whether the respondent misrepresented the trucks' condition, and if so, whether it is required to pay the applicants $2,520 plus contractual interest for the cost of repairs.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove its claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.

10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.

11. The parties agree that on April 10, 2019 the applicant bought both trucks from the respondent. It bought the F-350 for $80,000 with 22,500 kilometers on the odometer, and the F-150 for $33,600 with 32,000 kilometers on the odometer.

12. It is undisputed that before buying the trucks the respondent told the applicant that neither of the trucks had been in any accidents. The respondent submitted claims history reports for both trucks which show that neither truck had been in an accident or had a history of damage at the time the applicant bought them. The applicant says that upon receiving and inspecting the trucks it learned that both trucks had multiple problems. The applicant says that since the trucks came from Alberta, which has a private insurance system, the claims history reports may not capture the true accident or damage history of the trucks. However, the applicant provided no evidence to show that either of the trucks had in fact been in an accident. It did provide some evidence of various alleged damage or defects, and I address those allegations in detail below.

13. The parties agree that at the time of purchase, the respondent told the applicant that both trucks were under full manufacturer's warranties. The evidence shows that the F-350 was under a basic warranty starting September 26, 2018 for 3 years or up to 60,000 kilometers, and a power train warranty for 5 years, or up to 160,000 kilometers. The evidence shows that the F-150 was under a basic warranty starting January 16, 2018 for 3 years or up to 60,0000 kilometers, and a power train warranty for 5 years or up to 100,000 kilometers. The applicant does not dispute this. Therefore, I find both trucks were under basic manufacturer's warranties at the time of purchase.

14. The respondent says that at the time of purchase it told the applicant that the warranty on the trucks would likely not cover all defects, and that the respondent would pay for alignment and recalibration of the trucks' windshields if those items were not covered by the warranty. The respondent also says at the time of purchase it told the applicant it was unaware of any other damage to the trucks that

would not be covered by the warranties. The applicant does not dispute this, and therefore I accept the respondent's evidence on this point.

15. On May 30, 2019, the applicant notified the respondent by letter that both trucks had "front end damage" that the respondent did not disclose before the sale. It attached a May 25, 2019 invoice it created charging the respondent $2,520 for the cost of repairing the alleged damage and allegedly substandard repairs that had previously been done to the trucks. The invoice says payment was due in 10 days, after which interest would accrue at a rate of 2.5% per month. The applicant says $2,520 represents only 25% of its financial loss and repair bills for the trucks, but neither the invoice nor the applicant's submissions include any additional explanation or breakdown of the $2,520 claimed.

16. The respondent says that at some point after it received the applicant's May 30, 2019 letter and invoice, it offered to take back the trucks, but the applicant had already sold 1 of them. The applicant does not dispute this, so I accept the respondent's evidence on this point.

F-350

17. The applicant says when the respondent delivered the F-350, one of the respondent's drivers notified it that the "adaptive cruise" and "forward collision alert" were not working properly. The applicant says it informed the respondent's general manger (GM) the next day, who said the windshield had been replaced prior to delivery, and it may not have been programmed properly. The applicant says the respondent's GM advised him to have the windshield re-programmed and the respondent would pay for the related expenses. The respondent does not dispute this.

18. The applicant says it took the F-350 to a Ford dealership, but the problem was not resolved. It submitted a July 4, 2019 invoice from a Ford dealership indicating the applicant brought the F-350 in complaining that the dashboard displayed a message stating, "adaptive cruise fault," and that when the message was displayed the

steering wheel pulled to the right. The applicant also says the front bumper had been replaced before it bought the truck and it was improperly aligned, which caused the dashboard messages. It did not explain how it determined this or provide evidence to support this specific allegation.

19. The Ford dealership invoice says that the dashboard message did not display during testing and the mechanic was unable to confirm or replicate the applicant's complaints about the wheel pulling to the right. It says the mechanic determined there was an internal electric failure of the steering effort control module and that Ford's engineering department was investigating the cause of the failure. The mechanic asked the applicant to check in every month to find out if the engineering department had resolved the issue. The invoice shows that the Ford dealership did not charge the applicant. There is nothing on the invoice to indicate that the F-350 was unsafe to drive in the meantime or that its function would be negatively affected by the internal electric failure.

20. Although the applicant did not raise the *Sale of Goods Act* (SGA), I find it applies in this case. The evidence before me is that the respondent is in the business of selling used vehicles. Therefore, section 18 of the SGA requires that at the time of sale the trucks must have been reasonably fit for their express or implied purpose, of merchantable quality, and durable for a reasonable period of time when put to normal use.

21. The courts have set a high bar for finding that used vehicles are not of "merchantable quality," and the analysis should focus on what is reasonable in the circumstances. A used vehicle is merchantable if it is in usable condition, even if not perfect (see *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198 at paragraphs 99 – 110). With respect to determining whether a used vehicle is durable for a reasonable period of time, factors to consider include the age and mileage of the vehicle, the nature of use before and after purchase, the price paid, the reasons for any defects, and the expectations of the parties as determined by express warranties (see *Sugiyama v. Pilsen*, 2006 BCPC 0265).

