Civil Resolution Tribunal

Date Issued: May 8, 2020

File: SC-2019-008157

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lehri v. Singh*, 2020 BCCRT 506

B E T W E E N :

DOLLY LEHRI

APPLICANT

A N D :

DILDAAR SINGH

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This small claims dispute is about the purchase of a used car through a private sale. The applicant, Dolly Lehri, purchased a 2004 Honda Civic from the respondent,

Dildaar Singh. The applicant says that the respondent misrepresented the car's condition and that there were problems with the radiator and the O2 sensor. The applicant requests reimbursement of $2,000.00 for repair costs and to compensate for "cheating." The applicant represents herself.

2. The respondent says that the car was 15 years old and that he told the applicant all the issues he knew about. He says he did not misrepresent the car'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 "she 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.

7. I note that the applicant's father, who owned the car, was not named as a party. It is up to the applicant to name the proper parties. However, because I find the applicant is unsuccessful in her claim, I need not consider whether she should have named the father as a party.

ISSUE

8. The issue in this dispute is whether the respondent misrepresented the car's condition, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove her 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 car's condition?

10. If a seller misrepresents the condition of a vehicle, 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.

11. The applicant says that the respondent misrepresented how many kilometers were on the car, whether it had a clean title, how much it would cost to replace the O2 sensor, and the state of the radiator.

12. As discussed below, what matters is whether the applicant has proved that the respondent misrepresented the car and the applicant reasonably relied on such misrepresentation.

13. The applicant advertised the car on Craiglist. The ad stated that it was a 2004 Honda Civic with a "clean title." It said the car had 140,000 kms on it and the asking price was $3,950. It is undisputed that the respondent told the applicant at the time of sale that there was a problem with the O2 sensor and provided her with quotes from the internet as to how much the sensor would cost to replace. It is also undisputed that the respondent promised that the cost of the sensor would be between $30 to $80 and if the cost was more than that the respondent could return the car and get her money back.

14. The applicant bought the car from the respondent on September 10, 2019 after test driving it with her uncle. The transfer form stated that the car had 244,000 kms on it. The respondent says that this was a mistake and he was off by one number. It is undisputed that the vehicle's odometer shows the vehicle had 144,000 kms on it, I infer the respondent means he put a 2 where he should have put a 1. The applicant says that this shows that the odometer was rolled back although she has provided no proof of this. I find it does not make sense that the respondent would voluntarily say there was actually 244,000 kms on the car when the odometer stated there was 144,000. I also note that this was not the respondent's car, so it is less likely he had a clear idea about how much it had been driven. I do not accept the applicant's submission that the respondent rolled back the odometer.

15. The transfer form also stated that the car needed work and that it was sold "as is." The purchase price was $1,500. The applicant says that she actually paid $3,500 in cash for the car. She says that the amount listed on the transfer/tax form was lower

so that she could get a break on the taxes owing. Because I find that the applicant's claim must be dismissed, I find the car's precise purchase price is irrelevant.

16. The applicant says that the respondent misrepresented the vehicle as having a clean title. The transfer form stated that the car was a used vehicle with damage over $2,000. The applicant says that the car did not have a clean title as it has been rebuilt, which she says she learned from the Insurance Corporation of BC papers "later on." The applicant has not provided any document saying this. The applicant also says she did not have time to read the form because she was in a rush. The form is a one page document with only basic information. I do not accept the applicant's argument that she did not have time to read it before signing. The applicant signed the transfer form and therefore I find she was aware that the car had previous damage.

17. The applicant says that a few days after purchasing the car it began to overheat. The text messages between the applicant's uncle and the respondent show that the same day the applicant bought the car the uncle texted the applicant about the level of the temperature gauge. The respondent answered that the car had been fine all day when it was driven long distances, including during the test drive. He said that the car probably just needed coolant.

18. The applicant's uncle then began to bring up issues with the O2 sensor. He said that the applicant should be allowed to return the car because the O2 sensor was going to cost $150 to replace, including labour. I infer this to mean that the applicant is saying that the respondent also misrepresented the cost of replacing the O2 sensor. I note that the applicant has not provided proof that the O2 sensor would cost this amount. The respondent sent the applicant's uncle pictures of the sensor available online for under $80. I find that the applicant has not proved that the sensor cost more than the $80. Therefore, I find the applicant did not misrepresent the cost of the O2 sensor.

19. The applicant continued to drive the car while the applicant's uncle texted the respondent throughout September that there were issues with it, specifically with

the temperature gauge. The applicant claims that the respondent misrepresented the state of the radiator.

20. A mechanic's invoice shows that the applicant brought the car in on September 26, 2019. This is over two weeks after the date of sale. The mechanic took the car for a test drive and stated that there was no "heating up" but the left side of the radiator took a long time to get hot. He said there was a possible radiator problem. The applicant returned the car to the mechanic on October 1, 2019. The applicant told the mechanic she continued to have problems with the vehicle. The radiator was then replaced. I note that the applicant also submits that the engine light was on because of other issues with the car and not just because of the O2 sensor but she has not itemized or proven any of these other issues.

21. The respondent says at the time he sold the car he disclosed what he knew to be wrong with the car. He says he did not know that there was a problem with it overheating. He states that there was no issue when the applicant's uncle test drove the car. As noted, the applicant must prove that the respondent misrepresented the car's condition. I find that she has not done so. The respondent says that he allowed the uncle to test drive the car and that the uncle also drove him back to his home on the day of sale. I find the respondent's actions inconsistent with a finding that he knew that there was a problem with the radiator and was trying to hide it. On a balance of probabilities, I am not convinced that the respondent knew there was an issue with the radiator. I find that the evidence does not show that the respondent fraudulently or negligently misrepresented the state of the vehicle, including the radiator.

Warranties under the Sale of Goods Act (SGA)

22. 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.

23. However, the implied warranty for durability in section 18(c) does apply to private vehicle sales. In particular, the vehicle 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.

24. 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.

25. I note that two weeks after the sale the mechanic's report stated that the odometer at that time showed 144,74X kms with the last number cut off. The applicant returned the car to the mechanic on October 1, 2019 when the odometer read 145,1XX with the last digits cutoff. This shows that the applicant put at least a thousand kilometers on the car since it was purchased.

26. 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.

27. I find that the same reasoning applies to this dispute. The car was 15 years old and had no apparent significant issues when the applicant purchased it. I also note that the applicant chose not to have a professional inspection done, which may have revealed that there was a problem with the radiator. Like in *Sugiyama,* the car began showing problems after relatively little driving, but it was roadworthy and could be safely driven when the applicant purchased it. It was durable at that time and the radiator was not actually replaced until weeks after the sale. I also note that the transfer form said that the vehicle needed work and it was sold in an "as is" condition. This indicates that the respondent put the applicant on notice that he was not guaranteeing the car's durability.

28. 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.

29. The conclusion is also consistent with the tribunal's 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.

30. In summary, the applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims.

31. I also note that even if I had allowed the applicant's claims, I would not have awarded the $2,000 sought. The applicant has not indicated how she suffered this amount of damage. Further, the applicant requests damages for the respondent's "cheating" which I infer is a claim for punitive damages. The tribunal has jurisdiction to award punitive damages, but this remedy is reserved for malicious or high-handed extreme conduct, see *Benda v. Cao et al,* 2018 BCCRT 323. The evidence does not suggest that the respondent behaved in this manner. I would have dismissed the punitive damages claim in any event.

TRIBUNAL FEES AND EXPENSES

32. 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 she is not entitled to reimbursement of her tribunal fees. There was no request for expenses.

ORDER

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

Kathleen Mell, Tribunal Member