



# Civil Resolution Tribunal

Date Issued: December 31, 2019

File: SC-2019-007033

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Michie v. Remming*, 2019 BCCRT 1453

B E T W E E N :

JAY MICHIE

**APPLICANT**

A N D :

JAMES REMMING

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about the purchase and sale of a used quad bike.
2. The applicant Jay Michie says he bought a 2006 Can Am quad bike (quad) from the respondent James Remming. The applicant says he then discovered that the quad was a “write off” that would need over \$3,000 in repairs. He says the respondent

failed to disclose known defects in the quad. The applicant claims the \$3,800 he paid for the quad.

3. The respondent says that he did not know of anything significant being wrong with the quad at the time of sale. The respondent says he told the applicant the quad had the usual wear and tear for a 2006 model. He 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. 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.
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.

## **ISSUE**

- 9. The issue in this dispute is whether the respondent misrepresented the condition of the quad to the applicant such that he must now refund the \$3,800 purchase price.

## **EVIDENCE AND ANALYSIS**

- 10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.

- 11. The following facts are undisputed:

- a. In July 2019, the respondent offered the quad for sale.
- b. In the few weeks before selling it, the respondent used the quad for a ride of over 4 hours, without trouble except when he proceeded through a puddle that was too deep, causing a flooded air filter. At the time, the respondent had the quad insured for use.
- c. The applicant and respondent traded text messages about the quad's condition prior to the sale.
- d. On July 11, 2019, the respondent texted the applicant say the quad's price was firm at \$3,800, which is also what he paid for it. The respondent said he spent \$1,100 on repairs, and that the quad came with a second seat with storage, a winch, USB chargers and a snow plow. He provided the respondent with a photograph of the quad.
- e. The respondent texted the applicant to say that the quad had "its typical bumps and scrapes for a 2006" but was well maintained with very low miles.

- f. In July 2019, the applicant paid the respondent \$3,800 for the quad.
  - g. The applicant did not obtain a mechanical inspection of the quad before buying it.
  - h. The applicant did not view the quad in person before the sale.
  - i. On July 19, 2019, the applicant's wife picked up the quad from the respondent.
  - j. On July 27, 2019, the applicant used the quad for the first time.
  - k. On August 17, 2019, the applicant contacted the respondent to say that there were problems with the quad.
12. The respondent says the only prior problem with the quad was a break down in February 2019 when plowing a driveway. A problem with the quad's u-joint was to blame for the breakdown. The respondent says this was the only problem he had in his year of owning the quad.
13. Based on the invoice filed in evidence, I find that the respondent had the quad tuned up and the u-joint issue repaired by CR Racing in spring 2019. CR Racing noted that the quad also had a valve cover leaking oil, a front drive shaft seal leak and needed a proper battery strap and some bolts. CR Racing did not report any problems with the quad's front end.
14. The applicant says the quad had a prior rollover accident which was undisclosed to him prior to purchase. KG, who knows both the applicant and respondent, wrote that he thought the quad had been in an accident while the respondent owned it, but was unsure of the accident details. I find KG's evidence credible, but too vague to prove that the quad had a rollover or a front-end damaging accident while the respondent owned it. Rather, KG's evidence is equally consistent with the quad having had a u-joint related breakdown as described by the respondent.

15. The applicant filed the opinion of a journeyman welder, JS, in evidence. JS writes that the quad had experienced a high-speed impact with damage solely to the front end. In JS's opinion, the previous owner would have known of this issue. I do not accept JS's opinion on this point, because he could not precisely determine how long ago the front-end repairs had been conducted. JS thought the repairs were performed sometime in early to mid-2019, based on surface rust and deterioration of the welds.
16. JS suggested that the quad should not be ridden due to "extensive frame damage" making it unsafe. The applicant did not obtain this opinion about safety from the Yamaha mechanics who performed repair and maintenance work on the quad after he bought it. I find that the Yamaha mechanics had the appropriate qualifications to offer their opinion as to the quad's safety. I draw an adverse inference against the applicant for not obtaining this opinion from a mechanic.
17. The applicant filed a repair summary from Yamaha reporting some small oil leaks, consistent with the spring 2019 report. Yamaha also commented that the quad's engine was idling rough and that the quad had some front-end damage that had been fixed. The records show that the applicant paid \$669.68 to Yamaha for repairs includes installing new tires. The Yamaha report does not mention the quad needing over \$3,000 in repairs, as the applicant contends.
18. Because JS is not a mechanic, I do not accept his opinion that the quad should not or cannot be used. Such an opinion would have to come from a quad mechanic who had examined it. Yamaha did not offer the opinion either that the quad was unsafe to ride or was not operational.
19. I also do not accept JS's opinion as proof that the respondent knew of the previous welding work and front-end damage to the quad. The respondent only owned the quad for about a year before selling it to the applicant. There may have been front end damage before the respondent owned the quad, still consistent with JS's opinion. As well, given that the front-end damage had been repaired, there was no reason for the respondent to have known about it through typical use. I say this

particularly given that CR Racing did not mention the front-end damage when they worked on the quad in spring 2019.

20. The applicant submits that the respondent made a fraudulent misrepresentation about the condition of the quad. Specifically, the applicant says the respondent knew about the quad's front-end damage and intentionally withheld that information from him.
21. Generally, private sales of used vehicles are governed by the principle of "buyer beware", subject to some limits set out in section 18(c) of the *Sale of Goods Act* (SGA) addressing durability. However, buyer beware is set aside where a buyer is induced to buy the vehicle based on the seller's fraud: *Nixon v. MacIver*, 2016 BCCA 8, *Nevmerjitski v. Ratinov*, 2018 BCCRT 293.
22. Section 18(c) of the *Sale of Goods Act* implies a condition that goods will be durable for a reasonable period having regard to the normal use to which the goods are put. I find that the applicant did not prove the quad was not durable for a reasonable period. The Yamaha documents suggest the quad was operational following some minor maintenance. As well, the quad was built in 2006 and could be expected to have some maintenance issues due to its age.
23. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the judge said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element (intention). The 4 elements of civil fraud, also known as fraudulent misrepresentation, are as follows, as set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21:
  - a. A false representation made by the respondent;
  - b. Some level of knowledge of the falsehood of the representation on the part of the respondent (whether through knowledge or recklessness);

- c. The false representation caused the applicant to act; and
- d. The applicant's actions resulted in a loss.

24. I find that the applicant has established that the respondent made a representation about the quad having only the usual wear and tear for a 2006 model. I have found the respondent did not know of the front-end damage. The applicant has not established that the respondent knew that his representation was inaccurate or incomplete. The applicant also did not prove that the respondent owned the quad at the time of the accident that caused the front-end damage. The respondent insured and used the quad regularly just before before selling it to the applicant, which supports my conclusions above.
25. The applicant could have personally inspected the quad before buying it but did not. The applicant could have obtained had a mechanical inspection of the quad before purchasing it, but he did not. He could have obtained these inspections, if they were important to his decision to purchase the quad. However, even such an inspection may not have disclosed the damage, since CR Racing did not report on it when they examined the quad.
26. Therefore, I find that the applicant has not met the burden upon him to establish fraudulent representation.
27. For these reasons, I dismiss the applicant's claims and this dispute.
28. 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. The respondent did not pay tribunal fees or claim dispute-related expenses.

## **ORDER**

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

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Julie K. Gibson, Tribunal Member