



Civil Resolution Tribunal

Date Issued: April 22, 2020

File: SC-2019-009473

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wu v. McKinnon*, 2020 BCCRT 438

BETWEEN:

DONG JIE WU

APPLICANT

AND:

RANDY MCKINNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a private car sale. The applicant, Dong Jie Wu, purchased a 2014 Ford Fusion from the respondent, Randy McKinnon. The applicant says the respondent misrepresented the vehicle's service records, and seeks a total of \$2,998.59 in damages, including \$1,400 for "incompatible" oil changes, \$908.59 for

winter tires, \$600 for bumper repainting, as well as \$90 for failing to keep the car garaged before it was picked up.

2. The respondent says he did not misrepresent the vehicle and the applicant had ample time to have the vehicle inspected, had he chosen to do so. He denies owing the applicant any money.
3. The parties are each self-represented.

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. Here, I find that I am properly able to assess and weigh the documentary 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.
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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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 vehicle's condition, such that the applicant is entitled to \$2,998.59 in damages.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that in October 2019, the parties agreed that the applicant would purchase the respondent's 2014 Ford Fusion for \$10,000. The vehicle's advertisement for sale is not in evidence. In any event, on October 13, 2019 the applicant viewed and test drove the vehicle. On October 18, 2019 the applicant paid a \$500 deposit. The applicant test drove the vehicle again on October 19, 2019 and paid an additional \$500 cash, for a total deposit of \$1,000. On November 2, 2019, the applicant picked up the vehicle and paid the balance owing. The applicant admits he did not have the vehicle inspected before purchase because he "did not feel an inspection was necessary".
11. The applicant says the respondent misrepresented the vehicle in several ways. First, he says the respondent told him the vehicle was correctly maintained, but instead the applicant found out six oil changes between October 2015 and April 2018 were done with what he says was "incompatible synthetic oil". Next, the applicant says the respondent told him the winter tires were only one year old, when they were actually four years old. The applicant further says the respondent failed to

disclose rear bumper damage and, finally, he says the respondent failed to keep the vehicle in his garage before the vehicle was picked up, as agreed upon.

12. In response to the applicant's arguments, the respondent says he provided all the service records to the applicant before the sale was completed and that the applicant could have reviewed the records and refused to purchase the vehicle at any time. The respondent further says the applicant was entitled to have the vehicle professionally inspected, but did not do so. In relation to the tires, the respondent said he was mistaken about when the tires were purchased, but in any event, denies the tires were as worn as the applicant claims and again says the applicant could have inspected the tires. As for the bumper, the respondent says he told the applicant the vehicle had not been in any accidents except for some minor dents and scrapes, which he pointed out to the applicant. He says the rear bumper was a factory defect in the paint, which was repainted under warranty. Finally, the respondent says he agreed to keep the vehicle in the garage when not in use, which he did, but that until the sale completed it was still his vehicle to use.
13. In a private sale, 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.
14. 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. 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.
15. If a seller makes a fraudulent or negligent misrepresentation, the buyer may be entitled to compensation. If not, the principle of "buyer beware" generally applies to private purchases of used cars. For the reasons that follow, I dismiss the applicant's claims.

16. As noted above, the applicant viewed the vehicle and took it on two separate test drives. The evidence is that the respondent provided the applicant with the vehicle's service records, both from the dealership and a service shop, before the sale completed. The applicant scheduled to pick up the winter tires and the service shop records before picking up the car, but ultimately decided to pick them all up at the same time.
17. In the circumstances, I find had the applicant performed an adequate inspection of the vehicle and winter tires, the bumper discolouration and age of the tires would have been easily identified, since they were immediately identified after the purchase.
18. I say the same about the oil changes. If the applicant took the time to review the readily available service records, he could have enquired as to whether the synthetic oil used by the service shop was compatible or not. I pause here to note that although the applicant argues the oil was not compatible, there is no evidence before me whether that is actually the case, such as an opinion from an auto mechanic. Additionally, the applicant has not alleged the "incompatible oil changes" have resulted in any vehicle issues.
19. I turn then to the \$90 the applicant claims for the respondent's failure to keep the vehicle in the garage. Although the applicant says it was a "fundamental" term of the purchase agreement that the respondent keep the car garaged until the applicant picked it up, I agree with the respondent that the vehicle was still owned by him and was his to use as he wished until the sale completed. I also find the emails in evidence do not state the respondent was not to use the vehicle, but rather the applicant was concerned with the vehicle remaining parked in the driveway, stating he was worried about "a drunk driver or a fallen tree" damaging the vehicle before he picked it up.
20. On balance, given all of the above, I find the applicant has not proved the respondent misrepresented the vehicle's condition, either fraudulently or otherwise. I find that even though the respondent was admittedly mistaken about the age of the

winter tires, that error did not induce the applicant to purchase the vehicle. Further, even if I had found the respondent misrepresented the vehicle, I find the applicant did not reasonably rely on any misrepresentation in purchasing the vehicle. I also find the applicant has not proven the respondent breached the parties' sale agreement by using the vehicle until the sale completed. I dismiss the applicant's claims.

21. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

22. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair