



Civil Resolution Tribunal

Date Issued: April 20, 2020

File: SC-2019-007553

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Caviglia v. Jonathan*, 2020 BCCRT 426

BETWEEN:

SAMUEL CAVIGLIA

APPLICANT

AND:

IVAN JONATHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This small claims dispute is about the purchase of a used motorcycle through a private sale. The applicant, Samuel Caviglia, says he purchased a motorcycle from

the respondent, Ivan Jonathan, who misrepresented the motorcycle's condition by saying it just had an oil change. The applicant says that soon after the purchase he drove the motorcycle away and the engine seized because there was no oil in it. The applicant requests reimbursement of the \$2,900.00 he paid for the motorcycle as well as \$452.40 he paid for towing and diagnostics, for a total of \$3,352.40. The applicant represents himself.

2. The respondent says that the motorcycle was 40 years old and the applicant did not take proper steps to inspect it. He says he did not misrepresent the motorcycle's condition. The respondent represents himself.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. 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.
6. 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

7. The issue in this dispute is whether the respondent misrepresented the motorcycle having a recent oil change leading to the motorcycle's engine failure, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Did the respondent misrepresent the motorcycle's condition?

9. The applicant bought a motorcycle from the respondent on June 20, 2019. The motorcycle was 40 years old at the time of purchase and had 30,500 kms on it. The applicant says that eight minutes after driving the motorcycle away the engine seized. The applicant says that the respondent misrepresented the motorcycle's condition and specifically whether it had oil in it.
10. In a private used vehicle sale, a purchaser is expected to reasonably assess the vehicle's condition before purchasing it. While a seller is not under any duty to disclose known defects, the seller must not actively conceal them. Unless the seller

commits fraud or conceals defects, the purchaser assumes the risk for any defects in the condition or quality of the vehicle. This principle is referred to as the doctrine of caveat emptor or “buyer beware”. See *Rusak v. Henneken*, [1986] B.C.J. No. 3072 (S.C.); *Smith v. Wild Grizzly Transport Ltd.*, 2018 BCCRT 203.

11. If a vehicle is simply more worn out than the buyer originally thought, or has problems that could have been discovered through an inspection, the buyer is likely not entitled to a remedy. See for example, *Laubscher v. Mansoor et al.*, 2018 BCCRT 59 and *Smith v. Wild Grizzly Transport Ltd.*, *supra*.
12. However, if a seller misrepresents a vehicle’s condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. 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.
13. 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 it was true or false. 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.
14. As discussed below, what matters is whether the applicant has proved that the respondent misrepresented the motorcycle and the applicant reasonably relied on such misrepresentation. Also, whether the applicant has proved the respondent breached any applicable warranty needs to be considered.
15. The respondent says at the time he sold the motorcycle to the best of his knowledge his statement that the motorcycle had oil in it was correct.
16. In a June 8, 2019 Craigslist advertisement the respondent stated that the motorcycle had new oil and a new oil filter. The applicant also provided text messages from the respondent where the respondent listed all the improvements and maintenance that had been done on the motorcycle including an oil change. The respondent said that he changed the oil but that the other improvements were

done by a professional. The applicant also provided a witness statement from a person who was present during the sale who says that the respondent said that he had recently changed the oil and the motorcycle was in a “fit shape to ride.” I find that the respondent did tell the applicant that he had recently changed the oil.

17. The applicant says that the respondent would not let him take the motorcycle for a test drive because he was an inexperienced driver. The respondent says that the applicant could not take the motorcycle out for a test drive because it was uninsured. I note that the applicant has not explained why, if the motorcycle was insured, he could not have gone on a test drive while riding on the back with the respondent driving. I find it more likely that the motorcycle was not insured and this is why the applicant did not take it for a test drive.
18. The respondent also submits that the applicant could have obtained temporary insurance to test drive the motorcycle if he wanted to do so. He also says that the applicant could have hired a mechanic to come and inspect the motorcycle, but he did not do so. The applicant did not specifically respond to these statements or explain why he did not get an inspection.
19. The respondent also says that he gave the applicant three new containers of engine oil when the applicant bought the motorcycle. The applicant does not deny that this occurred. I note that when the motorcycle’s engine seized, the applicant put oil in it. Based on this, I find that the respondent did give the applicant containers of engine oil when he purchased the motorcycle. I find this relevant because it means that the respondent had oil right there and I infer from this that if he knew the motorcycle was low on oil there is no apparent reason why the respondent would not have filled it up.
20. The respondent also says that there is an indicator light that illuminates when there are problems with the oil system, but this was not illuminated when he demonstrated the motorcycle’s condition and turned the engine on and left it idle for a few minutes before the applicant bought it. The applicant does not dispute this. The applicant also does not say that the warning light was on during the 8 minutes

he says he drove the motorcycle before the engine seized. Based on this, I find that the oil indicator light was not on when the respondent sold the applicant the motorcycle.

