



Civil Resolution Tribunal

Date Issued: February 12, 2020

File: SC-2019-006199

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Letourneau v. Robert Menzies (Dba Robert Menzies)*, 2020 BCCRT 167

B E T W E E N :

RICHARD LETOURNEAU

APPLICANT

A N D :

ROBERT MENZIES (Doing Business As ROBERT MENZIES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over a 1998 outboard motor.

2. The applicant, Richard Letourneau, says that on July 29, 2018 he purchased the outboard motor from the respondent, Robert Menzies (Doing Business As Robert Menzies) who was acting as a “broker” for the seller, “LP”. The applicant says the respondent represented the motor as in good condition but when he tested it months later, he found it would not run. The applicant claims \$2,500 as a refund for the motor and \$399.93 in expenses to inspect the motor.
3. The respondent denies he is responsible for the faulty motor. The respondent says he had only helped LP and did not collect money from the sale. The respondent says that the motor was sold “as is” or alternatively, that the motor was not faulty when sold. LP is not a party to this dispute.
4. Each party is 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, or a combination of these. Though I found that some aspects of the parties’ submissions called each other’s credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal’s mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondent sell the applicant a faulty motor?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant has the burden of proof on a balance of probabilities. This means that I must find it is more likely than not that the applicant's position is correct.
11. For the following reasons, I find the applicant has not proven his claim.
12. The applicant purchased the motor on July 29, 2018. Both parties agree that before the sale the motor was LP's property. Though the respondent says he did not collect the motor sale proceeds, he admits that he helped LP sell the motor. The respondent also says he delivered it for a fee and his name is on the sales receipt. I find that the respondent was LP's agent for the sale.
13. The applicant says that after the sale he discovered that the motor had "bad compression" and was "worn out and beyond repair". The applicant says the respondent misrepresented the motor's condition, which is the basis of his claim. I discuss the alleged representations below.

14. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the purchaser to buy the item. A misrepresentation made by an agent of the seller applies as if it was a representation made by the seller herself: *Weibelzahl v. Symbaluk*, 1963 CanLII 462 (BCCA). The applicant does not allege fraudulent misrepresentation and I find fraud is not an issue here.
15. The evidence shows that LP advertised a “Mercury 150 boat motor” on Facebook. The advertisement has no other description of the motor. The applicant says at the time of sale the respondent told him the motor was in good condition, well maintained, and was rebuilt “some time ago with low hours”. I accept the respondent did so, which is not disputed.
16. To prove misrepresentation, the applicant first needs to establish the motor’s condition. I have no objective evidence on the motor’s pre-sale condition. The applicant undisputedly looked the motor over before buying it, but did not test the motor or have it inspected by a certified mechanic. The motor was over 20 years old, there is no information on the rebuild, or its repair history.
17. I also have insufficient evidence that the motor was not in good condition at the time of sale. The applicant admittedly did not start testing the motor until February 2019. This is about 6 or 7 months after the sale. The applicant does not explain how he tested the motor or how he stored and handled the motor during those preceding months. Prior to February, the applicant’s invoices show that Neid Enterprises Ltd. (Neid) performed motor work in October 2018. The October 2018 invoice says the motor had “bad” fuel and that the “Boat will not start”. I infer it meant the motor would not start. Neid recommended the applicant take the boat home to “drain old fuel”. In November 2018, Neid invoiced the applicant for an “anode kit” and a water pump kit. The applicant does not say whether he drained the old fuel or installed the anode kit or water pump himself or whether he did anything else to the boat. Neid’s invoices do not show labour for those parts.

18. About 11 months after the sale, on June 26, 2019, Neid's invoice says the motor had a "broken fuel line" and was "not running properly". I have no information about what caused the broken fuel line, whether it was from draining the old fuel line, if that was done, or something else. The broken fuel line was not mentioned in the October or November 2018 invoices. Considering the passage of time and intervening work by Neid (and potentially the applicant), I have insufficient evidence that the motor was not properly running at the time of sale. I find it just as likely that the motor's problems were caused by some intervening event.
19. I also have insufficient evidence that the motor is "worn out and beyond repair" or that the compression is "bad". Neid's June 26, 2019 invoice does not say that the motor is "worn out and beyond repair". The invoice says that the motor is "not running properly", but I would not expect it to be running properly with a broken fuel line. Again, I have no evidence on what caused the broken fuel line.
20. I accept that Neid performed a compression test. However, Neid's related invoice has no test results. The applicant provided a "June 21" handwritten note with the words "compression check" and arrows pointing to numbers. I find this note insufficient to prove the motor's compression results. The applicant provided no information on Neid's qualifications to diagnose outboard motor problems. Absent an opinion from a qualified professional on the motor, I find the applicant has not proven the motor's mechanical condition or the cause of its problems.
21. Again, the applicant bears the burden of proof. I find the applicant has not proven on a balance of probabilities there was a problem with the motor when the respondent sold it to him. In other words, there is insufficient evidence that the sold motor was anything different than described. On this basis, I find the applicant's claim in negligent misrepresentation fails.
22. Next, the *Sale of Goods Act* applies to sales for used goods and for commercial sales implies warranties that the sold goods will be of merchantable quality, reasonably durable, and fit for purpose. Since the applicant has not established that the respondent sold him a non-functioning motor or the motor's current mechanical

condition, I find no breach of the *Sale of Goods Act*. So, I find no need to discuss it further here.

23. For the above reasons, I find the applicant has not established that he is entitled to reimbursement for the cost of the motor or inspection expenses. I dismiss the applicant's claims.

24. As the applicant was unsuccessful in this dispute, I also deny his request for reimbursement of tribunal fees.

ORDER

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

Trisha Apland, Tribunal Member