22. Aside from the applicant's allegations, there is no other evidence supporting its claim that the F-350's wheel pulled to the right or had a misaligned bumper. While there is evidence of an intermittent dashboard message, I find there is insufficient evidence of how this issue affected the truck's function. While the F-350 was relatively new with low mileage, I find the balance of the evidence shows it was useable and durable when the applicant bought it. Therefore, I find the applicant has not established that the respondent breached section 18 of the SGA.

23. In the absence of a breach of the implied warranties in section 18 of the SGA, the sale of the F-350 is governed by the principle of "buyer beware." This means that the applicant was required to assess the trucks' condition before buying them. However, if the respondent misrepresented the condition during negotiations, the applicant may be entitled to compensation. A misrepresentation is a false statement that induces a reasonable person to enter into a contract. The law does not require a seller to tell the buyer about any defects the buyer could have discovered by reasonably inspecting the vehicle.

24. On the evidence before me, I find the applicant has not established that the respondent misrepresented the condition of the F-350. I have found the only problem with the F-350 is the intermittent dashboard message, and I have found there is insufficient evidence this message causes any other problems with the truck. It is undisputed that the respondent notified the applicant of this problem and agreed to pay for any related repair costs that were not covered by warranty, but there is no evidence the applicant incurred such costs. For all of these reasons, I dismiss the applicant's claim with respect to the F-350.

F-150

25. The applicant says that before it bought the F-150 its front end was damaged and improperly repaired, though it does not specify the nature of the alleged repair. The F-150's exterior is royal blue and the applicant says the underside of the hood and the engine bay should have been painted the same royal blue colour at the factory, but both areas were black at the time of purchase. The applicant submitted photos

of the F-150 showing the colour scheme it describes. It says it has 3 other F-150s and the underside of the hood and engine bay areas on those trucks match their exterior colour. It provided some photos to support this.

26. Another of the applicant's photos shows what it says is the F-150's trim piece with the number "163" written in yellow, underlined in red. The applicant says such labels are put on parts obtained from auto wreckers, but it provided no expert or other evidence to support this allegation. The applicant does not allege that this part is broken or works improperly.

27. The applicant says the photos show that the F-150's engine bay is "primered," which proves the truck was not in the condition described by the respondent and was repaired improperly. I disagree. I find the applicant's photos and explanation are insufficient to prove that the F-150 was damaged or improperly repaired. Even if the applicant could establish that the engine bay is "primered," I find it has not explained or provided evidence about how this affects the value or function of the F-150. I also find the different paint colour was discoverable on a reasonable inspection and so the respondent did not have to disclose it.

28. The applicant submitted an April 20, 2019 quote from Coast Bumper & Body for $672 to remove the hood of the F-150 for painting the inner edges, removing the upper cowl for refinishing, and preparing the left side fender edge. However, having found the applicant has not established any problem with the way the F-150 was painted or functioned when it bought it, I find there is no evidence this paint job was required.

29. The applicant also says the F-150 had a broken bearing, and "was pulling constantly," but it provided no other evidence to support these allegations. It is undisputed that the applicant had the F-150's wheels aligned, and it submitted a May 1, 2019 invoice from Fountain Tire for $334.48 for this expense. However, wheel alignments are typically conducted as part of regular maintenance of vehicles, and I find that aside from the applicant's allegations there is no other

evidence indicating that there was any specific problem or defect with the F-150 requiring the alignment.

30. On the evidence before me, I find there is insufficient evidence that the F-150 was not usable or durable for a reasonable period of time when the applicant bought it. Therefore, I find the applicant has not established that the respondent breached any of the implied warranties in section 18 of the SGA.

31. I also find there is insufficient evidence to establish that the respondent misrepresented the condition of the F-150. I have found the applicant has not proven any problem or decrease in value of the F-150 as a result of the way it was painted at the time it bought it. As for the alignment costs, it is undisputed that the F-150 was under warranty and that the respondent agreed to pay for any such costs that were not covered by warranty. I find the applicant has not established that it made a warranty claim for the $334.48 alignment expense or that the warranty claim was denied. I therefore dismiss the applicant's claims with respect to the F-150.

32. I note that in its submissions the applicant says that on June 13, 2019 it asked the respondent to provide it with dealership banking records from October 1, 2018 to April 10, 2019, copies of sales contracts for truck purchases, any lease or rental contracts the respondent had for the 2 trucks, and any repairs done by the respondent or others who had care and control of the trucks. While the applicant did not specifically request the tribunal to order the respondent to produce these records in the tribunal process, I infer from the applicant's submissions that it may have intended to make such a request.

33. Under section 34 (1) (d) of the CRTA and tribunal rule 8.2 (3) the tribunal may order a party to provide evidence or produce a record within its control. However, in the circumstances I find such an order is not warranted. First of all, the applicant did not raise this issue until its reply submissions, so the respondent did not have an opportunity to respond to it. Secondly, the applicant is responsible for proving its claims. I have found the applicant has not proven that there were any compensable

problems with the trucks, aside from the alignment of the F-150, for which I found there was insufficient evidence of a failed warranty claim. Therefore, I find the requested documents would not change the outcome of my decision. For these reasons, I refuse to order the respondent to produce the requested records.

34. 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. Since the applicant was unsuccessful, I find it is not entitled to reimbursement of its tribunal fees. It has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member