21. The applicant provided an expert report from a motorcycle mechanic, Mr. Wells, with a Red Seal certification who also has certifications in diagnostics and worked as a master technician. The expert says that the engine seized because there was no oil in the engine. Mr. Wells did not examine the motorcycle himself but based his opinion on the evidence from the motorcycle shop where the applicant had the motorcycle towed. Both parties made submissions about whether the report should be accepted into evidence. The respondent originally stated that he did not have a proper opportunity to respond to the report. He was then given time to make submissions. The respondent submitted that much of the report is based on factual descriptions provided by the applicant.
22. I note that the factual circumstances of what occurred are not really disputed, including that the applicant bought the motorcycle, the engine seized after 8 minutes of driving it, the applicant put 2 liters of oil in it, but the engine would not restart. I do not accept the respondent's allegation that the expert report crosses the line into advocacy because the expert accepted these facts. The expert was entitled to base his report on the facts as described to him by the applicant. If the facts were not proven this would go to the weight I place on the expert report. However, this is not the case. Therefore, I accept the expert's report into evidence as it complies with tribunal rule 8.3.
23. The expert stated that the motorcycle shop's report indicated that the motorcycle did not have a major oil leak because the 2 liters of oil had not leaked out. The expert's conclusion was that there was no oil in the engine when it seized. The expert also indicated that this conclusion is supported by the fact the oil, filter, and cylinder had metal flakes in them. I accept the opinion that the motorcycle did not have a major oil leak. However, it is unclear on the evidence if the motorcycle had a slow leak and when exactly the respondent changed the oil. I have already accepted that the

motorcycle was not insured which suggests it had not been driven recently. The expert did not offer an opinion on whether there was a slow leak and if there was one how long it would take for the oil to drain.

24. Turning to the respondent's actions, the main questions are why would the respondent sell the applicant a motorcycle with no oil in it at the same time as giving him containers of engine oil? If the respondent was trying to misrepresent the state of the oil in the engine, and that he recently did an entire oil change, why would he not fill it up before the applicant drove it away?
25. As noted, the applicant must prove that the respondent misrepresented the motorcycle's condition. I find that he has not done so. On a balance of probabilities, I am not convinced that the respondent knew there was no oil in the motorcycle when he sold it. It does not make sense that the respondent would sell a motorcycle he knew had no oil in it, particularly when he had some there at the time of purchase. I find that the evidence does not show that the applicant fraudulently or negligently misrepresented the level of oil in the motorcycle because the evidence suggests he did not know this himself.
26. On balance, I find the applicant has not proved the respondent misrepresented the motorcycle's condition, fraudulently or otherwise.

Warranties under the Sale of Goods Act (SGA)

27. As noted, in a private used vehicle sale, where there has been no misrepresentation, the principle of 'buyer beware' largely applies. This means that the implied warranties of fitness for purpose and saleability under section 18 of the SGA do not apply.
28. However, the implied warranty for durability in section 18(c) does apply to private vehicle sales. In particular, the motorcycle must be durable for a reasonable period of time having regard to the use to which they would normally be put and considering all the surrounding circumstances of the sale.

29. In *Sugiyama v. Pilsen*, 2006 BCPC 265 the Court considered the implied warranties in section 18 of the SGA. There are a number of factors to consider when determining whether a vehicle is durable for a reasonable period of time, including the age, mileage, price, the use of the vehicle, and the reason for the breakdown.
30. In *Sugiyama*, the claimant bought an 8-year-old car with over 140,000 kilometers on the odometer. After driving it for only 616 kilometers, the car broke down. The Court determined that the car was roadworthy and could be safely driven when it was purchased. There were no apparent defects in the car. Therefore, even though the car broke down after very little driving, the Court found that it was durable for a reasonable time.
31. I find that the same reasoning applies to this dispute. The motorcycle was 40 years old and had no apparent significant issues when the applicant purchased it. I find it is unclear whether a known oil issue was related to the engine breakdown and whether the motorcycle had a slow oil leak. Although I accept the expert's evidence that the engine seized because there was no oil in it, and that he did not see evidence of a major oil leak, it is unclear on the evidence why there was no oil in the engine and whether there was a slow oil leak. The applicant chose not to have a professional inspection done, which as noted above may have revealed an engine problem or a problem with the oil before the engine seized.
32. Like in *Sugiyama*, the motorcycle broke down after relatively little driving, but it was roadworthy and could be safely driven when the applicant purchased it. There was enough oil in the engine for the applicant to drive the motorcycle away. It was durable at that time.
33. In all of these circumstances, I find that the respondent did not breach the implied warranty of durability. This conclusion is consistent with the court's decision in *Wanless v. Graham*, 2009 BCSC 578, which endorsed the statement that people who buy old used vehicles must expect defects in such vehicles will come to light at any time. That quote came from a 2004 New Brunswick decision *Dunham v. Lewis*,

[2004] N.B.J. No. 310, where the 1996 car bought for \$4,200 broke down within 2 days of purchase and would not start.

34. The conclusion is also consistent with a recent tribunal decision in *Penny v. Earthy*, 2018 BCCRT 851, where a 1999 truck, bought for \$2,500, had its engine seize after a 303 kilometer drive home. While I am not bound by that decision, I agree with its conclusion and apply it to this case. The applicant has not proved the vehicle was not reasonably durable, in all of the above circumstances.
35. In summary, the applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims.

TRIBUNAL FEES AND EXPENSES

36. 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. Here the applicant was unsuccessful so he is not entitled to reimbursement of his tribunal fees. There was no request for expenses.

ORDER

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

Kathleen Mell, Tribunal Member